

ANTIGUA AND BARBUDA



SPECIAL ECONOMIC ZONE BILL 2015

ACT NO. OF 2015,

SPECIAL ECONOMIC ZONE BILL

ARRANGEMENT OF SECTIONS

Sections

PART I

DEFINITIONS, OBJECTS AND APPLICATION

1. Short title and commencement
2. Interpretation
3. Objects of Act
4. Application of Act

PART II

PURPOSE, POLICY AND STRATEGY OF SPECIAL ECONOMIC ZONES

5. Purpose of Special Economic Zones
6. Special Economic Zones policy
7. Special Economic Zones strategy

PART III

SPECIAL ECONOMIC ZONES ADVISORY BOARD

8. Establishment of Special Economic Zones Advisory Board
9. Terms of office of Advisory Board members
10. Disqualification from membership of Advisory Board
11. Vacation of office and filling of vacancies on Advisory Board
12. Functions of Advisory Board
13. Fiduciary duties of Advisory Board members
14. Code of good conduct and disclosure of interests by Advisory Board members
15. Meetings of Advisory Board
16. Resolution of Advisory Board without meeting
17. Committees of Advisory Board
18. Secretariat of Advisory Board
19. Expenditure, remuneration and allowances paid to members of Advisory Board and committees

PART IV

FINANCING AND SUPPORT MEASURES

- 20. Special Economic Zones Fund
- 21. Support measures
- 22. Implementation protocol

PART V

DESIGNATION OF SPECIAL ECONOMIC ZONES

- 23. Application for designation
- 24. Designation of Special Economic Zones
- 25. Establishment of the Special Economic Zone Committee
- 26. Functions of Special Economic Zone Committee
- 27. Strategic plan for Special Economic Zone
- 28. Business and financial plan of Special Economic Zone
- 29. Reporting and financial statements of Special Economic Zone

PART VI

SPECIAL ECONOMIC ZONE OPERATOR

- 30. Special Economic Zone Committee
- 31. Application for Special Economic Zone operator licence
- 32. Requirements for application for Special Economic Zone operator licence
- 33. Special Economic Zone operator permit
- 34. Assignment of rights and obligations of Special Economic Zone operator permit
- 35. Application to locate in Special Economic Zone

PART VII

GENERAL PROVISIONS

- 36. Guidelines
- 37. Regulations

ANTIGUA AND BARBUDA
SPECIAL ECONOMIC ZONE BILL 2015
No. of 2015

An Act For

AN ACT to set up a Special Economic Zone to promote and establish self-contained, industrial, commercial and financial corporate offices and business centres, with solid and good infrastructure, to facilitate public and private sector participation in a competitive and attractive environment for the promotion of economic development and the creation of jobs in Antigua and Barbuda.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I

DEFINITIONS, OBJECTS AND APPLICATION

1. Short title and commencement

This Act may be cited as the Special Economic Zone Act, 2015 and shall come into force on a date that the Minister may, by notice published in the Gazette appoint.

2. Interpretation

In this Act, unless the context **otherwise** indicates —

“**Advisory Board**” means the Special Economic Zones Advisory Board established by section 8;

“**committee**” means the Special Economic Zone committee established under section 24 (2).

“**company**” means a company as defined in section 1 of the Companies Act, 1995 (Act No. 18 of 1995);

“**Finance Administration Act**” means the Finance Administration Act, 2006 (Act No. 23 of 2006);

“**industrial development zone**” means a purpose built industrial estate that leverages domestic and foreign fixed direct investment in value-added and export-oriented manufacturing industries and services;

“**licensee**” means the holder of a Special Economic Zone licence issued in terms of section 22(6);

“**Minister**” means the Minister responsible for Finance and Corporate Governance;

“**operator**” means the holder of a Special Economic Zone operator permit issued in terms of section 31 (4);

“**operator permit**” means an operator permit issued in terms of section 31 (4);

“**prescribed**” means prescribed by regulation made in terms of section 37;

“**public entity**” means a statutory corporation or a company which is wholly owned by the Government.

“**public-private partnership**” means a public-private partnership **established by an agreement between the Government and a private entity or a statutory corporation and a private entity.**

“**Special Economic Zone**” means a multi-functional zone of approximately 5sq. km (1,235.525 acres) that leverages domestic and foreign direct investment in value added and export oriented manufacturing industries, re-export, finance and services .

“**this Act**” includes regulations rules and orders made under section 37;

“**value adding**” or “**value added**” includes the enhancement packaging or re-packaging of and **improvement in quality** added to a product before the product is offered to the end-user.

3. Objects of Act

The objects of this Act are to provide for—

- (a) the determination of Special Economic Zones policy and strategy;
- (b) the establishment of the Advisory Board;
- (c) the establishment of the Special Economic Zones Fund to support the development of Special Economic Zones;
- (d) the designation, promotion, development, surveillance and management of Special Economic Zones;
- (e) regulatory measures and incentives for Special Economic Zones in order to attract domestic and foreign direct investment; and
- (f) the establishment of a single point of contact or one stop shop that delivers the required government services to businesses investing and operating in Special Economic Zones in order to lodge applications to various government authorities and agencies and to receive information on regulatory requirements from such authorities and agencies.

4. Application of Act

This Act applies to Special Economic Zones established in Antigua and Barbuda.

PART II

PURPOSE, POLICY AND STRATEGY OF SPECIAL ECONOMIC ZONES

5. Purpose of Special Economic Zones

(1) A Special Economic Zone is an economic development tool for the promotion of economic growth by using support measures to attract targeted foreign and domestic investments and technology.

(2) The purpose of establishing Special Economic Zones includes—

- (a) facilitating the development of a medium and small size industrial complex, having strategic national economic advantage for targeted investments and industries in the manufacturing sector and tradable services;
- (b) developing infrastructure required to support the development of targeted industrial activities;
- (c) attracting foreign and domestic direct investment;
- (d) providing the location for the establishment of targeted investments;
- (e) promoting integration with local industry and increasing value-added production;
- (f) creating decent **employment** and other economic and social benefits in the area in which it is located, including the broadening of economic participation by promoting small, and medium enterprises and promoting skills and technology transfer; and
- (g) the generation of new and innovative economic activities.

(3) For the purpose of this section, “targeted foreign and domestic investments” include investments in support of government’s economic and industrial development policies.

6. Special Economic Zones policy

The Minister may determine policy for the designation, promotion, development, operation and management of Special Economic Zones after consultation with the Advisory Board and may, when necessary, review such policy.

7. Special Economic Zones strategy

(1) The Minister **shall** determine a Special Economic Zones strategy after consultation with the Advisory Board and may, when necessary, review such strategy.

(2) The strategy contemplated in subsection (1) must address the designation of Special Economic Zones that will best support small and medium size industries and tradable services and economic growth strategies.

PART III
SPECIAL ECONOMIC ZONES ADVISORY BOARD

8. Establishment of Special Economic Zones Advisory Board

(1) The Special Economic Zones Advisory Board is hereby established.

(2) The Minister **shall** appoint not more than 7 persons as members of the Advisory Board, consisting of—

- (a) one person representing the Inland Revenue Department;
- (b) **one person representing the Customs Department** ;
- (c) two persons representing the holder of a Special Economic Zone licence;
- (d) **two** persons, representing organised business and labour;
- (e) one independent person appointed by the Minister on the basis of such person's knowledge, experience and expertise relevant to Special Economic Zones.

(3) The Minister **shall** —

- (a) appoint the persons contemplated in subsection (2) (a) to (e) as members of the Advisory Board from nominations submitted in response to **a request from the appropriate Ministry or Organisation**;
- (b) strive to ensure that the composition of the Advisory Board is broadly representative, with due regard to experience and expertise; and
- (c) publish the names of persons appointed as members of the Advisory Board and the dates of commencement of their terms of office in the Gazette.

(4) The Minister **shall** appoint in terms of the procedure contemplated in subsection (3) an alternate member for each such member to attend a meeting of the Advisory Board in the event that a member concerned is unable to attend the meeting.

(5) The **Chairperson shall be the person appointed under subsection (2) (e)**;

9. Terms of office of Advisory Board members

(1) The members of the Advisory Board contemplated in section 7—

- (a) shall hold office for a period of **three** years from the date of their appointment by the Minister; and
- (b) may be eligible for reappointment on expiry of their term of office.

(2) Despite subsection (1), the Minister may by notice **published** in the *Gazette* extend the period of office of members of the Advisory Board for a maximum period of 12 months.

10. Disqualification from membership of Advisory Board

A person may not be a member of the Advisory Board if that person—

- (a) is an unrehabilitated insolvent;
- (b) has been declared by a High Court with jurisdiction to be mentally ill;
- (c) has been convicted of an offence in Antigua and Barbuda or elsewhere, and sentenced to imprisonment without the option of a fine or, in the case of fraud or any other offence involving dishonesty, to a fine or imprisonment or both a fine and imprisonment;
- (d) has at any time been removed from an office of trust on account of breach of fiduciary duties; or
- (e) is otherwise disqualified in terms of section 66 of the Companies Act, 1995 (Act No.18 of 1995).

11. Vacation of office and filling of vacancies on Advisory Board

(1) A member of the Advisory Board vacates office if the member—

- (a) submits his resignation in writing to the Minister;
- (b) ceases to qualify for membership of the Advisory Board in terms of section 9;
- (c) is removed from office by the Minister—
 - (i) in the public interest and for just cause;
 - (ii) after consulting the Advisory Board; and
 - (iii) after a fair hearing.

(2) A vacancy arising from the death of a member or from circumstances referred to in subsection (1) must, within three months of the vacancy occurring, be filled for the unexpired portion of that member's term of office by a suitable person appointed by the Minister in terms of a the procedure contemplated in section 8.

12. Functions of the Advisory Board

(1) The Advisory Board **shall**—

- (a) advise the Minister on policy and strategy in order to promote, develop and supervise the management of a Special Economic Zones;
- (b) monitor the implementation of the Special Economic Zones policy and strategy and report to the Minister on an annual basis on the implementation of such policy and strategy;
- (c) consider an application for designation as a Special Economic Zone and recommend to the Minister whether or not to approve the application and grant a Special Economic Zone licence to the applicant;
- (d) report in the prescribed manner to the Minister on progress relating to the development of Special Economic Zones;
- (e) advise the Minister on minimum norms and standards required for the provision of a one stop shop in a Special Economic Zone;
- (f) advise the Minister on initiatives to market Special Economic Zones; and

- (g) assess and review the success of Special Economic Zones in achieving the purpose referred to in section 5.
- (2) The Advisory Board may—
 - (a) conduct investigations on any matter arising out of the application of this Act; and
 - (b) perform such other functions consistent with the objectives of the Act as determined by the Minister.

13. Fiduciary duties of Advisory Board members

A member of the Advisory Board—

- (a) must comply with the code of conduct and disclosure obligations contemplated in section 14;
- (b) may not act in a way that is inconsistent with the functions of the Advisory Board in terms of this Act; and
- (c) may not use the position or privileges of, or confidential information obtained as, a member of the Advisory Board for personal gain or to improperly benefit another person.

14. Code of good conduct and disclosure of interests by Advisory Board members

- (1) The Minister must approve a code of conduct for the members of the Advisory Board.
- (2) Members of the Advisory Board—
 - (a) **must** make full disclosure to the Advisory Board of any conflict of interest, including any potential conflict of interest;
 - (b) may not vote, attend or participate in any proceedings of the Advisory Board in relation to any matter before the Advisory Board in respect of which they have a conflict or potential conflict of interest; and
 - (c) must comply with any decision of the Advisory Board as to whether or not they are entitled to participate in any particular proceedings of the Advisory Board.
- (3) For the purposes of this section, a member has a conflict of interest if—
 - (a) the member, or a family member, partner or business associate of the member—
 - (i) has a financial or other interest in an entity that is involved with a Special Economic Zone; or
 - (ii) the member has any other interest that may preclude, or may reasonably be perceived as precluding, the member from performing the functions of a member of the Advisory Board in a fair, unbiased and proper manner.
- (4) Any disclosure in terms of subsection (2) (a) and any decision of the Advisory Board in terms of subsection (2) (c) must be recorded in the minutes of the Advisory Board.

(5) For the purposes of this section, “**family member**”, in relation to a member of the Advisory Board, includes his or her parent, sibling, child, including an adopted child, or spouse, and a person living with that member as if they were married to each other, and any person separated from the member by no more than two degrees of natural or adopted consanguinity or affinity.

15. Meetings of Advisory Board

(1) The Advisory Board must hold at least four ordinary meetings each year at times and places determined by the chairperson of the Advisory Board.

(2) The chairperson of the Advisory Board—

(a) may convene special meetings of the Advisory Board; and

(b) must convene a special meeting within 14 days of receiving a written request to do so, signed by a majority of the members of the Advisory Board.

(3) The request referred to in subsection (2) (b) must clearly state the reason for the request and only a stated matter may be discussed at the special meeting in question.

(4) The Minister may request that a meeting of the Advisory Board be convened at any time, should the need arise.

(5) If the chairperson is not present at a meeting of the Advisory Board, the members present must appoint another member to preside at the meeting.

(6) At any meeting, a majority of the members of the Advisory Board constitutes a quorum.

(7) A decision of the majority of members of the Advisory Board at any meeting constitutes a decision of the Advisory Board and, in the event of an equality of votes, the chairperson of the meeting has a casting vote.

(8) Minutes of the proceedings of every meeting of the Advisory Board **shall** be—

(a) recorded and must be kept in a manner that cannot be altered or tampered with; and

(b) submitted to the next meeting of the Advisory Board for confirmation and, if adopted, signed by the chairperson.

(9) The Advisory Board may—

(a) permit members to participate in a particular meeting by telephone or via audio-visual technology and any member who participates in this manner is regarded as being present at the meeting; and

(b) invite any person to attend a meeting for the purpose of advising or informing the Advisory Board on any matter.

(10) The Advisory Board may, with the approval of the Minister, by resolution, make rules to further regulate its meetings.

16. Resolution of Advisory Board without meeting

(1) The Advisory Board may adopt a resolution without a meeting if at least a majority of the members indicate in writing their support for the resolution in a manner and in accordance with a procedure determined by the Advisory Board.

(2) Section 15(8) applies with the changes required by the context in respect of subsection (1).

17. Committees of Advisory Board

(1) The Advisory Board may establish committees to assist the Advisory Board in the performance of its functions and may determine their composition, terms of reference, procedures and duration.

(2) The Advisory Board may appoint suitably qualified persons to serve on a committee, including persons in the full-time employment of the Government.

(3) Any committee established in terms of subsection (1) must be chaired by a member of the Advisory Board.

18. Secretariat of Advisory Board

The Minister must—

- (a) establish a dedicated secretariat in his Ministry to support and assist the Advisory Board in the performance of its functions in accordance with this Act; and
- (b) provide the secretariat with the human resources, financial and other resources necessary to enable the secretariat to effectively render the support and assistance contemplated in paragraph (a).

19. Expenditure, remuneration and allowances paid to members of Advisory Board and committees

(1) Expenditure incidental to the performance of the functions of the Advisory Board must be defrayed from money voted by Parliament as part of the appropriation of the Minister.

(2) A member of the Advisory Board or a member of any committee of the Advisory Board, who is not in the full-time employment of the Ministry, may be paid such allowances as determined by the Minister with the concurrence of the Cabinet.

(3) Ex officio members of the Advisory Board may be paid such stipend as the Minister, with the concurrence of the Cabinet, determine.

PART IV

FINANCING AND SUPPORT MEASURES

20. Special Economic Zones Fund

(1) The Minister may, with the concurrence of the Cabinet from moneys voted by Parliament as part of the appropriation of the Ministry, establish a Special Economic Zones Fund to support the promotion and development of Special Economic Zones.

(2) The Minister may, with the concurrence of the Cabinet, make regulations regarding

- (a) additional source of money, including contributions from licensed operators for Fund;
- (b) the administration, management and supervision of the Zone.

21. Support measures

(1) The Minister may determine and implement support measures, including incentive schemes, businesses operating within Special Economic Zones.

(2) The Minister may, with the concurrence of the Minister of any relevant government Ministry, design and administer support measures or other support programmes necessary, including incentive schemes, to support the development and operation of different categories of Special Economic Zones.

22. Implementation protocol

(1) The Minister may, enter into an implementation protocol with any organ of **the Government** that the Minister may deem appropriate, including—

- (a) the **Ministry** responsible for environmental affairs;
- (b) the **Ministry** responsible for National Security;
- (c) the **Ministry** responsible for labour;
- (d) the **Ministry** responsible for economic development ; or
- (e) **the Ministry responsible for Legal Affairs.**

(2) The implementation protocol may deal with—

- (a) implementation and operation of a one stop shop; or
- (b) any other matter requiring the co-ordination of the functions of **the** organs of **Government** that may be appropriate or required for the proper regulation and development of Special Economic Zones.

(3) The Minister **must**, in the annual report of the statutory corporations referred to in section 65 (b) of the Finance Administration Act, include a report on the conclusion and implementation of the protocols contemplated in subsection (1), if any, and the implementation of one stop shop in Special Economic Zones.

PART V

DESIGNATION OF SPECIAL ECONOMIC ZONES

23. Application for designation

(1) A private entity, a public entity, or a public-private partnership, may apply to the Minister in the form and manner prescribed by regulation for a specified area to be designated as a Special Economic Zone.

(2) In its application, the applicant must demonstrate that the designation of the area as a Special Economic Zone will further the government's industrial development objectives and must specify the extent to which the designation seeks to—

- (a) achieve the provisions of section 5(2);
- (b) be consistent with any applicable national policies and laws; and
- (c) comply with prescribed criteria.

(3) The applicant must—

- (a) have sufficient access to financial resources and expertise for the development, operation, management and administration of a Special Economic Zone;
- (b) submit to the Minister a comprehensive feasibility study;
- (c) indicate the extent to which it owns or controls the area to be considered for designation as a Special Economic Zone; and
- (d) in the case of a public-private partnership, indicate its ownership structure through the submission of a shareholders' agreement, indicating shareholding, percentages of shareholding, requirements for transfer of shares and requirements for the distribution of assets upon liquidation.

(4) The Advisory Board must—

- (a) consider the application; and
- (b) recommend to the Minister whether or not the area is suited to be designated as a Special Economic Zone.

(5) The Advisory Board may request further information and documents from the applicant for the purposes of considering the application.

(6) The Minister may, after considering the recommendation of the Advisory Board and satisfying himself that the area indicated in the application is in compliance with the prescribed zone size and any other criteria specified in any regulations made under this Act, designate the area as a Special Economic Zone by a notice published in the Gazette, and issue to the applicant a Special Economic Zone licence.

(7) A licence issued under this section shall include all the incentives and concessions granted to the licence and other entities permitted to operate in the Special Economic Zone.

24. Designation of Special Economic Zones

(1) The Minister may prescribe different categories of Special Economic Zones, which may include—

- (a) a free port;
- (b) a free trade zone;
- (c) an industrial development zone; and
- (d) a sector development zone;
- (e) industrial undertaking zone;
- (f) financing and banking zone;
- (g) tourism zone and
- (h) corporate headquarters zone

(2) The Minister may by regulation prescribe—

- (a) criteria and guidelines for the designation of Special Economic Zones; and
- (b) conditions that may be imposed on each category of Special Economic Zones.

(3) The Minister may, after consultation with the Minister responsible for Economic Development, by regulation, prescribe the type of service and business that may be located in a Special Economic Zone in order to achieve the purpose of Special Economic Zones set out in section 5.

(4) For the purposes of this section—

- (a) **“free port”** means a duty free area adjacent to a port of entry where imported goods may be unloaded for value-adding activities within the Special Economic Zone for storage, repackaging or processing, subject to customs procedures;
- (b) **“free trade zone”** means a duty free area offering storage and distribution facilities for value-adding activities within the Special Economic Zone for subsequent export;
- (c) **“port of entry”** means a place designated as a place of entry for the control of vessels, aircraft, vehicles, goods and persons entering Antigua and Barbuda; and
- (d) **“sector development zone”** means a zone focused on the development of a specific sector or industry through the facilitation of general or specific industrial infrastructure, incentives, technical and business services primarily for the export market.
- (e) **“industrial manufacturing zone”** mean a zone primarily for light industrial uses, where all processing, fabricating, assembling or disassembling of items takes place;
- (f) **“financing and banking zones”** means a zone that caters to, and houses clusters of facilities for companies engaging in offshore financial services in alignment with additional human capital arising from future investment to encourage significant financial services, banking and investments.
- (g) **“tourism zone”** means areas used to facilitate integrated resort and leisure, community development, duty free shopping, gambling, reports and eco-tourism.

- (h) “corporate headquarters zone” means areas where multinational corporations establish their global or regional corporate headquarters and one stop shop service.

25. Establishment of the Special Economic Zone Committee

(1) Upon designation of an area as a Special Economic Zone, the licensee must—

- (a) establish a committee to manage the Special Economic Zone; and
- (b) provide the committee with the resources and means necessary to manage and operate the Special Economic Zone, including the transfer of ownership or control of the land comprising the area designated as a Special Economic Zone.

(2) The Committee shall be responsible for the efficient governance and management of the business affairs of that Special Economic Zone.

(3) In the performance of its functions under this Act, the Committee shall be subject to the regulations and guidelines made by the Minister.

(4) The Minister must make regulations regarding the governance principles for entities is established as contemplated in subsections (2) including—

- (a) the constitution of Special Economic Zone Committee;
- (b) the term of Office of Special Economic Zone Committee members;
- (c) codes of conduct for Special Economic Zone Committee; and
- (d) disclosure of interest by Special Economic Zone Committee members.

26. Functions of the Special Economic Zone Committee

(1) The Committee shall be the governing body of the Special Economic Zone and shall oversee and monitor all investments, developments, construction and overall management and administration of the Zone.

(2) The Committee shall formulate the rules and guidelines to be followed by the operators in the Zone and ensure that holders of operator permits comply with their performance obligations in accordance with the time frame prescribed by the Committee.

(3) The development strategy for the management of the Zone shall include the generation of adequate financial resources from enterprises operating in the Zone as well as external sources.

(4) The Committee shall monitor the activities of all international participants, including foreign financial investments injected into the Zone and keep proper accounting and auditing record.

(5) In addition to the general responsibility of managing the affairs of the Special Economic Zone, the committee shall-

- (a) implement the strategic plan for that Special Economic Zone within the framework of the Special Economic Zones strategy;

- (b) make improvements to that Special Economic Zone and its facilities in accordance with the written agreement contemplated in section 32(1);
- (c) provide or facilitate the provision of infrastructure and other services required for that Special Economic Zone to achieve its strategic and operational goals;
- (d) provide adequate demarcation of the Special Economic Zone from any applicable customs areas for the protection of revenue together with suitable provision for the movement of conveyances, vessels and goods entering or leaving that Special Economic Zone;
- (e) provide adequate security for all facilities in the Special Economic Zone;
- (f) adopt rules and regulations for businesses within the Special Economic Zone in order to promote their safe and efficient operation;
- (g) maintain adequate and proper accounts and other records in relation to its business and report in the manner prescribed or required on the activities, performance and development of the Special Economic Zone to the Minister and as required under any other law
- (h) promote the Special Economic Zone as a foreign and domestic direct investment destination, in consultation with the Advisory Board;
- (i) recommend to the Committee whether or not to approve an application by a business to locate within the Special Economic Zone in terms of section 34;
- (j) apply to the Minister for funds and support measures contemplated in section 21 in the form and manner prescribed;
- (k) facilitate a single point of contact or one stop shop that delivers the required government services to businesses operating in the Special Economic Zone in order to provide simplified procedures for the development and operation of that Special Economic Zone and for setting up and conducting business in that Special Economic Zone; and
- (l) undertake any other activity within the scope of this Act to promote the effective functioning of the Special Economic Zone.

(6) The Committee shall, in the performance of its functions be subject to all the laws in force in Antigua and Barbuda.

27. Strategic plan for Special Economic Zone

(1) The Committee must develop and implement a strategic plan within the framework of the Special Economic Zones strategy contemplated in section 6 in order to comply with the conditions for that Special Economic Zone.

(2) The strategic plan contemplated in subsection (1) must be reviewed on an annual basis and submitted to the Minister before the end of each financial year or at a later date as the Minister may determine.

(3) The Committee must provide the Minister with such information and documentation as the Minister may reasonably require in connection with the affairs of that Special Economic Zone entity.

28. Business and financial plan of Special Economic Zone

A Committee must, before the end of each financial year or at a later date **as the Minister may determine**, submit to the Minister for approval a business and financial plan—

- (a) containing a projection of the revenue and expenditure of that Special Economic Zone entity in respect of the ensuing financial year; and
- (b) covering the affairs of that Special Economic Zone entity for each of the two immediately following financial years.

29. Reporting and financial statements of Special Economic Zone

(1) A Special Economic Zone Committee must—

- (a) keep full and proper records of the financial affairs of the Special Economic Zone entity;
- (b) prepare financial statements for each financial year in accordance with generally accepted international accounting practice;
- (c) submit within five months of the end of the financial year to the Minister—
 - (i) an annual report on the activities of that Special Economic Zone entity during that financial year;
 - (ii) audited financial statements of that Special Economic Zone entity for the previous financial year; and
 - (iii) the report of the Auditors appointed under subsection (1) (c) on those statements.

(2) The annual report and financial statements referred to in subsection (1) must fairly present the state of affairs of that Special Economic Zone entity and its performance against predetermined objectives for the financial year concerned.

PART VI

SPECIAL ECONOMIC ZONE OPERATOR

30. Special Economic Zone Committee

(1) A Special Economic Zone Committee must follow a fair, equitable, transparent, competitive and cost-effective procurement process, when appointing an operator to develop, operate and manage that Special Economic Zone entity.

(2) Notwithstanding subsection (1), only a Special Economic Zone entity incorporated or registered under the laws of Antigua and Barbuda as a private entity, a public-private partnership or a public entity may develop and operate in the Special Economic Zone concerned.

31. Application for Special Economic Zone Operator Licence

(1) A Special Economic Zone may only be developed, operated and managed by a person who holds a Special Economic Zone operator licence issued in terms of this section.

(2) Any person appointed by a Special Economic Zone Committee to develop, operate and manage a Special Economic Zone entity in terms of this section must apply to the Minister for a Special Economic Zone operator licence in the form and manner prescribed by regulation.

(3) The Special Economic Zone Advisory Board—

- (a) must consider the application;
- (b) may require an applicant to supply additional information necessary to consider the application;
- (c) may request an applicant to appear before it for the purpose of making an oral representation at the applicant's expense;
- (d) may require any interested party, including an organ of state, affected by such application to comment on the application in writing; and
- (e) must recommend to the Minister whether or not the applicant is eligible for an operator permit.

(4) The Minister may, after considering the recommendation of the Advisory Board and with **the** approval of the Cabinet issue a person with an operator permit, with or without conditions.

(5) The Minister may make regulations regarding—

- (a) the procedure and time periods applicable to applications for operator permits; and
- (b) the information that must be provided in any application for an operator permit.

32. Requirements for application for Special Economic Zone operator permit

(1) An applicant for an operator permit must—

- (a) be a person, a corporate entity approved by a Special Economic Zone Committee, to develop, operate and manage that Special Economic Zone in terms of section 30
- (b) an entity **incorporated or** registered as a company in Antigua and Barbuda;
- (c) have sufficient financial resources and expertise to develop, operate and manage a Special Economic Zone; and
- (d) comply with such other criteria and requirements as may be prescribed.

(2) The Minister may make regulations regarding—

- (a) additional criteria for applications for operator permit;

- (b) any condition that may be imposed on operator permit, including conditions relating to businesses that may be operated in Special Economic Zones;
- (c) any measure to promote the effective monitoring of the conditions contained in operator permit; and
- (d) any other matter necessary to facilitate the issuing of an operator permit.

33. Special Economic Zone operator permit

Before issuing an operator permit in terms of section 31(4), the Minister must, on the recommendation of the Advisory Board, be satisfied that the written agreement between the Special Economic Zone Committee and the operator adequately provides for the duties, terms and conditions for the development, operation and management of that Special Economic Zone by the operator, including—

- (a) the requirements and timetable for the planning, construction, supply of infrastructure and utilities within that Special Economic Zone;
- (b) the security measures that the operator must take and maintain in or around a customs controlled area defined in section 2 of the Customs (Control and Management) Act, 2013, (Act No. 3 of 2013);
- (c) the facilities that the operator must provide in order to enable the Advisory Board or a Special Economic Zone Committee, as the case may be, to exercise its functions within that Special Economic Zone; and
- (d) the construction timetable and milestone schedule for that Special Economic Zone.

permit.

34. Assignment of rights and obligations of Special Economic Zone operator permit

(1) An operator may, subject to section 31(1), assign its rights and obligation under the an operator permit to another person, if such other person—

- (a) applies to the Minister for a transfer in terms of the provisions of this section; and
- (b) satisfies the requirements for an operator permit in terms of this Part.

(2) The assignee must in its application clearly stipulate any changes to the original development, business and operating plan of the Special Economic Zone in question.

(3) The Minister may, after considering the recommendations of the Advisory Board, approve the assignment of an operator permit from one operator to another.

(4) Upon the assignment of its right and obligation under an operator permit, the new operator shall be subject to all the obligations placed on an operator in terms of this Act, enjoy all the rights and benefits attached to the licence assigned and comply with the obligations conferred or imposed on the assignor in terms of this Act and the operator permit transferred.

(5) The Minister may make regulations regarding—

- (a) the procedure to assign an operator permit; and
- (b) any other matter necessary in order to ensure the effective assignment of an operator permit.

35. Application to locate in Special Economic Zone

(1) Any person who intends to operate a business in a Special Economic Zone must apply to the Committee, in the manner and form prescribed by regulation, to locate the business in the Special Economic Zone.

(2) In the application the applicant must—

- (a) provide information to show that the applicant operates a business or renders a service prescribed by the Minister in terms of section 24(4);
- (b) indicate the extent to which the applicant's business achieves the purpose of Special Economic Zones set out in section 5; and
- (c) comply with any other criteria that the Minister may prescribe

(3) The applicant must enter into a written agreement with the committee and undertake, among other conditions and covenants, to comply with the requirements prescribed in section 33.

(4) The Special Economic Zone Committee may, after considering the recommendations of the operator, approve the application of a business to locate within that Special Economic Zone, with or without conditions.

PART VII

GENERAL PROVISIONS

36. Guidelines

(1) The Minister may, after consultation with the Advisory Board, issue guidelines regarding any matter in respect of which the Minister deems it necessary or expedient in order to achieve the objects **and** purpose of this Act.

(2) The guidelines—

- (a) shall not be inconsistent with the provisions of this Act;
- (b) must be published in the *Gazette*;

37. Regulations

(1) The Minister may, after consultation with the Advisory Board, make regulations —

- (a) prescribing guidelines regarding any matter in respect of which the Minister deems it necessary or expedient in order to achieve the objects or purposes of this Act;

- (b) prescribing fees and other changes for services and other facilities provided to developers in the zone;
- (c) regarding any matter which in terms of this Act is required or permitted to be prescribed;
- (d) regarding any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) Any regulation made in terms of subsection (1), must be subject to affirmative resolution of the legislature.

Passed by the House of Representatives
on the day of 2015.

Passed by the Senate on the day
of 2015.

Speaker

President

Clerk to the House of Representative

Clerk to the Senate

Explanatory Memorandum

The Bill seeks to create a legislative frame work for the establishment of a mechanism by which Antigua and Barbuda may attract domestic and foreign investment and compete effectively in the global market.

2. It is the view of this Government that the success of its economic policies may have a better chance of success, if it can employ innovative mechanisms that has proved successful in the promotion of development and economic growth in other parts of the world.

3. In search of such a mechanism, the Government has identified the concept of a Special Economic Zones as a mechanism for development, economic growth and job creation.

4 The long title summaries in broad outline the purpose and objective the Bill seeks to promote. These objectives include the establishment of a Special Economic Zone for the

promotion of a self-contained, industrial, commercial and financial corporate offices and business centres. The Zone contemplated in the Bill will develop its own infrastructure to facilitate both public and the private sector participation in an environment, which is more attractive to facilitate competition globally.

5. Part I of the Bill contains clauses 1-3. Clause 2 defines words and terms frequently used in the Bill. Clause 3 sets out the objects of the Bill, which include, among others, the determination of Zone policies and strategies, the establishment of the Special Economic Zones, provision of regulatory measures for incentives and concessions, the establishment of Special Economic Zone Board and a single point of contact or one stop shop for delivery of required government services to businesses in the Zones. Clause 4 applies the Act to Special Economic Zones established in Antigua and Barbuda.

6. Part II, contains clauses 5, 6 and 7, which reinstates in detail, the purpose of the Bill. In clauses 6 and 7, the Minister would be authorised to determine the policies and strategies for designation, promotion and development of the Zone as contemplated by the Bill.

7. Part III of the Bill would establish and constitute the Special Economic Zone Advisory Board. The members of the Board are selected from both the public and private sectors. The tenure of office of the Advisory Board is prescribed in clause 9. Clause 10 sets out the criteria for disqualifying persons to be appointed to serve on the Board.

8. Clause 12 prescribes the functions of the Advisory Board, which primarily advises the Minister on policy and strategy for development of the Zone. The Advisory Board would also be charged with responsibility to review and to consider applications for licences and advise the Minister as to whether the applicant have satisfied the criteria prescribed for the grant of a licence.

9. Clause 14 would require the Minister to prescribe a code of conduct to regulate the conduct of members of the Board, including disclosure of any conflict of interest.

10. Clauses 15, 16, 17 and 18 make provision for procedure at meetings of the Advisory Board and the establishment of committees to assist the Advisory Board in the performance of its functions.

11. Clauses 18 and 19 make provision for the establishment of a dedicated unit within the Ministry with adequate financial resources to carry out its functions.

12. Part IV contains three clauses, namely clauses 20, 21 and 22. Under clause 20, the Minister would be authorised to create an Economic Zone Fund with monies provided by Parliament and contributions from external sources, including as operators in the zone. The Fund would be used to establish Zones and implement support measures, including incentives and concessions schemes.

13. The designation of a specified area as a Special Economic Zone, the procedure for making application to the Minister, the financial and other resources of the applicant to operate a Special Economic Zone, the different category of businesses to operate in the Zone, the establishment and

functions of the Special Economic Zone Committee and other conditions and criteria for the administration and management of the Zone are addressed in clauses 23-29.

14. Clause 23 specifies the entities that would qualify to make application to the Minister for the designation of an area as a Special Economic Zone. Clause 23 further sets out in detail the criteria to be met before an application is submitted. These would include a requirement to demonstrate that the area to be designated would advance the Government's industrial development objectives and achieve the purposes specified in clause 5 (2), and the extent to which the applicant owns or control the area. The applicant would also be required to demonstrate that it has sufficient financial resources and expertise to develop and operate of a Special Economic Zone;

The application should be accompanied with a comprehensive feasibility study, and in the case of an applicant who is a private partnership; the ownership structure, the shareholding and share transfer requirements as established in the partnership agreement must be attached to the application.

15. Clauses 24-29 make provision that would authorise the Minister to designate an area as a Special Economic Zone and to provide the regulatory measures necessary for the administration and management of the designated area.

16. In clause 24, the Minister would be authorised to prescribe the different categories of business and industries that may operate within a designated area and in particular, would include a free port, a free trade zone, industrial development zone and a sector development zone as categories of businesses qualified to operate in the Special Economic Zones. For purposes of clarification, subclause (4) has defined the category of business referred in subparagraph (1).

17. For the purpose of administrating and managing a Special Economic Zone, provision is made in clause 25 for the establishment of a Zone Committee by the licence holder, which is subject to regulations and guidelines to be prescribed by the Minister. The functions of the committee are spelt out in clause 26 and would include the responsibility of overseeing and monitoring the operations of entities permitted to operate in the Zone.

18. Clauses 28-29 would require the Committee to prepare business and financial plans, keep proper records of the affairs of the Zone, and submit annual reports of its activities to the Minister.

19. Part VI addresses in clauses 30-35 the guiding principles governing in the selection of qualified applicants to operate in the Zone. Clause 31 would prescribe the qualification for persons eligible to apply for an operator's licence and the responsibility of the Advisory Board to make recommendation to the Minister after reviewing the applications submitted.

20. Clause 34 prescribes the procedure for assignment of operator's permit and the conditions under which such permits be assigned. Clause 34 prescribes the information that an applicant for permit would be required to include in an application.

21. Part VII contains the general provisions which include the powers conferred upon the Minister to make guidelines in respect of matters which he considers necessary for the administration of the Act.

22. Clauses 37 would confer power on the Minister to make regulations to prescribe for certain specific subjects.

Hon. Gaston Browne
Prime Minister and
Minister of Finance