

# LICENCING PROCESS – SPECIAL ECONOMIC ZONE

## Procedures for Dealing with Licensing

**APPROVED**

### 1. Introduction

The Cayman Islands Special Economic Zone (“SEZ”) was established to facilitate the creation of new jobs in the country and strengthen and diversify the economic base of the Cayman Islands. Cayman Enterprise City (CEC) “the developer” shall be constructing, developing, operating, managing and maintaining the zone. The zone is intended to attract global science, technology, commodities and derivatives, media and educational businesses to the Cayman Islands.

This zone shall exist and function pursuant to the Special Economic Zone Law 2011 (the Law). It is envisioned that The Department of Commerce & Investment (DCI) pursuant to section 4 of the Law shall operate as secretariat and carryout daily operational duties.

All applications for a certificate to operate as a SEZ company must be sent to the Secretariat, SEZA, Department of Commerce & Investment, (PO Box 10087, Grand Cayman, KY1-1001, CAYMAN ISLANDS or dropped off at DCI, 27 Hospital Road, Cayman Corporate Centre, Grand Cayman, CAYMAN ISLANDS) – Location to be decided.

As a result of operational independence of the Special Economic Zone (SEZ), the decision-making is vested in the Directors of the SEZA..

Government sets licensing fees and policy and SEZA is the conduit through which licensing fees are collected and the zone regulated on behalf of the Government.

This document is intended to layout the procedures required for the SEZA to carry out its function. As there is a Definitive Agreement, signed in July 2011, between the Cayman Islands Government and Cayman Enterprise City Ltd, any changes to this document should be vetted to ensure they are consistent with what was agreed in that Definitive Agreement.

### 2. Functions & Responsibilities of SEZA

SEZA has two key functions: to handle licensing and policy. The SEZA, pursuant to section 3(2) of the law and a Licensing Committee (“LC”), pursuant to the regulations is comprised of select members of SEZA shall carry out the licensing of all enterprise/companies of the SEZ.

It is envisioned that the DCI, will be designated by the Governor in Cabinet as the secretariat to the Special Economic Zone.

#### The SEZA

The SEZA shall be responsible for all enforcement decisions. In addition the SEZA shall be responsible for policy and oversight of the zone pursuant to section 5 (1) of the Law.

Pursuant to the SEZ Law, the SEZA shall have the authority to manage its functions and operations to facilitate and carry-out the proper handling of its responsibilities under the law.

### **Functions & Powers of Licensing Committee (“LC”)**

Licensing is the primary function of the LC. The LC shall be responsible for licensing and supervisory matters in relation to special economic zone enterprises and shall maintain powers delegated to it by the SEZA.

### **3. Composition & Quorum**

The SEZA is comprised of Chairperson, a Deputy Chairperson, two other persons appointed by and holding office at the pleasure of the Governor in Cabinet; the Director of the Department of Commerce & Investment or his designate, the Collector of Customs or his designate, The Chief Immigration Officer or his designate, the Director of Planning or his designate, the Director of Labour or his designate and the Chief Survey or his designate.

A quorum of six including the Chair/Deputy is required in order for a meeting to be properly constituted. A decision is made by majority vote of those present.

#### **Licensing Committee**

The LC is comprised of the Deputy Chairperson, one person employed outside of the Public Service and three other members of the SEZA, or their designates. A quorum of at least three signatures is required. Recommendations based on the assessment procedures in #10 (below) for issue of a Trade Certificate from the Secretariat shall be the document used to decide on applications from entities received from CEC.

Meetings shall be initiated by a request from the secretariat for a conference call, email done round robin. The secretariat receiving a completed application shall seek a decision within 48 hours of receiving the application. A decision is made by majority vote.

Decisions of the LC shall be official upon approval of the application. All decisions by the LC shall be ratified at the next scheduled meeting of The SEZA.

### **4. Conduct and Conflicts of Interest**

Members of The SEZA are required to adhere to a strict Code of Conduct, Conflicts of Interest Code, and to the provisions of the Special Economic Zone Law and to declare any conflicts of interest, including making an annual declaration of any conflicts of interest. Declarations must be in writing and Agenda items that pose a possible conflict may require The SEZA member to recuse themselves from the discussion and casting a vote.

## **5. Meetings**

The SEZA meets once per month. All papers, including key background documents and file folders, of licenses issued by the LC in the preceding month to the meeting must be prepared and submitted by the secretariat, as well as, issues deemed necessary by the Chair for inclusion on the Agenda. Submissions for the agenda must be provided at least 3 business days prior.

In exceptional circumstances, papers received outside of the prescribed deadline may be brought before the SEZA for consideration, but the Chairperson must approve the inclusion of a late paper.

At each SEZA meeting, minutes are recorded, confirmed and retained by The SEZA Secretary. The agenda and the supporting materials must be circulated to all members of the SEZA by The Secretariat. The agenda and supporting papers must be circulated by secured email. Minutes of the meetings must be circulated to all members by email within 4 working days of the meeting.

### **Licensing Committee**

The LC meets when needed. Meetings are initiated by notification from the secretariat. Meetings may be held via telephone conferencing/email. All papers, including key background documents and file folders must be submitted to the members before calling of the meeting.

The LC shall be empowered to approve all applications for a Trade Certificate for special economic zone enterprises.

## **6. Preparation of Papers for Approval**

### **Licensing Committee**

Once a meeting has been initiated by the secretariat, a recommendation to issue a SEZ Trade Certificate(s) and a "Company Brief" as well a copy of the due diligence world-check database summary shall be sent at least a day before the meeting to outline the following information:

- i) Name of Company and key Directors
- ii) Name of the Special Economic Zone Park allocated by the CEC & corresponding ISIC Code
- iii) Number of expected Employees to be employed by the company
- iv) Outline of type of business expected to be carried out
- v) Proof of Incorporation has been received along with the proposed Certificate Number
- vi) Other relevant/supporting documentation to support the application deemed necessary and provided by the CEC whether or not requested by the Secretariat.

## **7. Application Process, Communication, Certificate Issuance**

The LC shall issue the Trade Certificate within a maximum of five business days in aggregate from the date of initial submission of a complete application.

Upon receipt of an application by the Secretariat, the following procedure will be followed:

- 1) An immediate review of the application against the checklist to ensure that CEC has submitted all relevant documents with the application shall be completed
- 2) The completed application will be immediately date stamped indicating date received.
- 3) A file number will be assigned to the applicant and a Hard Copy Folder created with the number.
- 4) A photocopy or scan of the submitted application and attached documents will be made and marked as copy and placed in the Hard Folder or for the scanned documents – tagged to company.

If application is deemed to be incomplete:

- i) A standard letter indicating incomplete application will be generated by the secretariat and addressed to the CEC.
  - ii) It will be photocopied and attached to the original application along with submitted application fee's cheque and sent back immediately to the sender/CEC.
  - iii) Pursuant to 14 (3) of the SEZ Law, if an incomplete application is submitted to the Authority, the Authority may require an applicant to complete and re-submit the application, subject to the payment of the prescribed re-submission fee . This will be highlighted in the cover letter when returned.
  - iv) If applicable, an immediate email will be sent to the sender indicating incomplete application and that the application is being returned.
  - v) A record of received date of application and a copy of the return cover letter and date of the same will be recorded in the CRM (to be decided)system in the company's file.
- 5) If application is deemed complete i.e. An application for a SEZ Trade Certificate (Form 1), the SEZA Customs Trade Identification Number (TIN) form (Form 2) & Completed Personal Questionnaire (Form 4) are completed and all relevant checklists are met include all applicable fees:
- i) The secretariat will immediately generate a group email to, first the members of the SEZA/Licensing Committee (LC), recommending sign-off of the application upon review of the "company brief" and attached docs listed above. Once sign-off by the SEZA/LC, the application shall be returned to the secretariat for continued processing.



- ii) This sign-off must be completed within 2 business days. The recommendation from the secretariat will highlight key application data, as indicated above #6. (i – vi), as well as any conditions to be discussed with the CEC to be placed on the Trade Certificate or the consideration for additional information to be requested.
- iii) Once returned to the secretariat from the LC the relevant government agencies shall be sent the approval notifications of the SEZA for their records as well the relevant applications for formal processing by them.
- iv) These agencies are: Immigration Department, Customs Department, Trade & Business Licensing Unit and any other agency deemed necessary to process the application through their system, relevant to their legal or policy obligations at that time.
- v) Applications will be processed by identified point staff in each of the following agencies: Trade & Business Licensing (“TB&L”) – Head of Trade & Business Licencing, HM Customs – Deputy Collector(s), Department of Immigration – Chief Immigration Officer.
- vi) Once the extract of the decision to approve has been issued, the Secretariat acts in accordance with the decision (The Secretariat is empowered to issue all certificates approved by the LC or the SEZA). The Secretariat upon receiving sign-off of the application from the SEZA/LC, shall immediately notify the CEC via e-mail, whether they have been approved as a SEZ company and advised a collection date for the SEZ Trade Certificate, Customs Registration ID Number and a Welcome Pack. Approval packages shall be kept in a secured file cabinet for collection by the CEC. Approval process to be carried out with-in the stipulated 5 day processing period.
- vii) The processing shall be applied in the following efficient manner:
  - (1) Applicant shall apply to CEC for space in the zone. Upon approval a “Provisional Letter of Acceptance” will be issued from CEC to the SEZA indicating provisional acceptance with the space requirements clearly allocated.
  - (2) Applicant is to submit a copy of letter to Company Registry for Company Incorporation as well as to the SEZA secretariat along with original certified Company Registration documentation and a completed SEZA Trade Certificate Application (Form 1), SEZA Customs TIN Form (Form 2) together with the Personal Questionnaire (Form 4) and cheque to the secretariat of the SEZA.
  - (3) Upon full review and internal processing by the secretariat the application is sent to the SEZAs/LC for approval/ sign-off.
  - (4) After sign-off, the CEC is notified and an approval email will be sent to T&BL and Customs point personnel with copies of documents for processing through their respective systems.

- (5) T&BL unit will process the application administratively. Upon registering the data in their system (IMSS) a SEZ Trade Certificate to operate as a SEZ Company shall be issued by the secretariat. TB&L shall store a copy of TB&L along with The SEZA Trade Certificate on file and forward original to SEZA.
- (6) The Customs Department shall use the SEZA Customs' TIN Form to create an internal TIN number. This number shall be sent back to secretariat of the SEZA within 3 days and shall be added to the secretariat's database.
- viii) Once a Trade Certificate has been approved the company shall be issued the following:
- (1) A welcome and approval letter/package.
  - (2) A Trade Certificate bearing a unique SEZ Trade Certificate number to operate as a SEZ company in one of CECs authorized parks.
  - (3) The Customs' TIN number advising that as a registered business with Customs, future shipments for the company should have this number on the parcels and required forms. This TIN is used to assist with the recording/tracking of duty concessions considerations (if any).
  - (4) A copy of issued Trade Certificate will be sent to Company Registry by secretariat.
- 6) When the applicant is ready to secure staff on a SEZA Employment Certificate (SEZEC), the following process shall be recognized:
- a) The applicant shall complete the SEZA Employment Certificate Application - SEZEC (Form 3) and submit it along with the letter of support from the CCDB, to the Secretariat of the SEZA. Upon receipt of the application(s), the secretariat shall immediately forward to the Chief Immigration Officer for processing and issuance of the Employment Certificate(s).
    - i) Once processed the issued SEZEC(s) shall be returned to the Secretariat along with invoiced amount due.
    - ii) The CEC shall be advised via email to collect the employment certificates and an invoice for the amount due to Government.
    - iii) This invoice is due immediately upon collection of Employment Certificates and is payable via cheque to the Cayman Islands Government at the secretariat.
  - b) The CCDB will create an employer account for every business in the SEZ.
    - i) The CCDB will establish a team to work closely with employers to address their needs for skilled Caymanian manpower.
    - ii) The CCDB will capture and process employer manpower requirements and information.

- 7) The CEC shall be responsible for filing an original SEZ Trade Certificate and copies of the rental space lease for CEC to Lands & Survey directly. This may be handled by their attorneys.
- 8) All the above actions will be recorded in the CRM system (Customized IMSS System or similar ) and copies including Original Copy of Company Registration License placed in applicant's Hard Folder and stored in secure file cabinets.

## **8. Reporting**

The Secretariat shall provide quarterly reports to the Minister with responsibility for the Department of Commerce & Investment via the Chief Officer, covering the following areas.

- SEZA Meetings convened
- General Policy Issues (if any)
- Overview of the issues in the zones and the developer (CEC)
- Any trends and initiatives happening in the domestics and international markets that may impact the zone.
- CCDB and its progress or issues on training & preparing Caymanians for jobs in the zone
- Summary of Number of Licences issued (using comparatives)
- Comparison of Budgeted Revenue and Actual Revenue collected to date
- Any other information deemed relevant from time to time.

## **9. Time Lines**

All decisions for the Trade Certificates, Employment Certificates and all other processes shall be met with a 5 day turn around starting from the submission of a complete application.

## **10. Assessment Procedures -Secretariat**

The following procedures are performed on all requests received by the Secretariat:

- a) The affidavit or police clearance is reviewed to ensure it meets the following standards:
  - i) Dated within six months of the application; If it is a police clearance certificate
  - ii) it is stamped and signed
  - iii) If it is an affidavit, it is: Signed by the Applicant; Signed by a notary, affixed with the seal as

required in that jurisdiction;

- b) A search on the World-Check database is conducted. World check is a database that tracks potential high-risk financial customers, including money launderers, terrorists and political figures, among numerous other high-risk categories.
- c) A search of Regulatory DataCorp's Global Regulatory Information Database ("GRID"), which is a collection of in-depth, current, risk-relevant data. The database contains approximately 1.5 million individual and business names drawn from over 22,000 international and US public record sources including government lists, media and regulatory actions.
- d) A search of publicly available search engine websites be made for the following:
  - i) The applicant's name;
  - ii) Entities listed in PQ of which the applicant is a director;
  - iii) The licensee; and, The licensee's ultimate shareholder.

## **11. Decision Making**

Upon completion of the applicable due diligence procedures, the LC/SEZA shall make a final decision whether to grant Trade Certificate.

In an effort to minimise the delay in responding to SEZA, the Due Diligence findings will be submitted when there have been three (3) failed attempts to verify the information in the personal questionnaire references. This will be noted as a discrepancy on the Due Diligence Summary Report and the SEZA will need to assess whether further follow up is required.

While the information provided in the Due Diligence Summary Report will be pertinent in assessing whether persons are fit and proper to act as directors of licensed entities, the ultimate responsibility for making this decision vests with the SEZA.

## **12. Records Maintenance**

All aspects of application and file handling will be maintained with the Secretariat at the DCI office. Applications will be handled as follows by the secretariat:

- Hard Copy folders will be created for each new applicant.
- All documents including original applications, payment receipts, copies of emails relevant to the application process, all communications on the processing of the application and copies of the license certificate will be placed in the folders.
- An internal Electronic File will be created in the DCIs Customer Relationship Management

system (CRM), to be purchased, under SEZ contracts. This is for mining purposes; as well as,

- internal instant or real-time data access.
- This CRM system will be used to document all interaction with an applicant, including telephone conversations, notes on meetings, and all substantial and relevant work done with respect to the application.
- Hard copies of the CRM notes will be printed and stored in the Hard Copy Folders.
- Hard Copy Folders will be stored in a secure cabinet(s) held at the DCI.

Numerical filing will be maintained, as an added security feature. The master list of the numerical log will be stored on the DCIs/Government Network: L drive. Access to the SEZ files shall be restricted to authorized secretariat staff.

### **13. Assessment of Existing Persons in the absence of a new application**

#### ***Basis for Enquiries***

At the end of the PQ, the Applicant certifies that the information in the PQ is complete and correct and that s/he undertakes that, as long as he continue to be a director, s/he will notify the SEZA of any material changes affecting the completeness of the answers to questions 11 – 25 (page 5 – 7) of the PQ within a period of 21 days.

As a result, as standard practice the SEZA does not make inquiries into whether a person acting as a director remains fit and proper.

However, there will be circumstances that may prompt the SEZA to make further enquiries of a person acting as a director, with a view to assessing whether that person continues to be fit and proper.

Broadly speaking, there are two primary circumstances that would warrant further enquiries by the SEZA into a person's fitness and propriety:

- a) The direction and management of a licensee's business has not been conducted in a fit and proper manner;
- b) The SEZA is made aware that a director has been subject to or has been involved in any of the matters outlined in the Fitness and Propriety section.

#### **14. Concerns surrounding a Licensee**

The SEZA may be prompted to make further enquiries into the actions or lack of action when the direction and management of a licensee's business has not been conducted in a fit and proper manner.

The primary responsibility for ensuring compliance with a licensee's regulatory obligations rests with the licensee itself. Normally therefore, the SEZA's main focus, in considering whether action is appropriate, will be on the licensee rather than on its directors or management.

In some cases, however, it will not be appropriate to hold a licensee responsible for the actions of its directors and management. For example, where management may have acted in a manner detrimental to the interests of a licensee's investors, clients, or creditors and where the licensee can demonstrate it took all reasonable steps to prevent the breach.

Alternatively, in other cases, it may be appropriate for the SEZA to investigate the actions of both the licensee and the directors or management. For example, where the licensee has breached the rule requiring it to take reasonable care to establish and maintain such systems and controls as are appropriate to its business and the directors or management have taken advantage of those deficiencies to front run or misappropriate assets.

In such circumstances as described above, the SEZA will utilise one of two approaches, or a combination thereof, to assess the fitness and propriety of directors:

- a) A person, either upon its own initiative or upon the request of the SEZA, reports on the fitness and propriety of the directors, for example upon appointment of a controller, liquidator advisor or other expert to inter alia investigate the affairs of the licensee; or,
- b) The SEZA, using its regulatory powers to obtain and perform analysis of information, investigates the actions (or lack of action) of directors.

The extent to which the SEZA will utilise either of the approaches will be dependent upon a number of factors, including, but not limited to, the source of the information, access to the documents, the basis for any conclusions reached and its credibility.

#### **15. Concerns arising from other sources**

The SEZA may become aware of certain information, originating outside of the supervision of the licensee, which may give rise to concerns of the fitness and propriety of a director to continue to perform his or her functions.

The extent to which the SEZA will rely upon the information is dependent upon a number of factors, including, but not limited to, the source of the information, DD process of the SEZA, whether it is independent, the basis for any conclusions reached and its credibility. It may also be important to corroborate the information obtained with other independent and/or reliable sources, particularly

where the information is not from an authoritative source.

To assist the SEZA to perform its own enquiries and analysis of the information, it is imperative that the SEZA collect all information on the subject and where possible, obtain original or certified copies of the documents, court orders or reports that are most authoritative, independent or fact-based. It is also important to ensure the document is final.

#### **16. Factors to be taken into Account in determining Fitness and Propriety**

In determining whether a person is a fit and proper person, the SEZA shall have regard to all circumstances including that person's –

- a) honesty, integrity and reputation;
- b) competence and capability; and
- c) financial soundness.

#### **17. Process for Decision-Making on Fitness and Propriety**

Where the SEZA:

- a) Has determined or is considering the refusal of a person's application to act as director; or
- b) Is exercising or is considering exercising its regulatory enforcement powers in relation to a director, it will follow the process as it relates to Due Diligence.

#### **18. Funds & Billing Handling**

##### ***Trade Certificate***

All applicable fees shall be submitted via cheque with the Trade Certificate application.

##### ***Employment Certificate***

All fees payable for an Employment Certificate shall be due immediately on application for the Employment Certificate (s).

All cheques received with applications will be immediately processed by;

- Issuing a receipt in the name of the submitting company. The created file number will also be recorded on the receipt.
- Cheques will be handled directly processed by secretariat staff in accordance with established guidelines and policy for funds handling by the DCI's Accounts Unit.