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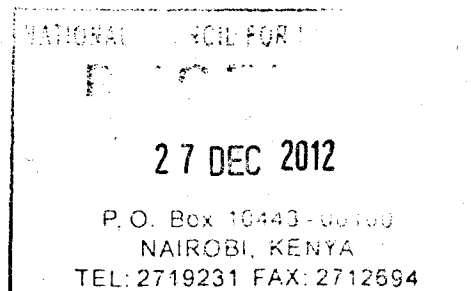
BILLS, 2012

NAIROBI, 14th December, 2012

CONTENT

Bill for Introduction into the National Assembly—

The Special Economic Zones Bill, 2012..... 6025



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THE SPECIAL ECONOMIC ZONES BILL, 2012

ARRANGEMENT OF CLAUSES

Clause

PART I - PRELIMINARY

- 1— Short title.
- 2— Interpretation.
- 3— Object and purpose of Act.
- 4 — Act to supersede.

PART II –THE SPECIAL ECONOMIC ZONES

- 5— Declaration of special economic zones.
- 6— Criteria for designating special economic zones.
- 7— Goods to be considered to be exported and imported into Kenya.
- 8— Goods within a special economic zone.
- 9— Removal of goods from a special economic zone.
- 10— Receipts and payments of special economic zone enterprises:

PART III –THE SPECIAL ECONOMIC ZONES AUTHORITY

- 11— Establishment of the Authority.
- 12— Functions of the Authority.
- 13— Board of Directors.
- 14— Conduct of business and affairs of the Board.
- 15— Powers of the Board.
- 16— Remuneration of Directors.
- 17— Chief Executive Officer.

- 18—Staff of the Authority.
- 19—Delegation by the Authority.
- 20—Protection from personal liability.
- 21—Common seal.
- 22—Establishment of the Fund.
- 23— Financial year.
- 24—Annual Estimates.
- 25—Accounts and Audit.
- 26—Investment of funds.

PART IV – REGULATORY PROVISIONS

- 27—Licence to operate in special economic zone.
- 28—Application and issue of licence.
- 29— Qualifications of a special economic zone developer and operator.
- 30— Special economic zone enterprises.
- 31— Special economic zone residents.
- 32— Register of licences.

PART V –RIGHTS AND OBLIGATIONS OF THE SPECIAL ECONOMIC ZONE ENTITIES

- 33— Activities permitted within a special economic zone.
- 34—Facilities within a special economic zone.
- 35—Rights of a special economic zone developer.
- 36—Rights of special economic zone residents.

37—Rights of a special economic zone enterprise.

38—Benefits accruing to a special economic zone enterprise.

PART VI—MISCELLANEOUS PROVISIONS

39— Powers of the Cabinet Secretary.

40—Dispute Resolution.

41—Exemption from stamp duty.

42—Regulations.

43—Repeal of Cap.517.

44—Transition and savings.

**SCHEDULE — PROVISIONS AS TO THE CONDUCT OF BUSINESS
AND AFFAIRS OF THE BOARD**

THE SPECIAL ECONOMIC ZONES BILL, 2012

A Bill for

AN ACT of Parliament to repeal the Export Processing Zones Act and provide for the establishment of special economic zones; the promotion and facilitation of global and local investors; the development and management of enabling environment for such investments and for connected purposes

Enacted by the Parliament of Kenya, as follows-

PART I – PRELIMINARY

Short title.

1. This Act may be cited as the Special Economic Zones Act, 2012.

Interpretation.

2. (1) In this Act, unless the context otherwise requires-

“Authority” means the Special Economic Zones Authority established under section 11;

“Board” means the Board of Directors of the Authority established by section 13;

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

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to trade;

“commercial activities” include wholesale trading, breaking bulk, re-labelling, repackaging, minor assembly, and grading where goods may be sold into the domestic market upon payment of duties;

Cap.486.

“company” has the meaning assigned to it by section 2 of the Companies Act and includes a company incorporated outside Kenya but registered in Kenya under that Act;

“customs control” means the measures applied to ensure compliance with the laws and regulations which the customs officers are responsible for enforcing;

“customs controlled area” means any place within the special economic zone appointed by the

Commissioner for Customs Services for carrying out customs controlled operations;

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

“customs territory” means the territory to which the customs laws of Kenya apply in full, but does not include a special economic zone;

“director” means a member of the Board appointed under section 13;

“duty” means the cess, levy, imposition, tax or surtax, imposed by any Act;

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

“export processing zone” means a special economic zone, or part thereof, predominantly oriented for export manufacturing;

“free port” means a special economic zone, or part thereof, adjacent to a port of entry lake port, seaport, or airport;

“free trade zone” means a special economic zone, or part thereof, where any goods introduced are generally regarded, in so far as import duty and taxes are concerned, as being outside the customs territory;

“Fund” means the General Fund established by

section 22;

“goods” include all kinds of articles, wares, merchandise, currency, and stock;

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

“infrastructure” means roads, communications, power grids, water and sanitation equipment, networks or other facilities, necessary for the development and operation of special economic zones;

Cap.469. “Kenya Revenue Authority” means the Authority established by section 3 of the Kenya Revenue Authority Act;

“licence” means a licence issued under this Act;

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

“national treatment” means non discriminatory trade policy commitment, which under WTO rules, implies that a government cannot treat foreign exporting firms any less favourably than its own local firms;

“negative list” means a list of activities not allowed to be undertaken by special economic zone

enterprises;

“regional headquarters” means a special economic zone enterprise engaged in corporate supervision and advisory services to affiliate companies with business executives and directors who are employed by a foreign company, based in Kenya for the purpose of managing the affairs of the affiliate companies;

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

“special economic zone” means a zone declared as such under section 5;

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

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

“special economic zone import” means any goods or services supplied to a licensed special economic zone enterprise within a special economic zone, whether from a foreign country or from the customs territory;

“special economic zones operator” means a corporate body engaged in the management of a special economic zone;

“special economic zone resident” means a person who is authorised by the Authority to reside within a special economic zone.

(2) Despite subsection (1), until after the first election under the Constitution, references in this Act to the expressions “Cabinet Secretary” and “Principal Secretary”, shall be construed to mean “Minister” and “Permanent Secretary”, respectively.

Object and
purpose of Act.

3. The object and purpose of this Act is to provide for-

- (a) an enabling environment for the development of all aspects of special economic zones including-
 - (i) development of integrated infrastructure facilities;
 - (ii) creation of incentives for economic and business activities in areas designated as special economic zones; and
 - (iii) removal of impediments to economic or business activities that generate profit for enterprises in areas designated as special economic zones;
- (b) the regulation and administration of activities within the special economic zones with due regard to the principles of openness,

competitiveness and transparency.

4. The provisions of this Act with respect to special economic zones shall supersede the provisions of any other written law that are inconsistent with the provisions of this Act.

Act to supersede.

PART II - THE SPECIAL ECONOMIC ZONES

5.(1) The Cabinet Secretary may, upon the recommendation of the Authority, declare, by notice in the Gazette, any area as a special economic zone.

Declaration of special economic zones.

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

(a) define the limits of the zone;

(b) remain in force until revoked by order in the Gazette by the Cabinet Secretary in consultation with the National Land Commission and on the recommendation of the Authority.

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

(4) A special economic zone shall be a designated geographical area where liberal economic policies, and integrated land use and infrastructure

shall be provided, or which has the potential to be developed, whether on a public, private or public-private partnership basis, where any goods introduced and specified services provided are regarded, in so far as import duties and taxes are concerned, as being outside the customs territory and wherein the benefits provided under this Act apply.

(5) Any public land declared as a special economic zone shall not be alienated for private use.

Criteria for designating special economic zones.

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

- (a) nature of the proposed project;
- (b) intended size and perimeter of the proposed special economic zone;
- (c) availability of clean title;
- (d) geographical location and topography;
- (e) proximity to resource endowments, population centres, transportation infrastructure, and physical facilities, taking into consideration -
 - (i) infrastructure and other requirements from national and local authorities including water, power, sewage and waste water management;
 - (ii) provision of medical, recreational,

security and fire safety, customs, and administrative facilities;

- (iii) impact on off-site infrastructure or services;
- (f) compatibility with an area's overall land use plan and relevant master plans;
- (g) environmental standards and requirements;
- (h) percentage use and zoning requirements;
- (i) any other criteria as may be prescribed by the Authority.

7. Unless otherwise provided under this Act, or any other written law-

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

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

Goods within a special economic zone.

8. (1) Subject to section 7,-

- (a) goods within a special economic zone, which shall constitute a duty-free area, shall not be taken out of the zone except-
 - (i) for export; or
 - (ii) for entry into the customs territory, subject to the import and customs procedures and payment of import duties where the value of such goods is net of the value of the local inputs;
 - (iii) for removal to any other customs controlled area with the approval of the custom officers; or
 - (iv) for repair and maintenance or processing or conversion with prior approval and under supervision of the customs officer and subject to any conditions as may be imposed,

provided that such approval shall not be unduly withheld;

- (b) services provided by a special economic zone enterprise may be provided duty-free to -
 - (i) persons outside Kenya; or
 - (ii) other special economic zone enterprises in furtherance of the export activities of such enterprises subject to approval

of the Authority; or

(iii) persons in the customs territory subject to approval of the Authority.

9. (1) Subject to this Act as well as applicable customs laws, goods within a special economic zone may be-

Removal of goods from a special economic zone.

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

(2) Subject to this Act, goods of any description which would be used directly for the manufacture of other goods by a licensed special economic zone enterprises and business incubator or goods manufactured in any part of the customs territory which are meant for export, may be bought into a special economic zone.

(3) A person who contravenes this section commits an offence and is liable to a fine not

exceeding two million shillings or imprisonment for a term not exceeding three years or both and the goods shall be forfeited under the Customs and Excise Act and the East African Community Customs Management Act.

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

Receipts and payments of special economic zone enterprises.

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

(2) Notwithstanding subsection (1), all financial transactions, including payment of salaries and wages, between special economic zones enterprises and persons resident in Kenya, shall be carried out through commercial bank accounts.

PART III – THE SPECIAL ECONOMIC ZONES AUTHORITY

Establishment of the Authority.

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

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

(a) suing and being sued;

(b) purchasing or otherwise acquiring,

holding, charging and disposing of movable and immovable property in and out of Kenya;

- (c) entering into contracts;
- (d) borrowing or receiving money including having its own fund; and
- (e) doing or causing to be done or performing all such other things or acts for the proper performance of its functions under this Act, as may be lawfully done or performed by a corporate body.

12. The functions of the Authority shall be to -

Functions of the Authority.

- (a) prepare recommendations for the Cabinet Secretary on all aspects of establishment, operation and regulation of special economic zones;
- (b) implement the policies and programmes of the Government with regard to special economic zones;
- (c) identify, map and, where deemed necessary, procure or avail to developers and operators the areas of land to be, or which have been, designated as special economic zones;
- (d) determine investment criteria including investment threshold;

- (e) plan, enable, or undertake the development, operation or maintenance, as well as and to finance, the required basic infrastructure up to the perimeter of, or within, select special economic zones, as and when deemed necessary;
- (f) examine and process application for establishment and operation of special economic zones and issue relevant licences;
- (g) examine and process application for licences by special economic zone developers, operators and enterprises, and issue relevant licences, through an open, competitive and transparent process;
- (h) promote and market special economic zones among potential developers, operators, or other investors;
- (i) issue certificates of origin to special economic zone enterprises for the purposes of a generalized system of preferences and other trade preferences given under bilateral or multilateral trade agreements;
- (j) act as or administer a “one-stop” centre through which special economic zone enterprises can channel all their applications for permits, approvals, licences and facilities not handled directly by the Authority, coordinating with such other Government or private entities as may be necessary through agreements

with the entities or procedures defined in implementing regulations or such other prescribed procedures;

- (k) process developer and special economic zone enterprise building plans and issue relevant approvals in consultation with the ministry responsible for physical planning and other relevant authorities;
- (l) exclusively perform all administrative business regulation and services functions in relation to the designated special economic zones that would normally be performed by local authorities and County governments;
- (m) interface with the County governments on all matters relating to special economic zones investors including payments due under any written law;
- (n) maintain current data on the performances of the programme in each individual special economic zone and enterprises;
- (o) assist as necessary the government entity responsible for the enforcement of customs and revenue, within the special economic zones, in ensuring compliance with customs procedures and other applicable requirements;
- (p) assist as necessary the appropriate government entities in ensuring compliance with financial regulations;

- (q) recommend to the Cabinet Secretary a negative list of activities that are prohibited in the special economic zones including an additional set of restricted activities under the regulations made thereunder;
- (r) issue licences and grant business service permits under this Act;
- (s) suspend or cancel the licences of a special economic zone enterprise or a special economic zone developer which is in the violation of this Act, the Customs and Excise Act, or the Value Added Tax Act;
- (t) regulate the access of non-licensed service providers from the customs territory as may be required in order to service individual enterprises;
- (u) regulate and supervise all aspects of the special economic zones regime set forth in this Act.

Board of
Directors.

13.(1) The Authority shall be administered by a Board of Directors which shall consist of-

- (a) a Chairperson to be appointed by the President;
- (b) the Principal Secretary of the ministry for the time being responsible for matters relating to trade or his designated alternate;

- (c) the Principal Secretary of the ministry for the time being responsible for matters relating to industry or his designated alternate;
- (d) the Principal Secretary to the treasury or his designated alternate;
- (e) the Principal Secretary of the ministry for the time being responsible for matters relating to information and communications technology or his designated alternate;
- (f) the Chairperson of the National Land Commission or his designated alternate;
- (g) the Commissioner General of the Kenya Revenue Authority or his designated alternate;
- (h) not more than four other directors appointed by the Cabinet Secretary, from the private sector who have distinguished service, experience and expertise in any of the following -
 - (i) trade;
 - (ii) information and communications technology;
 - (iii) manufacturing;
 - (iv) law;
 - (v) engineering;
 - (vi) economics or financial matters;

- (vii) agriculture and agro-processing;
- (viii) transport and logistics;
- (ix) tourism and recreational services;
- (x) applied research and development;
or
- (xi) any other field relevant to the special economic zones programme.

(i) the Chief Executive Officer who shall be an *ex-officio* member.

(2) No person shall be appointed under subsection (1) (a) unless such person is of impeccable character and high moral standing.

Conduct of
business and
affairs of the
Board.

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

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

Powers of the
Board.

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

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

- (a) control, supervise and administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established;
- (b) determine the provisions to be made for

capital and recurrent expenditure and for the reserves of the Authority;

- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;
- (d) open such banking accounts for the funds of the Authority as may be necessary;
- (e) invest any of the funds of the Authority not immediately required for its purposes in the manner provided in section 26;
- (f) perform all such other acts or undertake any activity as may be incidental or conducive to the attainment or fulfilment of any of the functions of the Authority under this Act.

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

Remuneration of directors.

17. (1) There shall be a Chief Executive Officer of the Authority who shall be appointed by the Board and whose terms and conditions of service shall be determined by the Board upon the advice of the Salaries and Remuneration Commission, in the instrument of appointment or otherwise in writing from time to time.

Chief Executive Officer.

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

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

(3) The Chief Executive Officer shall-

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

Staff of the Authority.

18. The Authority may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the Board may determine and on the advice of the Salaries and Remuneration Commission.

Delegation by the Authority.

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

Protection from personal liability.

20.(1) The staff of the Authority shall not be personally liable for an act which is done or purported to be done in good faith on the direction of the Authority or the Board in the performance or intended

performance of any duty or in the exercise of any power under this Act.

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

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

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

Common seal.

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

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

future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matters as the Board may deem appropriate;

- (f) the funding of promotion and marketing of special economic zones;
- (g) the funding of training, research and development activities of the Authority;
- (h) any other expenditure incurred by the Authority in the exercise, discharge, and performance of its functions this Act.

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

Accounts and
audit.

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

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

- (a) a statement of the income and expenditure of the authority during that year; and

(b) a balance sheet of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act, 2003.

No.12 of 2003

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

Investment of funds.

PART IV – REGULATORY PROVISIONS

27.(1) No person shall -

Licence to operate in special economic zone.

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

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

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

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

Application and issue of licence.

(2) On receiving an application for licence or for a renewal of a licence, the Authority, may upon payment of the prescribed fee, issue to the applicant

the appropriate licence or renew the licence.

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

(4) The Authority shall expeditiously render its decisions on licensing under this Act within a reasonable period of time from the date on which the completed application form together with relevant supporting documents for the relevant approval or the licence has been received by the Authority.

(5) A licence issued under this section shall -

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

(6) A licence issued under this section may-

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

29. (1) A special economic zone developer shall, in addition to such other criteria and requirements as may be prescribed –

Qualifications of a special economic zone developer and operator.

- (a) be a company incorporated in Kenya, for the purpose of undertaking special economic zone activities;
- (b) have the prescribed financial capacity, technical, scientific and managerial expertise, and associated track record of relevant development or operational projects, required for developing or operating the special economic zone;
- (c) own, or lease land or premises for a minimum period of ten years within the special economic zone.

(2) A special economic zone developer shall, on application, receive a special economic zone operator's licence from the Authority if it qualifies under the criteria prescribed by the Authority.

Special economic zone enterprises.

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

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

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

Special economic zone residents.

31.(1) The Authority shall have the exclusive jurisdiction to-

- (a) register residents within special economic zones; and
- (b) revoke, suspend or cancel registration of special economic zone residency, according to the prescribed criteria.

(2) A special economic zone residents registry

shall be established for purposes of subsection (1).

(3) In the case of foreign nationals, registration shall occur simultaneously with special economic zone visa issuance procedures.

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

Register of licences.

- (a) the company name; and
- (b) the address of the principal place at which the company carries on business.

(2) Where-

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

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

**PART V - RIGHTS AND OBLIGATIONS OF
SPECIAL ECONOMIC ZONE
ENTITIES**

Activities
permitted within a
special economic
zone.

33. The Authority shall give notice to the Kenya Revenue Authority of every special economic zone, developer, operator or enterprise licensed under this Act specifying-

(a) the activities in respect of which the enterprise is licensed; and

(b) any conditions attached to the licence.

(2) Where goods are manufactured outside Kenya, such goods shall be clearly labelled as products of the country where such goods were manufactured.

Facilities within a
special economic
zone.

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

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

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

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

(5) A person who fails to abide by an order of the Authority or custom officer under this section commits an offence and is liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years or both.

35.(1) A special economic zone developer shall have the right to-

Rights and obligations of an economic zone developer or operator.

- (a) act or appoint a special economic zone operator to undertake management and administration of the special economic zone on its behalf subject to subsections (2), (3) and (4) of this section, section 29 (1) (b) and such other licensing requirements as may be prescribed;
- (b) lease, sub-lease or sell land or buildings to licensed special economic zone operators and enterprises, and charge rent or fees for other services that may be provided;
- (c) acquire, dispose or transfer special economic zone lands or other assets;
- (d) develop, operate and service special economic zone lands and other assets in conformity with applicable law and its licence;

- (e) provide utilities and other services in the special economic zone, in accordance with its licence, and to charge fees for such services;
- (f) provide utilities and other services outside the special economic zone in conformity with applicable law;
- (g) enjoy the benefits accruing under the provisions of this Act;
- (h) enter into contracts with private third parties for the development, operation, and servicing of special economic zone lands and other assets, including on site and off site infrastructure.

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

- (a) perform such physical development works or make such improvements to the special economic zone site and its facilities as may be required according to the plans approved by the Authority;
- (b) provide adequate enclosures to segregate the zone area from the customs territory for the protection of revenue together with suitable provisions for the movement of persons, conveyances, vessels and goods entering or leaving the zone;
- (c) provide or cause to be provided, adequate

security on the site, as may be determined by the Authority in its licence;

- (d) adopt and enforce such rules and regulations within the special economic zone that promote safe and efficient business operations;
- (e) maintain adequate and proper accounts, and other records in relation to its activities, employment statistics, business and report on zone activities, performance and development to the Authority on a periodic basis or as required by the Authority;
- (f) register all leases.

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

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

36. Subject to applicable customs laws, special economic zone residents shall have the right to upon first arrival in Kenya, import directly into the special economic zone where they reside, free of customs duties, foreign articles, in non-commercial quantities

Rights of special economic zone residents.

for personal and household use, and one motor vehicle subject to the provisions of this Act.

Rights of special economic zone enterprises.

37. A licensed special economic zone enterprise shall enjoy-

- (a) the benefits of national treatment, in the context of an open, free-competition investment environment, including the right to freely engage within the special economic zone for which it is licensed in any business, trade, manufacturing or service activity not prohibited by this Act;
- (b) the full protection of its property rights against all risks of nationalization or expropriation; the right to fully repatriate all capital and profits, without any foreign exchange impediments or restrictions whatsoever;
- (c) the right of protection of industrial and intellectual property rights, in particular patents, copyrights, business names, industrial designs, technical processes and trade marks;
- (d) the right to admit into the special economic zone for which it is licensed, to export and sell in the customs territory all classes or kinds of goods and services in accordance with this Act subject to limitations in the Second and Third Schedule of the East African Customs Management Act;
- (e) the right to transact and carry on business with a non special economic zones enterprise;

- (f) the right to contract with any other enterprise, to buy, sell, lease, sub-let, or otherwise exercise, manage, or transfer land or buildings within a special economic zone, subject to the said enterprise's own property rights;
- (g) the right to determine the prices of any of its goods or services sold inside or outside the special economic zone for which it is licensed;
- (h) the right to employ foreign workers within the special economic zone for which it is licensed as provided in this Act;
- (i) all other rights and benefits granted to licensed special economic zone enterprises under this Act.

38.(1) All licensed special economic zone enterprises, developers, operators shall be granted exemption from all existing and future taxes and duties payable under the Customs and Excise Act, East African Community Customs Management Act and Value Added Tax Act, on all special economic zone transactions in accordance with the conditions specified in the Customs and Excise Act, East African Community Customs Management Act and Value Added Tax Act.

Benefits accruing to special economic zone enterprise.

Cap. 472

Cap.476

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

- (a) exemption from registration under the Value Added Tax Act;

- (b) exemption from payment of income tax for the first ten years from the date of first sale as a special economic zone enterprise, except that the income tax rate shall be limited to fifteen percent for the ten years following the expiry of the exemption granted under this paragraph;
- (c) exemption from the payment of withholding tax on dividends and any other payments made to non-residents during the period that the special economic zone enterprise is exempted from payment of income tax under paragraph (b);
- (d) exemption from stamp duty on the execution of any instrument relating to the business activities of special economic zone enterprise;
- (e) exemption from payment of Pay as You Earn on earnings accruing from services provided by non-resident employees of special economic zone enterprises;
- (f) exemption from the payment of full withholding tax by an special economic zones enterprise which has rendered information and communication technology services to a resident person, which payment shall instead amount to five percent;
- (g) exemption from quotas or other restrictions or prohibitions on import or

- export trade with the exception of trade in firearms, military equipment or other illegal goods;
- (h) exemption from the provisions of the Companies Act relating to allotment of shares to non-residents;
 - (i) exemption from the provision of the Foreign Investments and Protection Act relating to certificate for approved enterprise; Cap.518
 - (j) exemptions from the provisions of the Statistics Act; No.4 of 2006.
 - (k) exemption from the payment of advertisement fees and business service permit fees levied by Local Authorities and by laws made under the Local Government Act; Cap.265
 - (l) exemption from Hotel licences, and Restaurant licence issued under the Hotels and Restaurants Act; Cap.494
 - (m) exemption from general liquor licence and hotel liquor licence under the Alcoholic Drinks Control Act, 2010; No. 4 of 2010
 - (n) exemption from licence under the Food, Drugs and Chemical Substances Act to use premises to sell, prepare, store or display for sale, any food; Cap.254
 - (o) exemption from manufacturing licence under Tea Act; Cap.343

- Cap.333 (q) exemption from licence to buy, sell, mill, warehouse, export or otherwise deal in or transact business in coffee under the Coffee Act;
- Cap.341. (r) exemption from licence for a factory under the Sisal Industry Act;
- Cap.224 (s) exemption from manufacturing licence under the Pharmacy and Poisons Act;
- Cap.404 (t) exemption from private carriers licence under the Transport Licensing Act;
- Cap.520 (u) exemption from licence to deal in motor vehicle components or accessories under the Motor Vehicle Components and Accessories Act;
- Cap.343 (v) exemption from licence to trade in unwrought precious metals under the Trading in Unwrought Precious Metals Act;
- Cap.222 (w) exemption from filming licence under the Films and Stages Plays Act;
- (x) entitlement to up to three Class A entry permits for technical, supervisory and managerial staff granted within forty days of application;
- (y) up to three Class H entry permits for directors within thirty days of application and other entry permits up to ten percent

of the total workforce;

- (z) exemption from rent or tenancy controls under the Landlord and Tenant (Shops, Hotels and Catering establishments) Act; Cap.301
- (aa) exemption from the Standards (Quality Inspection of Imports) Regulations;
- (bb) exemption from export duties payable on hides and skins imported by a special economic zones manufacturing enterprise from the customs territory, for processing into finished leather.

(3) One hundred and fifty percent investment deduction allowance applicable on capital expenditure on construction of buildings or infrastructure or purchase and installation of machinery for use by the special economic zone enterprise, not beyond twenty years from the first year that the special economic enterprise became exempt from income tax.

PART VI – MISCELLANEOUS PROVISIONS

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

40. (1) Where a dispute arises between a special economic zone developer, operator or enterprise and the Authority or the Government in respect of the special economic zone entity, all efforts shall be made to settle the dispute through negotiations and mutual Dispute Resolution.

agreement for an amicable settlement.

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

(a) in accordance with the rules of procedure set forth for arbitration by the United Nations Commission on International Trade Law, the International Chamber of Commerce in Paris or the International Center for Settlement of Investment Disputes Resolution; or

(b) within the framework of any bilateral or multilateral agreement on investment protection to which the Government and the country of which the investor is a national are parties; or

(c) in accordance with the Arbitration Act.

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

Exemption from
Stamp duty.

41. The Authority shall be exempt from payment of any stamp duty chargeable under the Stamp Duty Act.

Regulations.

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

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

- (a) determine criteria for the designation and gazetting of all special economic zones;
- (b) determine the application process, criteria, conditions, terms and procedures for designation of special economic zones and licensing of special economic zone developers, operators and enterprises;
- (c) determine the form of licences to be issued under this Act and the procedures from amendment and revocation of the licences;
- (d) determine the general conditions of entry of persons into a special economic zone; and
- (e) require information from special economic zone developers, operators and enterprises.

43. The Export Processing Zones Act is repealed.

Repeal of
Cap.517

44.(1) in this section-

Transition and
savings.

“commencement date” means the day this Act comes into operation;

“former Authority” means the Export Processing Zones Authority established under the former Act;

“former Authority” means the Export Processing Zones Authority established under the former Act;

Cap.517

“former Act” means the Export Processing Zones Authority Act.

(2) Notwithstanding the repeal of the former Act all the licences issued under that Act and any rights or privileges granted to licensed enterprises in the former Act and in force immediately before the commencement of this Act shall be considered to have been granted under the provisions of this Act, and shall remain in force until revoked in accordance with any terms set out in the licence or renewed under this Act.

(3) Unless and until repealed or amended, any regulation or other instrument made or issued under the former Act shall continue to have effect as if such regulation or other instrument were made or issued under this Act but -

- (a) any provision of the regulation or instrument that is inconsistent with this Act shall be severable; and
- (b) where a part of a provision may be deemed applicable and another inapplicable under the Act, the Authority's determination in this regard shall be binding.

(4) All the property, assets, rights and liabilities, obligations and agreements including (any contracts of employment) vested in, acquired, incurred or entered

into by or on behalf of the former Authority shall be considered to be vested in or to have been acquired by the Authority for a transitional period of three years, and accordingly every such right, liability, obligation or agreement may be enforced by or against the Authority during that period.

(5) All persons who, before the commencement of this Act are employed by the Export Processing Zones Authority shall at the commencement of this Act be considered as employees of the Special Economic Zones Authority and employed in accordance with this Act.

(6) Where at the commencement of this Act any penalty other than dismissal has been imposed on any employee of the former Authority in accordance with the disciplinary proceedings against that employee, and the penalty has not been or remains to be served by that employee, that employee shall, on his transfer to the Authority, serve or continue to serve such penalty to its full term as if it had been imposed by the Authority.

SCHEDULE

(s.14)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

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

Tenure of office.

Vacation of
office.

2. A director other than an ex-officio member
may-

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

Meetings.

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

(2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least three directors, convene a special meeting of the Board at any time for the transaction of the business of

the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be half of the total directors including the Chairperson or the person presiding.

(5) The Chairperson shall preside at every meeting of the Board but the directors present shall elect one of their number to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the directors present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the directors thereof.

(8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

Committees of the Board.

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

(2) The Board shall appoint the chairperson of a committee established under subparagraph (I) from amongst its directors.

(3) The board may where it deems appropriate, co-opt any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subsection (1) shall be ratified by the Board.

Disclosure of interest.

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

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A director who contravenes subparagraph (1) commits an offence and is liable to a fine not exceeding two hundred thousand shillings.

Contracts and instruments.

6. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be

entered into or executed on behalf of the Board by any person or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

MEMORANDUM OF OBJECTS AND REASONS

The purpose of this Bill is to repeal and re-enact the Export Processing Zones Act and provide for the establishment of special economic zones, the promotion and facilitation of global and local investors, the development and management of enabling environment for such investments.

Part I of the Bill contains preliminary provisions.

Clause 3 provides for the objects and purposes of the Act which include the creation of an enabling environment for the development of all aspects of special economic zones and the regulation and administration of activities within the special economic zones with due regard to the principles of openness competitiveness and transparency.

Clause 4 provides for the provision that the proposed Act shall supersede the provisions of any other written law in case of conflict in respect to a matter relating to special economic zones.

Part II of the Bill contains provisions relating to the creation and scope of the special economic zones

Clause 5 provides for the declaration of special economic zones by the Cabinet Secretary with due regard to the protection of the public interest.

Clause 6 outlines the criteria for designating and determining areas to be special economic zones by the Authority.

Clause 7 provides for instances where goods processed or imported into a special economic zone are deemed to have been exported or imported into Kenya.

Clause 8 provides for the treatment of goods within a special economic zone.

Clause 9 provides for removal of goods from a special economic zone.

Clause 10 provides for receipts and payments of monies to enterprises within the special economic zones.

PART III of the Bill has provisions relating to the Special Economic Zones Authority.

Clause 11 establishes the Special Economic Zones Authority as a body corporate.

Clause 12 provides in detail for the functions of the Authority.

Clause 13 establishes the Board of Directors as the administrative and management organ of the Authority.

Clause 14 provides for the conduct of the business and affairs of the Board.

Clause 15 provides for the powers of the Board

Clause 16 provides for the remuneration of the directors of the Board and the mode of determination of that remuneration.

Clause 17 provides for the Chief Executive Officer of the Authority who must be a university graduate.

Clause 18 provides for the engagement of staff of the Authority by the Board and the determination of their terms of service.

Clause 19 provides for delegation of the functions of the Authority

Clause 20 provides for the protection from personal liability of the directors and staff of the authority in respect of official duties.

Clause 21 provides for the common seal of the Authority and its manner of affixing.

Clause 22 provides for the establishment of the Fund.

Clause 23 provides for the financial year of the Authority which is the same as the Government financial year.

Clause 24 provides for the preparation and content of the annual estimates of the Authority.

Clause 25 provides for the keeping of accounts and audit of the accounts of the Authority.

Clause 26 provides for the investment of funds of the Authority.

Part IV contains provisions on licensing and registration of entities in the special economic zones.

Clause 27 provides that persons must be licensed to engage in the business of processing, exporting, importing or other activities within the special economic zones.

Clause 28 sets out the procedure for application and issuance of a licence under the Act.

Clause 29 provides for requirements needed to be fulfilled when applying for a licence as a special economic zones developer and operator.

Clause 30 provides for requirements needed to be fulfilled when applying for a licence as special economic zones enterprise.

Clause 31 provides for requirements needed to be fulfilled when applying for a licence as a special economic zones resident.

Clause 32 requires the Authority to keep a register of licences issued under the Act.

Part V of the Bill contains provisions relating to the rights and obligations of special economic zone entities and players.

Clause 33 requires the Authority to give notice to the Kenya Revenue Authority of every enterprise licensed to operate in the special economic zone specifying the activities it's allowed to undertake.

Clause 34 provides for facilities a special economic zones developer shall be required to maintain.

Clause 35 outlines the rights of a special economic zone developer.

Clause 36 outlines the rights of a special economic zone resident.

Clause 37 outlines the rights of a special economic zones enterprise.

Clause 38 further outlines the benefits that accrue to a special economic zone enterprise.

Part VI of the Bill has miscellaneous provisions.

Clause 39 deals with the powers of the Cabinet Secretary to issue directions to the Authority in respect to its work.

Clause 40 provides a dispute resolution mechanism for disputes between a special economic zone enterprise and the Authority.

Clause 41 exempts the authority from payment of stamp duty.

Clause 42 empowers the Cabinet Secretary upon the recommendation of the Authority to make regulations for the better carrying out of the provisions of the Act.

Clause 43 repeals the Export Processing Zones Act.

Clause 44 makes transitional provisions with regard to the contracts, assets and liabilities of the former Authority to the new Authority.

The enactment of this Bill shall occasion additional expenditure of public funds which shall be catered for through the estimates.

Dated the 10th December, 2012.

MOSES. M. WETANGULA,
Minister for Trade