



REPUBLIC OF KENYA

**DRAFT SPECIAL ECONOMIC ZONES
(AMENDMENT) BILL, 2023**

**A LEGISLATIVE PROPOSAL
BY THE MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY**

A Bill for

AN ACT of Parliament to amend the Special Economic Zones Act, 2015 and for connected purposes.

ENACTED by Parliament of Kenya, as follows—

PART I — PRELIMINARY

Short title.

1. This Act may be cited as the Special Economic Zones (Amendment) Act, 2023.

Amendment of section 2 of No. 16 of 2015.

2. Section 2 of the Special Economic Zones Act, 2015, hereinafter referred to as the principal Act is amended:

(a) by inserting the following new definition in proper alphabetical sequence—

“Business Service Park” means means a special economic zone declared as such under section 4 to facilitate the provision of services including but not limited to regional headquarters, business processing outsourcing centres, financial services centres, virtual and digital zones, call centres, shared service centres, management consulting and advisory services and other associated services;

“Commercial Area” means non-customs controlled areas specializing in shopping, dining, entertainment, and general wholesale, retail, or other commercial activities in a special economic zone.

“Digital Zone” means a business service park declared as such under section 4 to facilitate the provision of digital products and where a system for e-residency and digital incorporation may be established.

“Educational Zone” means a special economic zone area ” means a special economic zone declared as such under section 4 to establish a centre of excellence for advanced, world-class teaching and learning;

“Special Economic Zone 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; this replaces the definition of “business service permit”

“Special Economic Zone Infrastructure” include construction and refurbishment of infrastructure and super structures to provide facilities such as power supply, sewerage, water supply, drainage, telecommunications, roads, recreational green areas, docks, yards and related amenities. Incentives will be provided to developers to facilitate them to install world class infrastructure and superstructure.

“Special Economic Zones Housing” means “a building within a special economic zone that constructed as a support infrastructure and owned or used by a developer, operator, enterprise or a resident;”

“Special Economic Zone Resident” means any individual who has registered as a special economic zone resident because he or she resides in a special economic zone.

“Special Economic Zone Visitor” means any individual who has been issued with a pass to be temporarily present in the special economic zone.

“Special Economic Zone Worker” means any individual working for a developer, operator, enterprise or resident, whether as an employee or independent contractor.

“Special Economic Zone Transactions” means those transactions that involve the sale of goods and services to a party located either:

- (i) in a special economic zone;
- (ii) in an export processing zone, bonded warehouse, or bonded manufacturing facility outside Kenya;
- (iii) within Customs Territory but outside the customs-controlled zone;
- (iv) Exported out of the Customs Territory.

Amendment of section 4 of No. 16 of 2015.

3. Section 4 of the principal Act is amended as follows —
by deleting sub-section (4) and substituting the following new paragraph (4) —

- (a) (4) “A special economic zone shall be a designated geographical area which may include both customs controlled area and non-customs controlled area where business enabling policies, integrated land uses and sector-appropriate on-site and off-site infrastructure and utilities shall be provided, or which has the potential to be developed, whether on a public, private or public-private partnership basis, where development of zone infrastructure and goods introduced in customs-controlled area are exempted from customs duties in accordance with customs laws and where any goods introduced and specified services provided in the customs controlled area 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.
- (b) in subsection (6) inserting the following new paragraph immediately after paragraph (j) —

- (k) educational zone
- (j) such other schemes as shall be prescribed by the Cabinet Secretary on the recommendation of the Authority.

Amendment of section 8 of No. 16 of 2015

4. The principal Act is amended in Section 8 by inserting the following new paragraph immediately after paragraph (4) —

“(5) Goods of any description sold to any person that remain within a the customs-controlled areas of a special economic zone are not deemed to have entered the customs territory and are entitled to the benefits conferred under this Act.

Amendment of section 11 of No. 16 of 2015.

5. Section 11 of the principal Act is amended —

- (a) in paragraph (d), by inserting the words “by regulation” determine investment criteria “including the minimum investment value and minimum land size”;
- (b) in paragraph (h), by inserting the words ‘establish and’ immediately before the word ‘administer’ and deleting the word ‘centre’ and substituting therefore the word ‘shop’.
- (ff) review applications and grant special economic zone service permit.

- (c) in paragraph (m), by deleting the words, “the Value Added Tax Act” and substituting therefor with the words, “any other applicable law”.

Amendment of section 12 of No. 16 of 2015.

6. Section 12 of the principal Act is amended in subsection (1)—

- (a) in paragraph (b), by deleting the words “industrialization and trade” and

substituting therefor the words “ special economic zones” ;

(b) by deleting paragraph (d) and substituting therefor the following new paragraph—

‘(d) the Attorney General or his designated alternate;’

(c) in paragraph (f) —

(i) by deleting the words ‘directors’ and substituting therefor the word ‘persons’; and

(ii) by deleting the words “or any other public institution”;

Amendment of section 16 of No. 16 of 2015.

7. Section 16 of the principal Act is amended —

(a) Deleting subsection (1) and substituting thereof the following new subsection —

“(1) There shall be a Chief Executive Officer of the Authority who shall be appointed by the Cabinet Secretary on recommendation of the Board on a competitive basis and on such terms and conditions as may be specified in the instrument of appointment.”

(b) In subsection (2), deleting subsection paragraph (a) and substituting thereof the following new subsection —

“(a) possesses a relevant degree from a recognized institution and has at least fifteen (15) years relevant working experience of which Five (5) years must have been in a senior management level of public or private institution in matters relating to industry, trade, law, finance, economics, management, entrepreneurship or engineering;”

(c) in subsection (3), in paragraph (b), by deleting the word “Board” and substituting therefor the word “Authority”.

Amendment of Section 26 of No. 16 of 2015

8. The Principal Act is amended by deleting Section 26 and substituting thereof the following new section

“ 26. A person shall not carry on business as a special economic zone developer, or operator, or enterprise, or hold himself out as providing or maintaining activities or facilities within a special economic zone, except and in accordance with a licence issued under this Act”.

Amendment of section 27 of No. 16 of 2015.

9. Section 27 of the Principal Act is amended —

(a) in subsection (2) by:

(i) by inserting the words, “and inform the Commissioner of Customs” at the end of the paragraph after the words “renew the licence”.

(b) In subsection (5) by deleting paragraph (d) and substituting therefor the following new paragraph —

(d) be valid for 10 years subject to inspection by the Authority and payment of annual license fees.

Amendment of section 28 of No. 16 of 2015.

10. Section 28 is amended in paragraph (a) by inserting the words, “or a public entity” immediately after the word, “Kenya”.

Insertion of a new Section 30 to No. 16 of 2015

11. The principal Act is amended by inserting the following new section immediately after section 30—

Issuance Of Special Economic Zone Business Service Permit **30A.** (1) A person who, intends to provide services within a special Economic zone for which no incentives or benefits accrue under this Act, shall apply in the prescribed form to the Authority for a special economic zone business service permit or for a renewal of the permit.

(2) The Cabinet Secretary shall prescribe, under regulations, the rights and obligations which shall be applicable upon issuance of the permit issued under subsection (1).

Amendment of section 32 of No. 16 of 2015.

12. Section 32 of the principal Act is amended in subsection (1) by deleting the word “enclosures” and substituting therefor the word “measures”;

Amendment of section 33 of No. 16 of 2015.

13. Section 33 of the principal Act is amended—

- (a) In subsection (1), paragraph (b), by deleting the word “and” immediately after the words “special economic zone operators” and inserting the words, “special economic zone service permit holders” and “residents” immediately after the word, “enterprises”;
- (b) in subsection (2) paragraph (b), by deleting the words “enclosures” and substituting therefor the word “measures” ;
- (c) in subsection (4), by deleting the words “ a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding six months” and substituting therefor the words “payment of an administrative penalty of five million shillings or to imprisonment for a term not exceeding one year or both”;

Amendment of section 34 of No. 16 of 2015

14. Section 34 of the principal Act is amended —

- (a) replacing (f) with the following paragraph
 - (f) perform such physical development works or make such improvements to the part of the special economic zone for which it is licensed, and its facilities as may be required according to the plans approved by the relevant approving entity;
- (b) inserting the following new paragraph immediately after paragraph (f)
 - “(fa) provide utilities and other services to the part of the special economic zone for which it is licensed in conformity with the applicable law and its licence”;
- (c) in paragraph (h), by inserting the words, “this Act and” immediately after the words “subject to”;

Amendment of section 35 of No. 16 of 2015.

15. Section 35 of the Principal Act is amended in sub section (2) by inserting the following new paragraphs immediately after paragraph (i):

“(ia) licence to manufacture medicine under the Pharmacy and Poisons Act;

(ib) exemption from payment of Corporate Tax in the case of a special economic zone Developer, Operator, and Enterprise for the first ten years from date of first operation and thereafter fifteen per cent for

another ten years”

Insertion of a new section
36A to No. 16 of 2015.

16. The principal Act is amended by inserting the following new section immediately after section 36 —

36A. (1) The Cabinet Secretary may provide support to a special economic zone to enable them achieve the objects and purpose for which it is established.

(2) Without prejudice to the generality of subsection (1), Cabinet Secretary may—

- (a) develop and assist in the implementation of incentive schemes for special economic zone developers, operators and enterprises operating within special economic zone;
- (b) with the concurrence of the Cabinet Secretary of any relevant government department, develop or administer any relevant support programmes to improve the operation of different categories of special economic zones;
- (c) assist the special economic zone developers, operators and enterprises operating within special economic zone to identify the causes of their performance problems and potential solutions to the problems;
- (d) collect information on the performance and best practices in resolving performance problems with a special economic zone; and provide such other support as may be required from time to time.

Amendment of Section 37 of
No.16 of 2015.

17. Section 37 of the Principal Act is amended —

(a) by deleting subsection (2) and substituting thereof the following new subsection —

“ (2) Where a dispute under subsection (1) is not settled, the parties may submit it to Arbitration before the Nairobi Centre for International Arbitration or any other Arbitration centre as may be mutually agreed by the parties.

(b) inserting the following new subsections immediately after subsection (2) —

“ 2A. Where the dispute is submitted to the Nairobi Centre for Arbitration, and is set to be heard and determined by a sole arbitrator, unless otherwise agreed by the parties, the sole arbitrator will be appointed by the Registrar of the Nairobi Centre for International Arbitration and any award, order or determination of or by such arbitrator shall be final and binding on all parties.

“2B. The arbitration dispute shall be administered in accordance with the Arbitration Act, No. 4 of 1995 and in accordance with any of the following rules —

(a) the Rules for arbitration of the Nairobi Centre for International Arbitration; or

(b) 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 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”.

Amendment of the First Schedule to No. 16 of 2015.

18. The First Schedule to the principal Act is amended by inserting the following new paragraph immediately after paragraph (h) —

- (i) livestock zones;
- (j) convention and conference facilities.
- (k) such other schemes as may be prescribed by the Cabinet Secretary on the recommendation of the Authority”.

Insertion of a new Third Schedule to No. 16 of 2015

The Principal Act is amended by inserting the following new schedule immediately after the Second Schedule —

**“ THIRD SCHEDULE
[S. 35 (1)]**

Special Economic Zone enterprises, developers and operators shall be granted the following tax incentives

1. Value Added Tax is Zero Rated; as per Section 12 of the Second Schedule of the Value Added Tax Act No. 35 of 2013 revised in 2018, “the supply of goods or taxable services to a special economic zone enterprise are zero-rated for VAT purposes”.
2. Corporate Tax rate of 10% for the first 10 years; as per Head B of the Third Schedule to the Income Tax Act Cap 470 paragraph 2 (h), licensed SEZ developer, operator and enterprises charged a corporation tax rate of ten per cent for the first ten years from the date of the first operation and thereafter fifteen per cent for another ten years.
3. Investment Deduction Allowance of 100% on capital expenditure on buildings and machinery for use in a Special Economic Zone as provided in the Finance Act of 2021, section 19 (b).
4. Excise Duty is exempted; as SEZ goods and Services are defined as exports under the Excise duty Act No 23 of 2015 revised 2017.
5. Stamp Duty is exempted as per the Stamp Duty cap 480 revised in 2018, Part VIII 117 (n) which provides for exemption on any instrument relating to business activities of Special Economic Zone Enterprises, Developers and Operators licensed under Special Economic Zone Act, 2015.
6. Exemption from payment of withholding tax on dividends paid by Special Economic Zone enterprises, developers and operators licensed under the Special Economic Zones Act;
7. Exemption from Payment of WithHolding Taxes on Royalties, interest, management fees, professional fees, training fees, consultancy fee, agency or contractual fees paid by a special economic zone developer, operator or enterprise, in the first ten years of its establishment, to a non-resident person as provided in the Finance Act of 2023 Section 24 (c) 73.
8. Exemption from payment of Capital Gains Tax on transfer of property within a special economic zone enterprise, developer and operator as provided in the Finance Act of 2023 Section 24 (c) 72.
9. Import Declaration Fee is exempted from Special Economic Zone enterprises as per the Second Schedule part A of the Miscellaneous Fees and Levies Act No. 29 of 2016 revised 2021.

Consequential amendments

19. The laws specified in the schedule are amended in the manner specified

thereto.

SCHEDULE

WRITTEN LAW	PROVISION	AMENDMENT
Income tax Act, (<i>Cap 470</i>)	Third Schedule, Head B	Delete paragraph 2(h) and substitute therefor the following new paragraph— “in the case of a special economic zone enterprise, whether the enterprise sells its products to markets within or outside Kenya developer and operator, zero percent for the first ten years from date of first operation and thereafter fifteen per cent for another ten years”