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The Catawba Digital Economic Zone: A Native American SEZ

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Abstract

The Catawba Indian Nation recently announced the launch of a new kind of special economic zone (SEZ) on its reservation lands in the Carolinas piedmont region. The Catawba Digital Economic Zone (CDEZ) aims to provide “A Jurisdiction Built for the Fintech and Digital Asset Industry.” Federal and state law affirms that the Nation has original and exclusive jurisdiction over two categories of disputes: those arising from contracts to which the Nation or its members are a party and those arising under any civil code that the Nation issues for the conduct of businesses and individuals on its reservation. Together, these give the Nation sovereign authority over commerce, real or virtual, that takes place on Catawba lands. The Nation has invoked this power to create the CDEZ. The Catawba General Council, a democratic assembly of tribe members, recently enacted the a civil ordinance creating a legal framework specially designed to support e-banking, cryptocurrency, non-fungible tokens, and other fintech and digital asset industries. This paper, written by one of a team of coders who worked on it, describes the origins, legal foundation, and basic structure of the CDEZ, the latest and most advanced example of a special jurisdiction focused on digital assets.

Keywords: Special jurisdiction; special economic zone; SEZ; American Indian; Native American; Catawba; digital commerce; fintech; cryptocurrency; blockchain

Resumen

La Nación Indígena Catawba anunció recientemente el lanzamiento de un nuevo tipo de zona económica especial (SEZ) en sus tierras de reserva en la región del piedemonte de las Carolinas. La Zona Económica Digital de Catawba (CDEZ) tiene como objetivo proporcionar “Una jurisdicción construida para la industria de activos digitales y Fintech”. Las leyes federales y estatales afirman que la Nación tiene jurisdicción original y exclusiva sobre dos categorías de controversias: las derivadas de contratos en los que la Nación o sus miembros son parte y las derivadas de cualquier código civil que expida la Nación para la conducción de negocios y individuos en su reserva. Juntos, otorgan a la Nación autoridad soberana sobre el comercio, real o virtual, que tiene lugar en las tierras de Catawba. La Nación ha invocado esta facultad para crear la CDEZ. El Consejo General de Catawba, una asamblea democrática de miembros de la tribu, promulgó recientemente una ordenanza civil que crea un marco legal especialmente diseñado para respaldar la banca electrónica, las criptomonedas, los tokens no fungibles y otras industrias de activos digitales y fintech. Este documento, escrito por uno de un equipo de codificadores que trabajó en él, describe los orígenes, la base legal y la estructura básica de la CDEZ, el ejemplo más reciente y avanzado de una jurisdicción especial centrada en los activos digitales.

Palabras Clave: jurisdicción especial, zona económica especial, SEZ, Nativo-Americano, Catawba, comercio figital, tecnologías financieras, blockchain.



1. INTRODUCTION

The Catawba once thrived as warriors, hunters, farmers, craftspeople (specializing in pottery and baskets), and traders. Then, the Europeans came. The territory and population of the Catawba shrank as those of the United States grew. The Catawba suffered devastating epidemics, dispersion to other tribes and distant regions, abject poverty, and knavery and neglect by colonial, state, and federal governments. They never gave up, though. The Catawba won their standing as a sovereign nation and now aim to expand into an entirely new kind of territory—a place where digital assets, e-banks, cryptocurrencies, non-fungible tokens, and other fintech innovations roam free. In that virtual wilderness, where the power of terrestrial sovereigns falters, the Catawba Indian Nation have established a trading post they call the Catawba Digital Economic Zone (CDEZ).

This paper, written by one of the team of coders who worked under contract with the Nation, describes the origins, legal foundation, and basic structure of the Catawba Digital Economic Zone. Section two describes how the Catawba's long but successful struggle to regain their sovereign status has won them the exclusive power to govern commerce on reservation lands, the genesis of the CDEZ. Sections three and four detail the federal and state laws, respectively, that affirm the Nation's sovereignty over commerce in the zone. Section 5 outlines the structure and operation of the CDEZ.

This paper only introduces the Catawba Indian Nation's Digital Economic Zone. There remain many important unanswered questions. What will be the exact effect of state and federal criminal laws, tax laws, regulations, and executive orders on the zone? What day-to-day rules will the CDEZ's Zone Authority issue, how will that institution function, and who will staff it? How will technological and legal changes in the outside world affect the fortunes of the zone? The paper concludes in section 6 by offering not the last word on the Catawba Indian Nation's Digital Economic Zone, but merely an introduction to this bold new experiment in American government.

The CDEZ is not the first special jurisdiction in the world to offer laws and regulations tailored specifically for e-banking, cryptocurrency, non-fungible tokens, and other fintech and digital assets and services. The Cagayan Economic Zone in the Philippines began catering to offshore virtual currency and digital token businesses as early as 2018 (Cagayan Economic Zone Authority, 2018a & 2018b). That same year saw the launch of the Belarus Hi-Tech Park, which offers special regulatory treatment for qualifying companies not just at a specified location but anywhere in the country. (Hi-Tech Park Belarus, 2022). Several zones in the United Arab Emirates have more recently taken aim at the same sorts of businesses, including the Abu Dhabi Global Market and Dubai Multi Commodities Centre, both of which have launched special regulatory regimes, and the Dubai International Financial Centre, which has proposed one (Abu Dhabi Global Market, 2019; Dubai Multi Commodities Centre, 2021; Dubai International Financial Centre, 2022). Próspera ZEDE in Honduras recently announced its entry to the field, touting itself as



the first crypto-friendly jurisdiction that is fully AML-KYC compliant (Honduras Próspera, Inc., 2022). Other countries, including Switzerland, Russia, Georgia, Armenia, and Iran, have plans in the works for special jurisdictions with their own, crypto-friendly regulations (Serlet, 2021; Benzinga, 2021; O'Neal, 2019).

Despite those precedents, the Catawba Indian Nation has established several firsts with its CDEZ. Never in living memory has a Native American tribe done so much to assert its jurisdiction over an entire class of commerce and to invite the world to enjoy the fruits of its civil governance. Furthermore, unless one counts the states themselves, the United States has never before hosted a special jurisdiction exercising such far ranging and exclusive authority over commerce within its boundaries. For these and other reasons, the CDEZ merits close study.

2. ROOTS OF THE CATAWBA INDIAN NATION'S SOVEREIGNTY

The Catawba Nation today occupies a reservation near the town of Rock Hill, South Carolina. This 1,012 acre (410 hectare) reservation represents a small fraction of the territory that they once occupied. Their ancestral lands, held for over 6,000 years, stretched through the Piedmont region of North and South Carolina and into southern Virginia. When European settlers arrived, the Catawba numbered 15,000 to 25,000 people. Today the Nation has less than 3,400 enrolled members (Catawba Indian Nation, About The Nation, n.d.; BIA Letter, 2020).

After long fighting to secure their political status and sovereign rights, the Catawba Indian Nation reached a settlement agreement with South Carolina on February 20, 1993. Entitled the Agreement in Principle By and Between the Catawba Indian Tribe of South Carolina and the State of South Carolina (Settlement Agreement), it has much the effect of a treaty. Soon after, the state and federal governments ratified the Settlement Agreement by statute. The Settlement Agreement, statutes, and higher authorities combine to give the Catawba Nation considerable autonomy in select areas, including those necessary for creation of the CDEZ. The relevant rules, in order of authority:

- International Law of Nations;
- U.S. Constitution;
- Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993 (US Settlement Act);
- The Catawba Indian Claims Settlement Act, S.C. Code Ann. § 27-16-10 et seq. (SC Settlement Act); and
- Settlement Agreement.

Taken together, this stack of authorities gives tribal courts exclusive original and appellate jurisdiction



over a wide range of cases, including the two broad categories used to create the Catawba Digital Economic Zone.

The first category of such cases: disputes arising out of contracts to which the Nation or its members are a party (on condition the contracts provide for that jurisdiction expressly and in writing). As a tribal body, the CDEZs' contracts will fall within the scope of this sovereign power. People will contract with the CDEZ to win entry to the virtual trading post, form legal persons under its law, transact between each other, and otherwise enjoy contractual relations with the Nation. Because the CDEZ (or more precisely, its Zone Authority) operates as an organic law of the nation, it can invoke this jurisdiction in its contracts with visitors, resident companies, and others (Zone Civil Ordinance, 2022, Tit. II Ch. 1 § 1). This allows the CDEZ to put any disputes arising under those contracts within the Nation's exclusive original and appellate jurisdiction.

The second category of cases where tribal courts have exclusive jurisdiction: Those raising claims under any Catawba civil code that the Nation issues for the conduct of businesses and individuals resident on the Catawba reservation. This sovereign power protects the autonomy of the Nation's legal system from the judgments of state or federal courts in questions about the application of Catawba civil code within its reservation. This gives transactions arising under any Catawba civil code on their reservation—specifically, under the Zone Civil Ordinance—a second defense against interference by outside sovereigns with the Nation's exclusive power to enact, interpret, and enforce Catawba law on Catawba land—specifically, a server farm operating within the CDEZ.

Being for the most part virtual, built in computer code and trading in information, the CDEZ need not be large. The Zone Resolution launches it with an initial property of only 1.89 acres (0.76 hectares) (Zone Resolution, 2022). In that small space, though, the Catawba Nation can build a virtual marketplace big enough for a whole world of commerce.

3. FEDERAL LAW AND THE CATWABA DIGITAL ECONOMIC ZONE

In the law that most affects the CDEZ, the US Settlement Act, the United States federal government approved, ratified, and confirmed the Settlement Agreement by and between the Catawba and South Carolina. As described in subsection 3.1, this has the intent and effect of making the Settlement Agreement effective as federal law. Subsection 3.2 discusses the somewhat unusual statutory mechanism through which the Nation and South Carolina can effectively amend the Settlement Agreement without further involvement by federal lawmakers. Subsection 3.3 examines language in the Settlement Agreement describing the scope of the Nation's sovereignty.

3.1. Purpose and Effect of the US Settlement Act

The US Settlement Act federalizes the SC Settlement Act, which itself incorporates the Settlement Agreement between the Catawba Indian Nation and South Carolina. The US Settlement Act embraces the Settlement Agreement directly, providing in § 2(b), “It is the purpose of this Act--(1) to approve, ratify, and confirm the Settlement Agreement entered into by the non-Indian settlement parties and the Tribe, except as otherwise provided by this Act...”

One might say that the US Settlement Act gives the Settlement Agreement between the Catawba and South Carolina federal effect. The US Settlement Act provides in § 4(a)(2) that:

the Settlement Agreement and the State Act are approved, ratified, and confirmed by the United States to effectuate the purposes of this Act, and shall be complied with in the same manner and to the same extent as if they had been enacted into Federal law.

Consistent with the quoted provision, § 15(e) of US Settlement Act specifically provides that “the provisions of South Carolina Code Annotated, section 27-16-40, and section 19.1 of the Settlement Agreement are approved, ratified, and confirmed by the United States...” These two cited provisions—SC Settlement Act § 27-16-40 and Settlement Agreement § 19.1—concur in placing the Catawba Indian Nation, its members, and properties under the civil, criminal and regulatory jurisdiction of the State except as otherwise provided in state or federal law.

How far does that “otherwise” reach? Applicable state and federal law recognize that the Catawba Indian Nation has exclusive original and appellate jurisdiction over contracts with tribal parties, of which the CDEZ itself is one, and over the civil regulation of persons and businesses engaged in commerce on the Catawba reservation. The Settlement Act’s grant of jurisdiction also arguably reaches contracts that intentionally benefit the Nation as a third party, a topic discussed below.

What happens in the event of conflict between the US Settlement Act, the SC Settlement Act, and the Settlement Agreement? The earlier-listed document prevails. As US Settlement Act § 15(b) says, “In the event of a conflict between the State Act and the Settlement Agreement, the terms of the State Act shall govern.” SC Settlement Act § 27-16-140(C) agrees: “If there is a conflict between this chapter and the Settlement Agreement, this chapter governs.” Happily, there do not appear to be any major conflicts between the three documents, creating a stable hierarchy of rule sets.

3.2. Can the Nation and the State Make New Federal Law?

The US Settlement Act gives the Catawba Indian Nation and South Carolina an unusual power: Allied,



they can amend the Act. The Nation and the state can thus effectively make new federal law without any need of further action by congress or the president. This reflects an abiding federal interest in bringing peace between the Nation and South Carolina.

Federal respect for the comity between the Nation and South Carolina first appears in § 4(a)(2) of the US Settlement Act, which provides that:

the Settlement Agreement and the State Act are approved, ratified, and confirmed by the United States to effectuate the purposes of this Act, and shall be complied with in the same manner and to the same extent as if they had been enacted into Federal law.

Having thus embraced their agreeable relations, the US Settlement Act goes on to empower the tribe and the state to jointly amend federal law. US Settlement Act § 15(f) provides:

Consent is hereby given to the Tribe and the State to amend the Settlement Agreement and the State Act if consent to such amendment is given by both the State and the Tribe, and if such amendment relates to:

- (1) the jurisdiction, enforcement, or application of civil, criminal, regulatory, or tax laws of the Tribe and the State;
- (2) the allocation or determination of governmental responsibility of the State and the Tribe over specified subject matters or specified geographical areas, or both, including provision for concurrent jurisdiction between the State and the Tribe; [and]
- (3) the allocation of jurisdiction between the tribal courts and the State courts....”

Together, these provisions give the Nation and South Carolina the power to create new federal law within limits. This special delegation operates only within the US Settlement Act. The two sovereigns could not re-write, say, the federal tax code. They evidently could however change the Nation’s tax treatment under South Carolina law, give the Nation’s exclusive jurisdiction over all intentional torts occurring on the reservation, or otherwise change relations between the two sovereigns. US Settlement Act § 4(a)(2) would then make those and other amendments effective as federal law.

3.3. The Nation’s Sovereignty Under Federal Law

An Indian nation’s sovereign power reaches as far as those of any sovereign under customary international law, minus those specific powers enumerated in federal law. The minus amounts to quite a lot in many cases, leaving the formerly autonomous Indian nations somewhat the wards of the trustee federal



government (*Cherokee Nation v. Georgia*, 1831). Nonetheless, in theory, Indian nations remain fully sovereign, subject only to customary international law and specific federal limits.

Chief Justice John Marshall, no laggard in asserting federal power, described the default sovereignty of Indian nations in the Supreme Court case of *Worcester v. Georgia*:

Congress has passed acts to regulate trade and intercourse with the Indians; which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All these acts ... manifestly consider the several Indian nations as distinct political communities, having territorial boundaries within which their authority is exclusive and having a right to all the lands within those boundaries which is not only acknowledged, but guaranteed, by the United States.

31 U.S. 515, 556-57 (1832).

The United States Constitution ranks Indian nations with foreign and domestic states. When the Constitution gives congress the power to regulate “Commerce with foreign Nations, and among the several States, and with the Indian tribes” (U.S. Constitution, Art. I, § 8, cl. 3), it lists all of the counterpart sovereigns congress might face. In the Constitution as in customary international law, the federally recognized Indian tribes stand as peers to their federal and state counterpart sovereigns, their sovereign powers subject only to concessions forced by the exigencies of war, fortune, and fate.

The Catawba Indian Nation thus enjoys all the sovereign powers of any sovereign nation, subject to express federal limitations. US Settlement Act 4(e) seems to take a different view. It says, “This Act shall not be construed to empower the Tribe with special jurisdiction or to deprive the State of jurisdiction other than as expressly provided by this Act or by the State Act.”

This provision limits any grant of jurisdiction in the US Settlement Act to the express terms of the statute. Impliedly, § 4(e) recognizes that a power outside the Act might vest the Nation with special jurisdiction or deprive the State of jurisdiction over it. That power might arise from the law of the constitution or of the international customary law of nations. Indeed, on the traditional constitutional theory, that is the seed and sustaining roots of Indian sovereignty. Contrary to the default of Indian sovereignty, § 4(e) continues: “The jurisdiction and governmental powers of the Tribe shall be solely those set forth in this Act and the State Act.”

That facially limits the Nation’s sovereignty, binding it to jurisdiction and powers set forth in federal and state legislation. Query, however, whether those other statutes could overcome the constitutional presumption of the sovereignty of Indian Nations. That sovereignty takes root not in federal statute but in the same customary international law that regulates all nations and the Constitution’s command that Congress treat Indian nations like other nations.

Regardless of the philosophical gaff in the second sentence of § 4(e), the US Settlement Act pro-



vides the Catawba Indian Nation with more than enough authority to claim exclusive original and appellate jurisdiction over cases arising out of commerce in the CDEZ. Details on that count follow below. First, the discussion turns to how the US Settlement Act confirms the Nation's immunity from civil suit. Suppose for example that the CDEZ stood accused of copyright infringement under federal law. The Catawba would presumably like other Indian nations enjoy sovereign immunity against that claim. As a federal appellate court explained in recognizing Mashantucket Pequot Tribe's immunity to such a claim, "Nothing on the face of the Copyright Act 'purports to subject tribes to the jurisdiction of the federal courts in civil actions' brought by private parties, and a congressional abrogation of tribal immunity cannot be implied" (Bassett v. Mashantucket Pequot Tribe, 204 F.3d 343 at 357, 2000) (the internal quotes reference Supreme Court authority).

The US Settlement Act confirms this result, albeit in a roundabout way. US Settlement Act § 10.1 provides, "All matters involving tribal powers, immunities, and jurisdiction, whether criminal, civil, or regulatory, shall be governed by the terms and provisions of the Settlement Agreement and the State Act, unless otherwise provided in this Act." To understand the import of that provision requires further scrutiny of the SC Settlement Act. It elsewhere says that the Catawba Indian Nation:

enjoys sovereign immunity including damage limits and, except as provided in this subsection, immunity from seizure, execution, or encumbrance of properties, to the same extent as the political subdivisions of the State as provided in the South Carolina Tort Claims Act, Chapter 78 of Title 15 (SC Settlement Act § 27.16.80(F)(1)).

Following that reference in the last lines of the quote, the chase for understanding sovereign immunity must next plunge into the thickets of the South Carolina Tort Claims Act (SCTCA). That Act provides at § 27-16-80(F)(1) that a government entity shall not be liable for legislative action, *id.* at (1), administrative action of a legislative nature, *id.* at (2), or the adoption of any law, ordinance, or rule, *id.* at (4). In essence, these exempt the CDEZ's operators from liability for misgovernance.

The SCTCA commands that doubts about the scope of sovereign immunity be resolved in favor of immunity at § 15-78-20(e)(f):

(e) Nothing in this chapter is construed as a waiver of the state's or political subdivision's immunity from suit in federal court under the Eleventh Amendment to the Constitution of the United States nor as consent to be sued in any state court beyond the boundaries of the State of South Carolina.

(f) The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.



That passage speaks of states but by operation of SC Settlement Act § 27.16.80(F)(1), its words encompass the Catawba Indian Nation. Unless the Catawba Indian Nation has expressly waived sovereign immunity by statute or contract, therefore, it appears to enjoy a perfect defense to lawsuits brought against it. This immunity extends to the CDEZ, which operates as an organic arm of the Nation (Zone Civil Ordinance, 2022, Tit II Ch. 1 § 1).

4. STATE LAW AND THE CATAWBA DIGITAL ECONOMIC ZONE

The state of South Carolina surrounds the Catawba reservation. The two sovereigns have a long and mixed history. This section describes the scope of South Carolina's jurisdiction over the Nation, with special emphasis on the areas most relevant for the Catawba Digital Economic Zone. Subsection 1 discusses the presumption of the SC Settlement Act that South Carolina law controls the Catawba on their reservation, absent specific provision to the contrary (of which there is contrary enough to support the CDEZ). Subsection 2 describes the civil jurisdiction of the Catawba Indian Nation's courts.

4.1. Presumption of South Carolina's Jurisdiction

Chief Justice Marshall described the relationship between the federal government, the states, and the Indian nations thus: "The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the States, and provide that all intercourse with them shall be carried on exclusively by the government of the Union." Notwithstanding that, the SC Settlement Act voices a presumption that the Tribe is subject to state law:

The Catawba Tribe, its members, lands, natural resources, or other property owned by the Tribe or its members, including land, natural resources, or other property held in trust by the United States or by any other person or entity for the Tribe, is subject to the civil, criminal, and regulatory jurisdiction of the State, its agencies, and political subdivisions other than municipalities, and the civil and criminal jurisdiction of the of the State to the same extent as any other person, citizen, or land in the State, except as otherwise expressly provided in this chapter or in the federal implementing legislation (§ 27-16-40).

As the last sentence makes clear, the state enjoys only a presumption of jurisdiction, reversible by specific provisions in state or federal law. In that, South Carolina perhaps spoke too boldly. Commentary has it that state courts are not free to apply state law even when exercising concurrent jurisdiction, to say



nothing of when they have no jurisdiction at all (Gardina, 2010). Regardless, federal lawmakers have effectively federalized the SC Settlement—subject to limitations—in the US Settlement Act.

None of that means much for the CDEZ. It does not need anything more than the provisions expressly provided in state and federal law to justify the Catawba Indian Nation’s sovereignty over commerce on its reservation. The plain language of the SC Settlement Act and the US Settlement Act give the Catawba Indian Nation a solid legal foundation for the CDEZ, based in its exclusive original and appellate jurisdiction over commerce in the zone. Details follow next.

4.2. Civil Jurisdiction of Tribal Courts

SC Settlement Act § 27-16-80 has a number of provisions relating to the civil jurisdiction of tribal courts. It begins with a general statement of the scope afforded to tribal adjudication: “(A) The Tribe may provide in its constitution for a Tribal Court having civil jurisdiction which may extend up to, but not exceed, the extent provided in this chapter and the federal implementing legislation. The Tribe may have a court of original jurisdiction, as well as an appellate court.” The section continues with a series of separate provisions for distinct areas of law. Three areas in particular—contract law, tort law, and civil regulation on businesses or persons resident on the reservation—receive further consideration in the next three sub-subsections.

Tribal courts have exclusive original and appellate jurisdiction in select areas of law. This sovereign control provides the legal foundation for the CDEZ. The Settlement Act allows tribal courts to exercise exclusive original (but not necessarily appellate) jurisdiction in the following cases:

- Actions on contracts with a tribal party that expressly and in writing give the tribal court exclusive jurisdiction, SC Settlement Act § 27-16-80(A)(1), (B), (D)(1)(c);
- Internal matters of the Tribe, *id.* (A)(3), (D)(1)(c);
- Enforcement of tribal civil regulations on businesses or persons resident on the reservation enacted pursuant to § 10.2 of the Settlement Agreement, SC Settlement Act § 27-16-80(A)(5); or
- Enforcement of tribal civil regulations on businesses or persons resident on the reservation enacted pursuant to § 17 of the Settlement Agreement, *id.*

The first and third of these four areas offer solid ground to build an autonomous commercial legal system. The first allows the CDEZ to contract with users to submit disputes to tribal courts created for the zone, a condition easy for a virtual trading post to implement at its gates. The third area—conduct regulated by the Nation pursuant to § 10.2 of the Settlement Agreement—has a broad reach discussed more



fully below.

The other second and fourth areas in which tribal courts have original and exclusive jurisdiction are not as relevant to the CDEZ. The second concerns internal matters rather than the transactions involving non-members hosted in a virtual trading post. The fourth area, concerning § 17 of the Settlement Agreement, offers a potentially useful defense to foreign interference with the CDEZ. That section defines the scope of the Nation's autonomy with regard to building codes, environmental laws, planning and zoning, health codes, hunting and fishing, riparian rights, and alcoholic beverages. It has little impact on the legal foundations of the zone, though.

Even in areas where tribal courts have original and exclusive jurisdiction, they may lack appellate jurisdiction, leaving outside courts with the power to finally decide disputes. SC Settlement Act § 27-16-80(D)(1) provides:

All final judgments entered in actions tried in Tribal Court are subject to an appeal to the Family Court, the Court of Common Pleas, or the United States District Court, depending upon whether that court would have had jurisdiction over the appealed matter had it been commenced in that court, if all of the following circumstances exist:

- (a) A party to the suit is not a member of the Tribe;
- (b) The amount in controversy or the cost of complying with an equitable order or decree exceeds the jurisdictional limits then applicable in the magistrates' courts of South Carolina;
- (c) The subject matter of the suit does not fall within subsection (A)(1)(a) [contracts with a tribal party] if jurisdiction is exclusive or subsection (A)(3) [internal tribe matters] or (A)(5) [conduct under 10.2 or 17 of the Settlement Agreement, both of which give the Nation jurisdiction over tribal civil regulation of commerce on its reservation].

Such appellate judgements by South Carolina Courts are binding on tribal courts under SC Settlement Act § 27-16-80(E)(1). In all but a few areas of law, therefore, the decisions of tribal courts may be heard or appealed to and finally resolved by non-Nation courts. The CDEZ stays within those few areas. In conclusion, these in two jurisdictional grants give the CDEZ room to operate:

- Actions on contracts with a tribal party that expressly and in writing give the tribal court exclusive jurisdiction, as per SC Settlement Act § 27-16-80(A)(1), (B), (D)(1)(c); and
- Enforcement of tribal civil regulations on businesses or persons resident

on the reservation enacted pursuant to § 10.2 of the Settlement Agreement.

Together, these two areas give the Catawba Indian Nation a double claim to exercise sovereign control over all commerce with and in its Digital Economic Zone. Its courts have exclusive jurisdiction over all disputes with zone authorities or arising under the Zone Civil Ordinance.

4.2.1. Jurisdiction of Tribal Courts Over Contract Law

The Catawba have jurisdiction over contract cases to which they are a party. SC Settlement Act § 27-16-80(A)(1) says:

With respect to actions on contracts, the Tribal Court may be vested with jurisdiction over an action on a contract:

(a) to which the Tribe or a member of the Tribe is a party, which expressly provides in writing that the Tribal Court has concurrent or exclusive jurisdiction.

The SC Settlement Act confirms at § 27-16-80(B) that tribal courts may exercise exclusive jurisdiction over such cases: “The original jurisdiction of the Tribal Court over the matters set forth in subsection (A)(1)(a) must be concurrent or exclusive depending upon the agreement of the parties.” It should more than suffice for the parties to expressly agree that tribal courts have exclusive jurisdiction.

That condition should not be hard to satisfy. Non-members will be required to create and register LLCs or other legal persons with the CDEZ. In doing so, they will contract with the Nation or a member of it. Such contracts may include choice of law and forum clauses specifying applicability of the Zone Civil Ordinance and vesting courts formed under it with exclusive jurisdiction to hear disputes arising under the agreement. Furthermore, the CDEZ’s eCompanies will presumably have to agree to operate under the Zone Civil Ordinance as a condition of registration (They will doubtless have the right to choose other laws or fora in contracts with other parties made in the zone).

Note that SC Settlement Act § 27-16-80(A)(1)(a) vests the tribal court with jurisdiction over an action on a contract “to which the Tribe or a member of the Tribe is a party”. It does not require that the tribal party be in privity with that contract. How can someone be party to a contract without being in privity under it? By winning standing as an intended beneficiary of a contract formed by and between parties who are in privity. The common law grants standing to such a third party if the parties in privity intend the third party to benefit from their agreement and giving the third party standing to sue is appropriate to effectuate that intention. In that case, the intended beneficiary becomes a party to



the contract—a third party—with standing to sue (Restatement (2d) Contracts (1981) § 302). Application of these rules in the particular case of the Catawba Nation would mean that its court has exclusive original and appellate jurisdiction not only over actions arising under a contract between the CDEZ and its guests, but also over contracts between non-tribal parties if it “expressly provides in writing that the tribal court has concurrent or exclusive jurisdiction” (SC Settlement Act § 27-16-80(A)(1)(a)).

More specifically, contracts between parties in the CDEZ might be placed under the exclusive original and appellate jurisdiction of the tribal courts if they included express written notice that the tribal court has that jurisdiction and that the Tribe is an intended beneficiary of the contract with standing to sue for enforcement of its choice of law and forum clause. The parties would represent and warrant that they intend the Tribe to benefit from their respect for the Zone Civil Ordinance, which indeed would contribute to the good will enjoyed by the Nation through its CDEZ. They would likewise acknowledge that it is appropriate for the Nation to sue to enforce the choice of law and forum clauses in Zone contracts, which indeed it is, because the Nation wants to assure others transacting in its jurisdiction that they will enjoy its protection against foreign interference.

The CDEZ will also doubtless want to require each resident eCompany to maintain a registered agent with a physical address and mailbox on the reservation and to host operations transactions on servers running there. Why? Because SC Settlement Act § 27-16-80(A)(1)(b) gives the tribal court jurisdiction over an action on a contract, “between the Tribe or a member of the Tribe and other parties or their agents who are physically present on the Reservation when the contract is made, and which is to be performed in part on the Reservation ...” Note that the language of SC Settlement Act § 27-16-80(A)(1)(b) cannot be extended to give standing to the Nation as an intended third party beneficiary to contracts between non-tribal parties. The phrase, “between the Tribe or a member of the Tribe and other parties or their agents,” rules out that interpretation.

These measures establishing the exclusive jurisdiction of tribal courts may be applied to any contract between the Nation and a non-tribal party that expressly and in writing provides for them, to a contract between non-tribal parties that provides likewise and adds the Nation as an intended beneficiary, or to contracts between tribal parties and non-tribal parties (or their CDEZ agents) at least partially performed in the CDEZ. Those same contracts may provide at the same time that all disputes arising under the contracts will go not to the tribal court but to private arbitration, such as might be offered by a CDEZ Arbitration Center.

Given the effect of the Federal Arbitration Act, these arbitration agreements should be enforceable as a matter of course (Federal Arbitration Act, 1926). In the unlikely event that such an arbitration clause is not enforceable, tribal courts would have exclusive jurisdiction over actions on the contracts. Foreign courts would face a double defense against the unwarranted exercise of jurisdiction over such contracts: First, the arbitration clause; Second, the exclusive original jurisdiction afforded to the tribal court by federal and state law. To these defenses a properly structured market might add another, as des-

cribed below.

4.2.2. Jurisdiction of Tribal Courts Over Tort Law

The Catawba have original but not exclusive jurisdiction over various torts occurring on their reservation. Settlement Act § 27-16-80(A)(2) says,

the tribal Court may be vested with jurisdiction over an action arising out of:

(a) an intentional tort, as defined by South Carolina law, committed on the Reservation, in which recovery is sought for bodily injuries or damages to tangible property located on the Reservation.

(b) negligent tortious conduct occurring on the Reservation or conduct occurring on the Reservation for which strict liability may be imposed, excluding, however, accidents occurring within the right-of-way limits of a highway, road, or other public easement owned or maintained by the State or its subdivisions or by the United States, which abuts or crosses the Reservation. However, the action in tort involving a nonmember of the Tribe as defendant may be removed to a state or federal court of appropriate jurisdiction if the amount in controversy exceeds the jurisdictional limits then applicable to magistrate's court in South Carolina.

Under § 27-16-80(A)(2)(a), therefore, tribal courts have jurisdiction over certain intentional torts that physically harm persons or property on the reservation. The section does not expressly deny tribal courts jurisdiction over other types of intentional torts, such as fraud or unfair competition, that cause intangible damage. Section 27-16-40, described above, pretends to have that preclusive effect, though. Under § 27-16-80(A)(2)(b), tribal courts may hear negligence claims for which strict liability might be imposed except for those arising from accidents that occur on easements of the North Carolina or the United States. Again, § 27-16-40 would claim to preclude tribal courts from hearing negligence claims outside of that expressly delineated area of jurisdiction.

Even with regard to tort claims they can hear, the jurisdiction enjoyed by tribal courts must be shared with State courts. SC Settlement Act § 27-16-80(B) provides, "The original jurisdiction of the Tribal Court over the matters set forth in ... (A)(2) ... must be concurrent with the jurisdiction of the Court of Common Pleas of South Carolina, the Family Court, and the United States District Court for South Carolina." Also, as set forth in SC Settlement Act § 27-16-80(D)(1), any final judgements in tribal court are subject to appeal to SC courts if a party to the suit is not a Tribe member and the amount in

controversy exceeds \$7,500, the current limit for the jurisdiction of a South Carolina magistrate's court (Concurrent civil jurisdiction, 2004).

4.2.3. Jurisdiction of Tribal Courts Over Civil Regulation

Crucially for their Digital Economic Zone, the Catawba have sovereign power to pass civil regulations for conduct on their reservation. SC Settlement Act § 27-16-80(A)(5) provides:

The Tribal Court also may be vested with jurisdiction to enforce against a business located on the Reservation and members or nonmembers residing on the Reservation, tribal civil regulations regulating conduct on the Reservation enacted pursuant to Section 10.2 ... of the Settlement Agreement.

In contrast to the requirement in § 27-16-80(A)(1) that a contract make express reference to tribal courts for them to have jurisdiction over claims arising under it, § 27-16-80(A)(5) presumes their jurisdiction in cases arising out of tribal civil regulations. The above-quoted passage continues:

The entity or person is charged with notice of the Tribe's regulations governing conduct on the Reservation and is subject to the enforcement of the regulations in the Tribal Court unless the Tribe specifically has exempted the entity or person from any or all regulation or enforcement in Tribal Court.

As noted above, tribal courts have exclusive original and appellate jurisdiction over cases arising under the Zone Civil Ordinance. No foreign court can decide these matters.

To interpret the scope of SC Settlement Act § 27-16-80(A)(5) requires reference to § 10.2 of the Settlement Agreement, which provides in relevant part:

[I]n any constitution adopted by the Tribe, the Tribe may be authorized to the extent which is consistent with this Agreement

(i) to regulate the use and disposition of tribal property;

...

(iii) to regulate the conduct of businesses located on the reservation and individuals residing on the reservation;

...

(v) to grant exemptions, abatements or waivers from any tribal laws, tribal regulations, or tribal taxes, except the Tribal Sales and Use Taxes, otherwise applicable on the reservation,

including waivers of the jurisdiction of any tribal court; [and]

...

(ix) to charter tribally-owned economic development corporations and enterprises provided the corporations or enterprises register with the Secretary of State for South Carolina as a domestic or foreign corporation when doing business off the reservation.

Though each of the quoted provisions might have applications useful to the CDEZ, Settlement Agreement § 10.2(iii) appears to have the broadest scope. A great deal might fit under the heading of regulations on the “conduct of businesses located on the reservation and individuals residing on the reservation.” The Nation could bolster claims of autonomy it makes on that front by also invoking Settlement Agreement § 10.2(i), under which it enjoys exclusive authority over the use and disposition of tribal property. The Nation can moreover argue that its bespoke regulations, embodied in the Zone Civil Ordinance, speak with the same force as federal law, as discussed above.

The combination of SC Settlement Act § 27-16-80(A)(5) and Settlement Agreement 10.2(iii) allows the Nation to use its exclusive original and appellate jurisdiction over cases arising under the Zone Civil Ordinance to forestall interference by South Carolina. Once identified as arising under “tribal civil regulations regulating conduct on the Reservation enacted pursuant to Section 10.2 ... of the Settlement Agreement,” SC Settlement Act § 27-16-80(A)(5), a dispute falls within the exclusive original and appellate jurisdiction of tribal courts per SC Settlement Act §§ 27-16-80(A)(5), (D)(1). That leaves no basis for a South Carolina court to adjudicate the dispute.

Nor would courts of other states or the federal government have jurisdiction. The US Settlement Act makes clear in § 4(a)(2) that the just-cited provisions of the SC Settlement Act and the Settlement Agreement have the force and effect of federal law. If those provisions say that the Nation has exclusive original and appellate jurisdiction over cases arising under its civil regulatory code--and they evidently do--nothing less than the Constitution or a new federal statute can make it otherwise.

4.3. Authority of Nation Courts to Delegate Adjudication of Civil Disputes

The US Settlement Act provides at §10(1), “All matters involving tribal powers, immunities, and jurisdiction, whether criminal, civil, or regulatory, shall be governed by the terms and provisions of the Settlement Agreement and the State Act [of South Carolina], unless otherwise provided in this Act.” Without contradiction to the federal Act, § 27-16-80(A) of South Carolina’s Settlement Agreement says, “The Tribe may provide in its constitution for a Tribal Court having civil jurisdiction [to] the extent provided in this chapter and the federal implementing legislation.” The same section adds, “The Tribe may have a court of original jurisdiction, as well as an appellate court.”



As noted above, applicable law recognizes the exclusive original and exclusive jurisdiction of Nation Courts over two classes of disputes of particular interest to the CDEZ: those having a tribal party and those arising under any Catawba civil code applicable to businesses or individuals resident in the Digital Economic Zone on tribal lands. Tribal courts are not required to provide a forum for such cases, however. Like other sovereigns, the Catawba Nation can delegate the ultimate responsibility of settling civil disputes under its jurisdiction to private dispute resolution services operating under guidance and supervision.

Sovereigns have long customarily allowed private parties to resolve disputes arising under law. And South Carolina Settlement Act § 27-16-80(A)(5)(v) expressly recognizes that the Tribe may “grant exemptions, abatements or waivers from any tribal laws ... including waivers of the jurisdiction of any tribal court”. By both inherent sovereign power and statutory recognition, the CDEZ may specify private arbitration conducted under its rules as the default forum for disputes over which tribal courts have exclusive original and appellate jurisdiction.

4.4. Criminal, Tax, and Unlegislated Law

This paper focuses on the civil jurisdiction of the CDEZ and its courts over commerce in the zone. It finds that the Catawba Nation has sovereign power over private disputes arising on the reservation and under the Zone Civil Ordinance. That covers much ground, but not everything of concern to would-be traders. They might also want to know whether and to what extent the Catawba Indian Nation exercises exclusive jurisdiction over criminal law, tax law, administrative agency regulations, and executive orders. The still-formative status of the CDEZ and complexity of these matters allow only preliminary and general observations at this time.

Federal recognition renders an Indian tribe exempt from federal income taxes (Internal Revenue Service, 1967). As an organic part of the Catawba Indian Nation, the CDEZ would presumably benefit from the same exemption. The same exemption does not however extend to members of the tribe or non-tribal parties doing business in the zone.

The Catawba have a somewhat complicated tax relationship with South Carolina. Absent a specific cessation of jurisdiction or federal legislation to the contrary, “a State is without power to tax reservation lands and reservation Indians” (County of Yakima v. Confederated Tribes and Bands of Yakima Nation, 1992, p. 258). In the case of the Catawba, however, the Settlement Agreement and subsequent state and federal legislation allow for South Carolina to collect some but not all sales taxes on the reservation and require it to remit some but not all of the taxes it collects to the tribe (South Carolina Department of Revenue, 2019).

As discussed in more detail above, it appears that state criminal laws and regulations remain generally



applicable in the CDEZ. US Settlement Act § 10.1 provides, “All matters involving tribal powers, immunities, and jurisdiction, whether criminal, civil, or regulatory, shall be governed by the terms and provisions of the Settlement Agreement and the State Act, unless otherwise provided in this Act.” Firm conclusions about the reach of federal criminal laws and regulations, as well as of state or federal executive orders, will have to await further development of the CDEZ and review of the many relevant rules.

5. STRUCTURE AND OPERATION OF THE CDEZ

The above pages establish the CDEZ’s foundation on a stacked hierarchy of laws, stretching from the Settlement Agreement at the bottom to international law at the top. All recognize the sovereign authority of the Catawba Indian Nation to enact, interpret, and enforce a civil code for its own territory. Pursuant to that authority, on February 19, 2022, the Catawba Indian Nation passed the Resolution Establishing the Green Earth Zone, Approving the Green Earth Zone Civil Ordinance, and Designating Initial Property for the Green Earth Zone (Zone Resolution, 2022). Through this resolution, the Nation adopted the Zone’s foundational law, the Green Earth Zone Civil Ordinance (Zone Civil Ordinance, 2022). The following sections describe the status of the Green Earth Zone (d.b.a. “Catawba Digital Economic Zone”) in the Nation’s system of government and the major features of the Zone Civil Ordinance.

5.1. The CDEZ in the Nation’s System of Government

The Catawba govern themselves through the General Council, an assembly of Tribe members. The General Council passes ordinances, creates administrative bodies and appoints their officers, engages in diplomacy, and otherwise exercises the Nation’s sovereign power. The Catawba have two such administrative bodies: The Executive Committee, which governs the Tribe and its territory (Catawba Indian Nation, The Catawba Nation Executive Committee, n.d.) and the Catawba Corporations (formerly known as the Economic Development Committee), which handles business matters (Catawba Corporations, n.d.).

The General Council created the Catawba Digital Economic Zone through the Zone Resolution and attached Zone Civil Ordinance. The zone takes form as an unincorporated governmental instrumentality of the Executive Branch of the Catawba Indian Nation, thereby sharing with it all of the Tribe’s privileges and immunities (Zone Civil Ordinance, 2022, Tit II Ch. 1 §§ 1, 3). A five-member Zone Authority Commission governs the CDEZ by establishing overall policies and issuing regulations using delegated powers (Id., § 2). The Executive Committee appoints two members of the Zone Authority Commission, the Catawba Corporations appoint two, and a private Nation-majority-owned management company, the Green Earth Zone Services Corporation (Zone Corporation), appoints one. (Id., Tit. II Ch. 2 § 1).

Because the CDEZ enjoys the same sovereign immunity as the Nation itself, it also qualifies for the provisions of the US Settlement Act, discussed above, giving the Nation exclusive original and appellate jurisdiction over cases with non-tribal parties. Because all who visit the CDEZ will have to contract with it, the zone can assure that it regulates commerce in the zone with no less authority than any sovereign exercises over markets in its territory. The Zone Civil Ordinance likewise emphasizes the Nation's authority to "govern the activities of those businesses and persons who operate within the jurisdiction of the Zone" (Id., Tit. II Ch. 3 § 2) by making the Ordinance applicable therein.

5.2. The Zone Civil Ordinance

Prefatory to approving the Zone Civil Ordinance, the General Council by resolution explains its motives in a series of "Whereas" clauses, establishing the Zone, and designating its initial location (Zone Resolution, 2022). The Resolution attaches the Zone Civil Ordinance, a law having ten titles (Zone Civil Ordinance, 2022). The first title covers general provisions, the second covers administration of the zone, and the remaining titles set forth the substantive and procedural rules that govern activities in the CDEZ. Details of the Ordinance's contents follow.

Title I of the Zone Civil Ordinance lays the legal groundwork for the rest of the Ordinance. It includes nuts-and-bolts issues like interpretation of the Ordinance, modifications to it, and its scope. Title II creates the Zone Authority Commission and Zone Corporation, introduced above.

The next 6 titles, III through VIII, import provisions of Ulex, the open source legal system, into the Zone Civil Ordinance. Ulex offers an open source legal system suitable for startup communities, special jurisdictions, and other systems of government (Ulex Opensource, n.d.). It has already seen use in Próspera ZEDE's Roatán Common Law Code, which incorporates Ulex's substantive rules. (Próspera ZEDE, 2018). A similar Ulex kernel provides the CDEZ with rules for contracts, torts, and a wide range of other legal relations. Both jurisdictions thereby partake of the same objective, expert, and tested set of flag-free rules.

The Zone Civil Ordinance's last two titles return to nuts-and-bolts matters. Title IX gives the Tribal Court or any other special court organized by the Executive Committee general jurisdiction in law or equity. Title X makes the Ordinance effective as of its approval by the General Council, which occurred February 22, 2022.

6. CONCLUSION

With the Catawba Digital Economic Zone, the Catawba Indian Nation can lay fair claim to creating the first special economic zone (SEZ) in the United States. Other contenders for the title fall short. Foreign



trade zones, created in 1934 and now found throughout the United States, do little more than ease customs, duties, and tax burdens (Bell, 2018). The various states of the United States, in contrast, do so much that they qualify as normal jurisdictions rather than special ones. More complex than an FTZ and less grandiose than a state, the CDEZ thus represents the first true SEZ in the United States.

In but not of; though documented in state and federal law, the CDEZ is not a creation of any foreign sovereign. It arises from the Catawba Indian Nation's own sovereignty. Digital commerce in the zone operates under the Nation's law; its courts have exclusive original and appellate jurisdiction over cases arising under the rules of the CDEZ. Before anyone places the CDEZ in the United States, therefore, they should place it on the reservation lands of the Catawba Indian Nation. The Nation—not the United States or any state—created this new American special economic zone. A special jurisdiction within a special jurisdiction, the CDEZ offers a double guarantee against outside interference. It testifies to the grit, genius, and sovereignty of the Catawba Indian Nation.

This bold innovation in governance will present the CDEZ with many challenges. Though its small size will allow the zone to respond nimbly to the rapid changes characteristic of the high tech industry, it also leaves it without all of the financial and human resources enjoyed by larger organizations. Other special jurisdictions that have attempted to serve the digital assets sector have struggled to avoid becoming havens for money laundering and other illicit activities. For that reason, the CDEZ has already announced that all who plan to use its platform will “have to go through KYC and AML checks in compliance with International and Federal Law” (Catawba Digital Economic Zone, 2022). Only time will tell how the CDEZ weathers these and other storms.

This paper has documented the origins, legal status, and basic structure of the Catawba Indian Nation's CDEZ. At its foundation, the CDEZ relies on state and federal recognition of the exclusive jurisdiction of tribal courts over two broad kinds of disputes: those arising out of contracts to which the Nation or its members are a party and those arising under rules for conduct of businesses and individuals on the reservation. Wielding that power, the Catawba General Council ordained the creation of a civil code and administrative structure to govern e-banking, cryptocurrency, non-fungible tokens, and other fintech industries hosted in its Digital Economic Zone. There, the Catawba Indian Nation will build a virtual trading post for a new New World.

DISCLOSURES AND DISCLAIMER: As detailed in *Your Next Government? From the Nation State to Stateless Nations* (Cambridge University Press 2018), the author created Ulex, the open source common law-based legal system incorporated into the Zone Civil Ordinance. He worked on the Catawba Digital Economic Zone through Archer Sage Ventures, a joint effort of ArchimEDIATE LLC and Sage Prospect LLC, under contract with eTribe LLC, which itself contracted with the Catawba Indian Nation, and holds a small equity interest in the latter LLC. Opinions expressed herein represent those of the author only,



who bears sole responsibility for their publication, and do not represent the opinions of any employer, client, or associate.

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