

Government Gazette
Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Vol. 708 19 June Junie 2024 No. 50833

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ISSN 1682-5845

9 771682 584003 50833



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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NOTICE 2576 OF 2024

INVITATION FOR THE PUBLIC TO COMMENT ON THE DRAFT BLOCK EXEMPTION FOR PORTS AND RAIL, 2024

1. By virtue of the powers vested in me in terms of section 10(10) of the Competition Act, 1998 (Act No. 89 of 1998) as amended (the Competition Act), I, Ebrahim Patel, Minister of Trade, Industry and Competition, after consultation with the Competition Commission, hereby publish for public comments the draft regulations in terms of section 78(1) as set out in the Schedule hereto.

2. The purpose of these Regulations is to exempt a category of agreements or practices amongst firms in the ports and rail industry from the application of sections 4 and 5 of the Act in response to the current challenges facing ports and rail in South Africa:

   2.1. solely with the purpose of promoting collaboration to:

      2.1.1. reduce costs, improve services and minimise losses caused by operational inefficiencies and infrastructure capacity shortages; and

      2.1.2. contribute to measures aimed at resolving the challenges in the South African rail and ports industry.

3. Stakeholders and interested persons are invited to submit comments in writing on the proposed regulations within a period of 15 days of the publication of this notice to the Minister of Trade, Industry and Competition, for the attention of Dr Ivan Galodikwe, email IGalodikwe@thedtic.gov.za or hand delivered at 3rd Floor, Block E, 77 Meintjies Street, Sunnyside, 0132.

EBRAHIM PATEL
MINISTER OF TRADE, INDUSTRY AND COMPETITION
DATE: 18 JUNE 2024

SCHEDULE

Definition

1. In these Regulations any word or expression to which a meaning has been assigned in the Act shall bear that meaning and, unless the context otherwise indicates –

"Act" means the Competition Act No. 89 of 1998, as amended;
"Firm" includes a person (juristic or natural), association, partnership or a trust;
"Minister" unless otherwise specified, means the Minister of Trade, Industry and Competition;
"the Commission" means the Competition Commission, a juristic person established in terms of section 19 of the Act; and
"the DTIC" means the Department of Trade, Industry and Competition.

Purpose

2. The purpose of these Regulations is to exempt a category of agreements or practices amongst firms in the rail and ports industry from the application of sections 4 and 5 of the Act in response to the challenges facing ports and rail within the country, solely with the purpose of enabling collaboration to:

2.1. reduce costs, improve services and minimise losses caused by operational inefficiencies and infrastructure capacity shortages; and

2.2. contribute to measures aimed at resolving the challenges in the South African rail and ports industry.

Category of agreements or practices exempted

3. The Minister hereby exempts the following categories of agreements or practices in the ports and rail industry from the application of sections 4 and 5 of the Act for the sole purpose of responding to the challenges facing the ports and rail industry within the country:

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Exempted coordination on ports

3.1. Coordination on ports capacity and capacity of a port to accept new cargo and diverting cargo between ports;

3.2. Coordination on the flow of traffic into the ports, including weather forecasts, stack levels, equipment breakdowns and productivity shifts.

3.3. Coordination on night runs to ease congestion during peak hours.

3.4. Coordination on management, maintenance and upgrades of port facilities and equipment.

Exempted coordination on rail

3.5. Coordination on the repair and maintenance of rail lines identified by the rail industry.

3.6. Coordination on volumes to support a dedicated rail service.

3.7. Coordination on sharing capacity on locomotives.

Exclusions

4. These Regulations exclude:

4.1. Any discussions and/or agreement on fixing the selling price of goods and services to customers or consumers;

4.2. Collusive tendering; and

4.3. Resale price maintenance.

In-scope confirmation by the Commission

5. Firms in the rail and ports industry that wish to enter into agreements or engage in practices covered by the exemption contained in these Regulations must first seek

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confirmation from the Commission in writing whether the agreement or practice falls within the scope of these Regulations before implementation.

6. The Commission may:

6.1. confirm in writing if the agreement or practice falls within the scope of these Regulations with or without safeguards necessary to ensure that the collaboration among Firms in the rail and ports industry is limited to the agreements or practices contemplated in regulation 3; or

6.2. if the agreement or practice does not fall within the scope of these Regulations, advise the Firms in the rail and ports industry accordingly.

7. No agreement or practice contemplated in these Regulations may be implemented unless confirmation has been provided by the Commission in terms of regulation 6.

8. The Commission must make the decision contemplated in regulation 6 within 30 business days of receipt of the request for confirmation.

9. If the Commission has not made a decision within the period contemplated in regulation 6, the agreement or practice shall be regarded as having been confirmed as falling within the scope of these Regulations.

Revocation of confirmation

10. The Commission may revoke the confirmation granted in terms of regulation 6 if:

10.1. there is a breach of safeguards made in terms of sub-regulation 6.1; or

10.2. the collaboration among the Firms exceeds the exemption granted in terms of these Regulations; or

10.3. the confirmation was granted on the basis of false information; or

10.4. the reason for granting the confirmation no longer exists.

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Scope of the exemption

11. The scope of these Regulations is limited only to agreements or practices specified under regulation 3, and which have the sole purpose of responding to the challenges facing the ports and rail industry as set out in regulation 2.

12. The agreements or practices exempted in these Regulations include the exchange of information strictly necessary for the purposes of the conclusion and implementation of the agreements or practices.

Monitoring

13. Firms who participate in any agreements or practices falling within the scope of these exemptions must notify the Commission, and the DTIC of the agreement or practice within 7 business days of its implementation via the following:

    13.1. Notification to the Commission should be sent to exemption.conditions@compcom.co.za.

    13.2. Notification to the DTIC should be sent to exemption.conditions@thedtic.gov.za.

14. Firms who participate in any agreements or practices falling within the scope of these exemptions must keep accurate written records of meetings held, correspondence related to the exempted agreements and practices, exchanges of competitively sensitive information strictly necessary for the purposes of the conclusion and implementation of the agreements or practices, and all agreements or practices entered into in terms of these Regulations.

15. The Commission may, at any time, request the record of the minutes of meetings held, correspondence related to the exempted agreements and practices, exchanges of competitively sensitive information strictly necessary for the purposes of the conclusion and implementation of the agreements or practices, and all agreements or practices entered into in terms of these Regulations.

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Amendments to Regulations

16. The areas of collaboration exempted in these Regulations may be expanded or reduced by the Minister by notice published in the Government Gazette in terms of these Regulations.

Short Title

17. These Regulations shall be called the *Block Exemption for Ports and Rail, 2024*.

Commencement and duration

18. These Regulations shall come into effect on the date of publication in the Government Gazette and shall remain in force until withdrawn by the Minister.

Winding down of agreements and practices

19. The Minister, after consultation with the Commission, may, by notice in the Government Gazette, provide a reasonable period to Firms that have participated in any agreements or practices falling within the scope of these exemptions to wind-down agreements or practices referred to in regulation 3 prior to the withdrawal of these Regulations.

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DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NOTICE 2577 OF 2024

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

Members of the Public and Interested Parties are hereby notified of the decision of the Minister of Trade, Industry and Competition to grant the South African Forestry Company LTD (SAFCOL) a Broad-Based Black Economic Empowerment (B-BBEE) Facilitator Status. The Facilitator Status is considered in terms of paragraph 3.6 of Statement 100 of the Amended B-BBEE Codes of Good Practice that provides that the Minister of Trade, Industry and Competition may, by Notice in the Government Gazette, designate certain Organs of State and Public Entities as B-BBEE Facilitators.

the dtic will work closely with SAFCOL to identify black enterprises and growers to be incorporated as part of the Black Industrialist Programme.

Mr Ebrahim Patel
Minister of Trade, Industry and Competition

18 / 6 /2024

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NOTICE 2578 OF 2024

HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS ACT, 1988 (ACT NO. 69 OF 1988)

I, Ebrahim Patel, Minister of Trade, Industry and Competition, do hereby publish for comment the following application by the Helderberg Society for the Aged for indefinite exemption from the provisions of Regulation 1, 2, 5(d), 5(r), 5(t) and 6-14 of the Housing Development Schemes for Retired Persons Act, 1988:

The said application is being made in respect of the following Life Right Development
Centre:

a) Bowden Park Retirement Village

Interest persons are hereby invited to comment on the aforementioned application within twenty-one (21) days from the date of this publication. All comments should be directed to:

For the Attention: Mr Sibusiso Sasayi
Regulation Branch
Private Bag X 84
Pretoria
0001

Or by Hand

77 Meintjies Street
the dtic campus
Block B, First Floor
Email: SSasayi@thedtic.gov.za

Issued by:



Ebrahim Patel
Minister of Trade, Industry and Competition
18 / 6 /2024

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NOTICE 2579 OF 2024

HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS ACT, 1988 (ACT NO. 69 OF 1988)

I, Ebrahim Patel, Minister of Trade, Industry and Competition, do hereby publish for comment the following application by St. Luke's Hospice NPC for indefinite exemption from the provisions of Regulation 1, 2, 5(d), 5(r), 5(t) and 6-14 of the Housing Development Schemes for Retired Persons Act, 1988:

The said application is being made in respect of the following Life Right Development Centre:

a) Norfolk Place Retirement Scheme

Interest persons are hereby invited to comment on the aforementioned application within twenty-one (21) days from the date of this publication. All comments should be directed to:

For the Attention: Mr Sibusiso Sasayi
Regulation Branch
Private Bag X 84
Pretoria
0001

Or by Hand

77 Meintjies Street
the dtic campus
Block B, First Floor
Email: SSasayi@thedtic.gov.za

Issued by:



Ebrahim Patel
Minister of Trade, Industry and Competition
18/ 6 /2024

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NOTICE 2580 OF 2024

HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS ACT, 1988 (ACT NO. 69 OF 1988)

I, Ebrahim Patel, Minister of Trade, Industry and Competition, do hereby publish for comment the following application by Bridgewater Manor Pty (Ltd) for indefinite or 20 year period exemption from the provisions of Regulation 6(b) and 9(6) of the Housing Development Schemes for Retired Persons Act, 1988:

The said application is being made in respect of the following Life Right Development
Centre:

a) Bridgwater Manor

Interest persons are hereby invited to comment on the aforementioned application within twenty-one (21) days from the date of this publication. All comments should be directed to:

For the Attention: Mr Sibusiso Sasayi
Regulation Branch
Private Bag X 84
Pretoria
0001

Or by Hand

77 Meintjies Street
the dtic campus
Block B, First Floor
Email: SSasayi@thedtic.gov.za

Issued by:



Ebrahim Patel
Minister of Trade, Industry and Competition
18 / 6 /2024

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065

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