

Special Economic Zones: A legal framework Analysis

Luis Freisler

Free Cities Foundation
luisfreisler@yahoo.com
ORCID 0000-0003-4262-8317

Abstract:

With the increasing number and importance of special economic zones worldwide, more and more countries are thinking about establishing their own zones or improving their existing zones. This paper shows the model structure of a legal framework needed for such zones and gives corresponding recommendations. For this purpose, more than 80 laws from over 50 countries were analysed regarding to their commonalities. This results in a basic model scheme with different possibilities for individual deviation. Due to these deviations, which are adapted to the respective needs of each country, it is therefore not possible to develop a universal perfect law. Nevertheless, there are 3 points that seem essential for a successful zone law. These are the special tax incentives, the reduction of national regulatory complexity and the option of private participation in organization and operation of each zone.

Keywords: Special Economic Zones, SEZ, Free Zones, legal framework, legal framework structure, SEZ law, privatization, recommendations.

Resumen:

Con el aumento del número y la importancia de las zonas económicas especiales en todo el mundo, cada vez más países están pensando en establecer sus propias zonas o mejorar las zonas existentes. Este documento muestra la estructura modelo de un marco legal necesario para tales zonas y brinda las recomendaciones correspondientes. Para ello, se analizaron más de 80 leyes de más de 50 países en cuanto a sus puntos en común. Esto da como resultado un esquema de modelo básico con diferentes posibilidades de desviación individual. Debido a estas desviaciones, que se adaptan a las respectivas necesidades de cada país, no es posible, por tanto, desarrollar un derecho universal perfecto. Sin embargo, hay 3 puntos que parecen esenciales para el éxito de una ley zonal. Estos son los incentivos fiscales especiales, la reducción de la complejidad regulatoria nacional y la opción de participación privada en la organización y operación de cada zona.

Palabras Clave: Zonas Económicas Especiales, SEZ, Zonas Francas, marcos regulatorios, estructura legal, ley de zonas, privatización, recomendaciones.

1. INTRODUCTION

According to the UNCTAD World Investment Report, there were about 5,400 special economic zones (SEZs) in over 140 countries in 2019. For this calculation a SEZ was defined as “geographically delimited areas within which governments facilitate industrial activity through fiscal and regulatory incentives and infrastructure support” (UNCTAD, 2019). Nevertheless, as there is no unified definition of what a SEZ exactly is, this number varies widely. If single-factory zones, i.e. zones with incentives for one single en-

terprise, are included, up to 10,000 SEZs can exist worldwide (Bell, 2017). This lack of a unified definition for the rather general term SEZ is a result of different legislation, as each country has its own unique legal framework for the zones within its territory.

It is the aim of this paper to present the similarities and differences between those unique laws from different countries. For this objective, the second section presents a model framework of a “universal SEZ law”, on which the various implementation options are elaborated. Subsequently, in the third section, based on the possibilities described, some recommendations are made that can be implemented in future frameworks to ensure successful zones.

2. A UNIVERSAL SEZ LAW

The legal framework of a SEZ varies from state to state and can be a law, an act, a decree or any other type of legal norm on national or federal state level. There might as well be more than one framework within a country for different zone types (e.g. Belize Commercial Free Zones (CFZ), Belize Processing Zones (DAP); Indonesia Special Economic Zones (SEZ), Indonesia Industrial Estates (IE)). Nevertheless, almost all frameworks are based on a similar pattern, which, as a model framework, can be structured as follows:

1. Purpose;
2. Definitions;
3. Establishment, structure, and functions of a new authority;
4. Establishment and structure of new zones;
5. Licensing and the role of operators and developers;
6. Zone services;
7. Zone regulations;
8. Special legal regime;
9. Penalties;
10. Disputes;
11. Miscellaneous.

It should be clarified that not every framework follows this structure. There are both frameworks with more as well as fewer attributes, ranging from two (e.g. Fiji) up to more than fifty (e.g. Egypt) pages of content. The sample structure as well as the following explanations are only a compilation of the most frequently occurring chapters and attributes within the different frameworks.

2.1. Purpose

The purpose, usually set at the beginning of the framework, enumerates the goals to be achieved with the establishment of the zones. The most common, general goals are the creation of new jobs, economic development, attraction of foreign direct investment and the increase of international competitiveness. Nevertheless, the purpose of the zones is always adapted to specific needs and objectives of each country. In addition to the general objectives, there are some that are more specific. Countries with low export levels for example want to increase their exports. Countries with no significant manufacturing industry want to explicitly promote industrialisation and the production of goods. This also includes the development of skill expertise in the labour force, which can be increased through zones that attract high-tech industries. It is furthermore possible to specifically promote structural weak regional areas through the establishment of new zones. The cooperation of local companies with companies within the zone is then a special target in the purpose. Some economies only want to target specific economic sectors or industries with their zones as for example production, tourism or high-technology industry which is then specified in the purpose.

The goals mentioned in the purpose are not only generally desirable achievements, but in addition provide the indicators by which the performance and the concrete success of a zone can be measured. This is done, inter alia, by comparing the contribution to the stated goals between the zone companies and the companies in the rest of the country (e.g. Uruguay, Art. 1-BIS). For example, if a zone generates new jobs, but is too limited to service companies and has no manufacturing or producing companies, it does not contribute to an increase in exports. But if an increase in exports is listed as an important goal in the purpose, the zone does not contribute to its achievement and may even be closed due to its weak performance in this regard (e.g. Bolivia, Art. 56; Kosovo, Art. 18).

2.2. Definitions

The purpose is typically followed by a section with definitions, sometimes called interpretation, where specific terms are defined or precisely determined. This does not include detailed definitions, descriptions or provisions on content, but rather refers to the section in the law where the content is regulated (e.g. Botswana, Art. 2 “In this act, “special economic zone” means an area of land established as such under section 29”). The number of definitions ranges from a few (e.g. Argentina, Art. 1, definitions for the terms “free zone”, “general customs territory”, “special customs territory” and “third countries”) to high two-digit numbers (e.g. Jamaica, Art. 2, definitions for over 30 terms, including “Authority”, “customs territory”, “developer”, “infrastructure”, “occupant”, “Special Economic Zone” and “zone area”). The main definitions that can likewise be found in almost every framework, are the following:

The authority: most states have a special zone authority, also called a board or zone council, to manage the administrative matters concerning the zones (e.g. Botswana, Art. 6; Uganda, Art. 3).

The developer: a developer is responsible for setting up the zone along with its basic infrastructure (e.g. Ethiopia, Art. 5,6) and for land arrangements (e.g. Belize CFZ, Art. 9).

The operator: an operator, also called a managing company of the zone, is responsible for the administrative control as well as the day-to-day operations of the zone (e.g. Rwanda, Art. 2 (16)). An operator and a developer might, but do not have to be the same entity (e.g. Cameroon, Art. 3).

The licensee: a licensee is a person or company that is allowed to conduct an economic activity within the zone (e.g. Jamaica, Art. 2). If there are different types of zones within a country, there could be different types of licensees (e.g. Bolivia, Art. 3). Licensees are as well referred to as zone enterprises, users or entrepreneurs.

The zone type: Special economic zone (SEZ) is a recently popular term, characterized by UNCTAD (UNCTAD, 2019) and can be understood as a general term for “universal” zones. Nevertheless, in addition to those general SEZs, there are also specialised “sub-forms” of zones with expanded or reduced purposes and different definitions. Their used terminology is not uniform among the countries which is why only a rough classification for the most common types can be made here (for a detailed explanation of the definitions, see Bost, 2019).

- **Special Economic Zone (SEZ):** UNCTAD defines SEZs as clearly demarcated geographical areas with a regulatory regime distinct from the rest of the economy (most often custom and fiscal rules, but potentially covering other relevant regulations, such as foreign ownership rules, access to land or employment rules) and infrastructure support (UNCTAD, 2019). While infrastructure support is not mentioned in most definitions, the other two key criteria, i.e. a delimited area within the national custom territory and a special legal regime, are mentioned as minimum requirements in the majority of the zone definitions (e.g. Congo, Art 2; Indonesia SEZ, Art. 1).
- **Free Zone (FZ) / Free Trade Zone (FTZ):** A free zone, sometimes called free trade zone, is also a demarcated area with a special legal regime, but with peculiarities regarding the customs territory. It is that either the area is considered a separate customs territory, i.e. separated from the national customs territory (e.g. Jordan, Art. 2; Lithuania, Art. 2), or that special customs regulations apply within the zone (e.g. Guatemala, Art. 2). The purpose of FZs is mostly focused on warehousing or trade facilitation (e.g. Colombia, Art. 2; Montenegro, Art. 1).
- **Export Processing Zone (EPZ):** EPZs are likewise demarcated areas with a special legal regime, but their purpose and focus are specified to increase exports. The companies and infrastructure of an EPZ are thus dedicated to the production of export goods or in the pro-

vision of services required for exporting activities (e.g. Vietnam LI, Art. 3 (21)).

- Industrial Zone (IZ) / Industrial Estate (IE): IZs are demarcated areas with a special legal regime whose purpose is particularly directed towards the production of industrial goods and on industrial development (e.g. Kosovo, Art. 3).

As mentioned above, there may be different types of zones within one state, each addressing different economic or industrial sectors or purposes (e.g. Kosovo, Art. 3; Philippines, Sec. 4; Russia, Art. 4).

Taxes and Duties: the law often refers to various tax regulations, as for example the sales tax or the corporate tax, and their legal basis is mentioned here (e.g. Malaysia, Art. 2).

Even though the definitions do not yet contain any major content-related provisions, they are nevertheless important for identifying the important keywords and making it easier to find them. In addition, they serve as a kind of priority content specification since the terms mentioned there mostly have a greater significance. So likewise in the following subsections, where the terms mentioned are further specified.

2.3. Establishment, Structure and Function of a New Authority

To administer the zones and exercise state control, a special regulatory authority is created within the frameworks. The main elements to be regulated with regard to such an authority are its structure and its functions and powers.

2.3.1. Structure

The most important organ within the authority is the Governing Board, which is the policy-making organ responsible for carrying out the functions mentioned below and the management of the authority. The board usually consists of 8-15 members (sometimes more, e.g. Bangladesh, Art. 21 with over 30 members), which may be composed of the following persons:

- Ministers or representatives of one or more ministries related to the zones (e.g. Ministries of Industry, Commerce, Finance, Trade, Labour and Employment, etc.);
- Other government officials;
- Representatives of different chambers (e.g. Chambers of Commerce, Industry, Technology, etc.);
- A representative of the central bank of the country;
- Private representatives.

In addition, the meetings of the board and how they are to be proceeded, as well as the funding of the authority, are regulated. The fund mostly consists of a budget determined by the parliament or the government, fees paid to the authority for services such as registration or licensing and donations. Furthermore, there is a Chief Executive Officer (CEO) of the authority, ordinarily appointed by the government.

2.3.2. Functions and Powers

Each authority has clearly delineated and defined functions and powers. These can be summarised as follows:

- **Report function:** The authority must report regularly to the relevant body within the government on the performance of the zones. For this purpose, it shall register all activities within the zone and maintain records for the corresponding figures. Moreover, its function includes advising the government and making suggestions for future policies or legislative changes and formulating a national strategic master plan for the zone program.
- **Promotional function:** The authority has the function of promoting the zone program on national and international level in order to attract numerous investors. Especially if the regulatory authority is an investment promoting agency, the general promotion of investment or the promotion of exports is part of the authority's tasks in addition to the promotion of the specific zone program (e.g. Gambia, Art. 6).
- **Administrative function:** The authority must fulfil all administrative tasks that are related to the zones and its activities. It can set administrative fees for services like registration or licensing or set fines for breaches. The administrative function may as well include the establishment of police, customs or immigration offices within the zones along with the establishment or acting as a one-stop shop.
- **Compliance function:** The authority shall ensure that all national or zone-specific laws and regulations, especially the administrative and customs regulations, are complied with. To ensure that the authority has the right to carry out regular inspections of the facilities and goods in addition to monitor the processes by appropriate measures.
- **Land power:** The authority has the power to acquire and hold land. Therefore, it can lease, rent, or sell it to developers, operators or licensees. Furthermore the authority might identify suitable areas and propose them to the government (e.g. Ghana, Art. 7), so that the government can make the final decision and designate the area as a new zone.
- **Licensing power:** The authority is responsible for receiving, reviewing, and issuing all kinds of licences as well as determining the respective application procedures and forms. Thereby, the authority has the right to modify, revoke or cancel licences. In addition, it can be res-

possible for granting work permits and visas for foreigners (e.g. Philippines, Sec. 10).

- Regulating power: It has the power to make rules and regulations concerning the zones, e.g. the mentioned application or licensing process, the incentives or the entry and exit of persons or goods. It shall furthermore monitor the activities within the zone and must then allow, restrict, administer, regulate or prohibit certain activities of all kinds that contravene other laws.

The authority is mostly either overseen by or reports directly to the President or other high government officials such as the prime minister (e.g. Indonesia SEZ, Art. 15).

This authority is usually a body corporate with its own common seal, which is empowered to enter into contracts in its own name and which can sue and be sued.

2.3.3. Exemptions

As this is only a general structure, with common characteristics used by the majority, there are as well some possible exemptions which will be presented here:

- Structural exemptions: Not all countries have established only one federal authority, but rather one authority at national level and several authorities at regional or provincial levels (e.g. Indonesia SEZ, Art. 15, 9; Pakistan, Art. 5, 10). The national authority is then responsible for rather general tasks such as formulating general policies and a national master plan, while the provincial authorities administratively monitor the zones in their area and attend to more specific matters such as licensing.
- In addition to a national authority, called Board of Approval, India has even set up authorities for each individual zone, which monitor the performance of their zones (India, Art. 34).
- Other countries do not have a special authority at all, but simply transfer the zone related tasks to an already existing ministry (e.g. Guatemala, Art. 6). For the sake of simplicity, in the following the corresponding ministry is included when referring to the authority.
- Functional exemptions: In addition to these structural exceptions, there are as well some exceptions to the functions mentioned above. These include, in particular, the exception of licensing power, which is sometimes transferred to the individual zones themselves (e.g. South Africa, Art. 38). But also, individual aspects of the regulatory power, such as adopting rules or regulations for businesses within the zone are at times transferred to the operator (e.g. Kenya, Art. 22). Yet, the authority can not only be deprived of powers, but it might be granted extended competences. In some exceptions for example, it is empowered to designate certain areas as zones or to establish zones by itself, without the involvement of a central government (e.g. Papua New Guinea, Art. 41; Zimbabwe, Art. 31).

The structure of the authority is mostly based on the general structure of the administration of the individual state, whereas the distribution of functions and powers is based on which are still to be assigned to developers and operators.

2.4. Licensing and the Role of Developers and Operators

Once the authority has been established as an external setting, the internal structure of the individual zones still needs to be determined. Essential for this are the developer and the operator. The main tasks of a developer are to design, construct, and extend the zones. This can include leasing, renting or selling land or facilities to licensees and operators, providing facilities for the relevant authorities, and providing an adequate enclosure. In some cases, the developer might either select an operator or act as one (e.g. Uganda, Art. 34). The main tasks of an operator are to run, manage, administer, maintain and promote the zones. This can include adopting rules and regulations for business activities and the movement of goods or persons within the zone, entering into agreements with licensees, capturing their rights and obligations, maintaining the space provided by the developer and linking local industries to the industries within the zone. For the legal form of developer and operator there are 3 possibilities on how this is to be designed:

- The private design: In the private design, developers and operators are private companies with clearly defined powers and obligations (Rwanda, Art. 18). In such cases, the operators or developers enter into investment contracts with the licensees and the zone is then a complete private company, where the losses are borne by the respective owners.
- The public design: In the public design, developers and operators, usually called zone administration in such cases, are public entities, which are appointed and controlled by the national authority or the government (e.g. Belarus, Art. 15).
- The public-private design: The zones can furthermore be run in form of public-private partnerships (PPP), for example in the form of a public limited company where the state holds a certain number of shares or has a certain number of votes within the supervisory board (e.g. Poland, Art. 6).

Some frameworks implement all three options for zone operation, seeking private developers or operators or appointing public entities depending on needs and demand (e.g. Nigeria 2004, Part 4 Art. 1). The permission or licence to act as a developer, operator or licensee is normally granted by the authority upon successful application. The documents which are required for application are regulated in each

respective framework or by the authority itself. Usually basic information about the applying company, developer or operator and a business, marketing, or development plan for the corresponding zone are required. It is often compulsory that the company is registered in the host country. Licences are either perpetual, limited by the duration of the zone or renewable after a defined period. The licence may also be withdrawn for various reasons such as illegal activities, breach of contract, bankruptcy or suspension of operations. If an operator loses his licence, an interim administrator is usually hired (e.g. Pakistan, Art. 22).

The tasks and powers assigned to the authority, developer as well as operator arise in almost every country an zone program. However, who gets assigned the tasks from the 3 mentioned differs massively. This important part of the law therefore decides how the individual zones are managed and, above all, what amount of autonomy and flexibility they are granted.

2.5. Establishment of New Zones

Zones do not come into being randomly out of nowhere, but specific areas within the national territory must be selected and then declared as zone areas. Usually, the proposal to declare a particular territory a zone area comes from the authority, which forwards it to the government. The government then officially declares the area as a zone area and establishes a new zone. In some frameworks, proposals are furthermore allowed from the private sector (e.g. India Art. 3; Rwanda Art. 7). The minimum requirements for such a zone are clear boundaries and a minimum or maximum size. In addition, some countries require their zones to be established only on land that is state-owned (e.g. Angola, Art. 5 I). As far as infrastructure is concerned, some states require a pre-existing basic infrastructure before an area can be declared a zone (e.g. Philippines, Art. 6), while other states leave the construction of infrastructure entirely to the authority or developer. It is also possible that the potential area must be located near a port, airport or rail connection (e.g. Bosnia and Herzegovina, Art. 3). The establishment of so-called single-factory zones, i.e. zones in which only a single company is located, is permitted only in exceptions (e.g. Botswana, Art. 30 II).

Apart from these few clear rules, hardly any other concrete aspects are regulated regarding the establishment of zones or the designation of areas as zones within the frameworks; instead, terms that can be interpreted are used. The location should often be competitive and attractive for investment, in harmony with the purpose, and take environmental concerns into account. This ensures a great deal of leeway in the selection of potential areas as well as in the final decision.

2.6. Zone Services, Activities and Regulations

To ensure the development of a zone, the law prescribes several services that must be provided either by the developer, the operator or the authority. This mainly involves the provision of essential infrastructure such as roads, electricity, telecommunication, gas and water supply as well as waste management. Also, appropriate measures must be taken to ensure adequate security within the zone. A further important service is the establishment of a one-stop shop, a shop where all relevant and competent agencies and authorities are represented. Some countries might require extended services within the zones, for example green areas for recreation (e.g. Dominican Republic, Art. 9) or sanitary facilities in which medical care is guaranteed (e.g. Haiti, Art. 38).

Licensees, however, are not only subject to services, but also to regulatory restrictions that have to be fulfilled. In order to get a licence in the first instance, it might be that only certain activities may be conducted. Some states allow almost any economic activity and have only a small negative list of prohibited activities such as the trade in firearms or explosives, gambling or the production of alcohol or tobacco products (e.g. Belarus, Art. 5). Whereas other zones only allow certain economic activities within a positive list, while everything not included is illegal. Especially when it comes to specialised zones such as export processing zones, the permitted economic activities are limited to fit the purpose (e.g. Nigeria 1992, Art. 6). The economic activity of an enterprise is sometimes limited to the zone, i.e. the enterprise may only carry out its economic activity within the zone and not in the rest of the national territory (e.g. Uruguay, Art. 14). Other regulations concern the ownership of land, which is not always possible for all private parties. In some zones, licensees can only lease or rent land from the respective authority or developer (e.g. Vietnam Hi-Tech, Art. 7). Another significant difference between the zones occurs in the regulations of permanent residence. There are countries that prohibit any kind of living or housing within the zone (e.g. Djibouti, Art. 27), and retail trade may also be prohibited (e.g. Kenya, Art. 26) or only possible with a special permit (e.g. Nigeria 1992, Art. 14). They are then merely work zones. Others allow both retail and/or living within the zone (e.g. Ethiopia, Art. 15), whereby the possibility of living might be limited to service or security staff (e.g. Uruguay, Art. 4). Occasionally it is furthermore pointed out that the environmental and labour regulations in particular must be strictly complied with (e.g. Bangladesh, Art. 33,34; Philippines, Sec. 33; Rwanda, Art. 39). As far as the design options here are concerned, there are no limits for the legislator, which is also reflected in the variety of possibilities. They only have to be aligned with the objectives defined in the purpose and the type of zone.

2.7. Special Legal Regime

The special legal regime is one of the most important points of a zone, as this is where the incentives for investors are created. In general, there are three distinct types of regimes that may be regulated differently

within the zone than in the rest of the national territory. These are the tax regime, the economic regime and the customs regime.

2.7.1. Tax Regime

Most zones offer certain tax concessions to licensees and developers or operators within the zones, which are outlined below.

- Exemption from corporate tax: Almost all zones offer a corporate tax exemption of up to 100%. The exemption is either for the entire duration of the zone, or for a fixed period after which the exemption is cancelled or reduced by a certain percentage.
- Exemption from value added tax (VAT) or other consumption taxes: VAT can either be excluded in general or only for specific goods such as production goods, raw materials, equipment and machinery or for imported goods. There is also the possibility of an exemption from consumption tax, for example on gas, oil, fuel or electricity.
- Exemption from property or land tax: Possible exemptions here are the exemption from the property transfer tax or an exemption from the property or land tax, usually limited in time (mostly for the duration of the construction phase).
- Exemption from other taxes: Other common tax incentives are the exemption from the capital gains tax, the tax on dividends, the personal income tax, from local taxes or from stamp duties.
- Foreign exchange and currency related incentives: Currency related incentives often include rules concerning foreign exchange or foreign currencies. Foreign exchange regulations may not apply within the zone (e.g. Nigeria 1992, Art. 18) or there can be an exemption from the currency export tax (e.g. Cameroon, Art. 17).

2.7.2. Economic Regime

The special economic regime here refers in particular to the regulatory incentives and facilitations that apply to economic activities within the zones. Regulatory incentives are exceptions to or amendments of rules applicable at national level. This applies to exemptions from national licensing requirements, quota restrictions or government monopolies (e.g. Cameroon, Art. 22). Besides, it is possible to make exceptions to rent restrictions (e.g. Belize CFZ, Art. 26) or to allow foreign ownership within the zone more easily or on an increased percentage basis. Furthermore, labour regulations can be changed within the zone (e.g. Angola, Chapter VII).

2.7.3. Customs Regime

The zone is sometimes (especially in the case of FTZs, but also possible in other zone types) considered to be a separated area outside the national customs territory (e.g. Jordan, Art. 2; Zimbabwe, Art. 2; different in Bosnia and Herzegovina, Art. 2; Montenegro, Art. 2, where zones are considered as part of the customs territory). That is, goods that are inside the zone are to be considered outside the national customs territory. Goods moving from a zone into the national territory are to be considered as imports, goods moving into the zones from the national customs territory as exports. As far as imports and exports are concerned, customs duties are commonly not levied on goods. Nevertheless, the exemption may be limited to capital goods or raw materials or machinery and equipment. The import and export of goods is subject to the usual customs regulations and fees, with some exceptions. These exceptions include goods that are imported or exported for a short period of time for maintenance, service or testing reasons. The national customs authority is responsible for the customs control regarding the zones.

2.7.4. Requirements

In order to take advantage of those incentives, or to obtain a licence in the first place, certain conditions are imposed on companies and investors at times. The most used requirement is a guaranteed minimum investment, which might range from a few tens of thousands (e.g. Jamaica) to several millions (e.g. Indonesia SEZ) of U.S. dollars. The amount of the minimum investment can additionally depend on the type of investment made or be reduced by complying with other requirements such as the creation of new jobs. Other common requirements are a minimum export quota, the creation of a minimum number of new jobs or a minimum number of national employees in each zone enterprise. Often several of these requirements are used at once. Regarding the tax exemptions, the quantity of the granted exemptions may depend on the amount of the investment made or the number of jobs created.

Thus, also in the case of special legal regulation, there is a wide range of different regulation and combination possibilities, always depending on the type and purpose of the zone. For free zones, the rules on the customs regime are primarily relevant, while the attractiveness of the zones, i.e. the tax regime, is important for the attraction of foreign direct investment as defined in the purpose. Particularly via the requirements, it is simple to control what kind of licensees enter a zone and in what scale.

2.8. Penalties, Disputes and Miscellaneous

While national criminal law also applies, most countries additionally penalize specific misconduct within the zone. A distinction can be made here between internal and external penalties. In this case, internal penalties are penalties whose consequences remain within the scope of the zone, such as fines paid

to the authority or operator, a revocation of the granted incentives or even a revocation of the particular licence. External penalties are penalties at national level, including fines paid to other state authorities and imprisonment. Which zone-specific misconduct leads to which punishment and whether there are internal or external consequences at all differs greatly between the countries. There is the possibility to regulate the penal provisions generally and to prescribe the payment of a fine for each violation of the rules and regulations applicable within the framework of the law. A minimum and a maximum amount will be set, and the competent authority will decide the amount depending on the severity of the breach of the rules (e.g. Jordan, Art. 45; Uruguay, Art. 42). Some countries have offence catalogues that punish certain misconduct with different penalties depending on the severity, ranging from a fine or to the revocation of the licence up to imprisonment (e.g. Korea FTZ, Chapter VII; Thailand, Chapter V). The most common misdeeds contained in those catalogues are the endangering of the environment, giving misleading information to the authority, conducting a business without permission, acting against custom rules (for example by importing or exporting goods without registering them or storing illegal items) or entering/living inside the zone without permission. The severity of the punishment correspondingly varies significantly. For example, importing goods contrary to the rules is sometimes punished only by a fine (e.g. Dominican Republic, Art. 47), sometimes directly by imprisonment (e.g. Ghana, Art. 40). Since federal criminal law remains in force, it is possible that for one single action both a fine under zoning law and a fine or imprisonment under federal law will be imposed. Federal criminal law can furthermore be relevant when a conviction under federal criminal law may have zone internal consequences. If the company, or its chairperson, is convicted of particular federal offences, this may lead to the revocation of the respective licence (e.g. Belize DPA, Art. 21; Costa Rica, Art. 32).

2.9. Disputes

In many cases, a conflict will have preceded the imposition of a penalty. In the event of such a dispute, it is then important to determine the procedures and courts where decisions will be made. In a zone, a basic distinction must be made between two types of possible dispute constellations. First, there can be disputes between the respective private parties (licensees or developers/operators), and secondly there can be disputes between a private party and the competent state authority. The alternative settlement options mentioned below are limited to civil, commercial, administrative or investment-related disputes. Other issues, such as criminal offences, will be dealt with in accordance with the same laws and procedures applicable outside the zones. This applies equally if the framework does not contain any specific provisions for dispute resolution.

One option is to authorise the relevant competent authority by law to settle disputes arising between licensees or licensees and employees (e.g. Nigeria 2004, Part 2 Art. 24). If the dispute is about the

revocation or rejection of a licence, there can be created a special board of appeal within the authority which could be consulted in such cases (e.g. Belize DPA, Art. 24). Another increasingly used option is the use of international arbitration services. This is not limited to disputes between individual private licensees but is sometimes also explicitly applied to disputes between licensees and the operator or authority (provided both parties have agreed on this beforehand). Some restrict the explicit use of international arbitration services in disputes with the authority to foreign investors, for example under the International Centre for Settlement of Investment Disputes (ICSID) rules, whereas national investors must seek the competent national courts if they have no special arbitration agreement with the respective state body (e.g. Madagascar, Art. 10; Tanzania, Art. 34). In other frameworks, all licensees have access to international arbitration services in the event of disputes with the authority regarding zoning activities or made investments within the scope of the zone (e.g. Ghana, Art. 32; Papua New Guinea, Art. 72). But again, the two parties must have contractually agreed on such alternative dispute resolution beforehand.

2.10. Miscellaneous

At the end of most frameworks, general points are regulated in a short section. These include, the date of entry into force, or how already existing zones that have a different or older legal basis are to be treated. It is also stated that, unless provided otherwise for in the zones framework, the remaining national provisions, in particular labour and criminal law, apply.

The structure of a framework presented so far has proven itself over time. It is used as such by the majority. This is to say that the points mentioned are mostly regulated in terms of content, although of course other names or a changed order are used among different frameworks for the mentioned points. Major differences in content mostly arise in the determination of the authority or developer/operator which are sometimes not referred to at all. In such a case, the arising tasks usually assigned to the authority have already been transferred to an existing ministry or to other government agencies. If developers or operators are completely omitted, the tasks usually attributed to them have been assigned to the authority instead. Due to this transfer of tasks, the creation of the standard institutions is just not necessary. Other differences mainly occur in the setting of priorities or in the implementation of details. Especially when private parties are involved, precise specifications must be made. If, for example, only public parties are involved in the designation of new zones, the whole matter could be regulated in an article consisting of two sentences. This article then names the competent body that has the power to declare the zones and, if necessary, that it must be published in the gazette with its precise boundaries (e.g. Kenya, Art. 15). If private individuals can propose possible areas as zones as well, and thus apply directly for a developer licence for that new zone, then detailed regulations must be laid down. This includes the documents that must be attached, e.g. a master plan for the zone, to whom the application must be addressed and how this has to be proceeded (e.g. India, Art. 3; South Africa, Art. 23).

Regardless of private participation, some countries have regulated some issues more extensively than others due to country- or zone-specific needs and situations. This becomes particularly clear in the example of the different frameworks for the Free Trade Zones (Korea FTZ) and the Industrial Sites (Korea IS), both in the Republic of Korea. If comparing the two frameworks, it is noticeable that although they follow a similar structure in essence (purpose, definitions, administration/development, incentives and penalty provisions), there are enormous differences in emphasis. A free trade zone always has special customs laws, which is why the FTZ framework focuses on regulating the import and export of goods. Korea's industrial sites, on the other hand, do not have any special customs regulations, which is why regulation is just not necessary here. Industrial sites are rather about the development of industry, which is why the IS framework focuses on regulating the development of industrial complexes and their maintenance/renovation and does not mention any custom procedures. There are also clear differences in the penal provisions. The FTZ framework contains 14 penal provisions, the IS framework only 3. This results from the nature of the matter, as in the case of industrial sites one might mainly violate licensing provisions, but in the case of free trade zones, various goods are subject to different provisions, which then differ in type and severity of the penalty, and confiscation of goods must be regulated as well. But again, these are only focal points that must be individually adapted - the general structure presented here does not change as a result.

3. RECOMMENDATIONS FOR MODERN ZONES

When it comes to the implementation of zone programmes, there are several possibilities for the legal basis. Several individual laws might be enacted, each of which regulates different aspects of the zones (e.g. Senegal, which has a SEZ law, but the incentives are regulated in a separate law). Or already existing laws, such as the Customs Act, could be amended in such a way that the establishment of zones becomes possible. However, in order to avoid unnecessary complications and ambiguities, a single new zoning law should be created in which all zoning-relevant aspects are regulated in a structured manner. Based on the structure presented so far, some recommendations for such a law will now follow at the individual points, which contribute to efficient and profitable zones.

3.1. Structure of the Authority

Since the authority is the central administrative body of the zoning programmes, its structure is of particular importance. Private participation within the governing board should be taken into essential consideration. In addition to state members, all relevant private parties, such as licensees and operators or developers, should have a seat within the governing board (e.g. Dominican Republic, Art. 20). This

ensures that the interests and concerns of both groups are considered and that new rules or regulations concerning the zones are not subject to the problem of being far from reality because authority and state members lack realistic insight in the zone operations (Moberg, 2015). In order to be able to act independently, the authority's fund should be adequate and clearly defined.

Depending on the country, regional specificities might be of enormous importance in both the success of a zone and its failure. It can therefore make sense to create not only a national authority, but in addition regional authorities, as in the example of Indonesia (Indonesia SEZ, Art 14). These could then take special account of regional characteristics when planning new zones and support and advise the national authority accordingly.

3.2. Functions and Powers of the Authority

It is advisable to endow the authority with extended powers that are normally incumbent on other authorities. Of particular interest here are the issuing of visas (or work permits) to foreigners and customs licences. Especially for zones close to international borders, it can be an advantage if foreign workers do not have to deal with the occasionally complicated visa procedures at different national authorities. It is furthermore feasible that the national visa regulations are unsuitable for the specific situation within the zone. Instead, either the employer or the employee could quickly and easily apply to the zone authority for a visa (or work permit) adapted to the labour situation within the zone, which might then only be valid within the zone.

The same applies to customs procedures as well. In order to avoid the potentially complicated application to the national customs authority, the zone authority could likewise directly issue certain approvals or carry out the licensing of certain goods. In this way, administrative processes can be accelerated and simplified, saving time and money. This not only increases the performance of zoning activity, but also serves as an indirect incentive for investors.

3.3. Establishment and Structure of New Zones

The problem of regional specificity already described could additionally be counteracted by the option for private parties to propose certain areas as possible new zones (e.g. India Art. 3; Rwanda, Art. 7). Federal authorities may not have detailed knowledge of every area within the national territory and therefore may overlook suitable areas. The private sector on the other hand, may have this accurate knowledge of regional locations, and thereby can present detailed plans for certain areas (Moberg, 2015). Due to the more specific knowledge, these plans take better account of local aspects and needs. Furthermore, the plans are made on the own costs of the private parties, with the intention to establish profitable zones.

This intention, and the fear of losing private investment, ensures the selection of promising areas. The local conditions might change at any time, which should be kept in mind when planning and structuring new zones. A certain flexibility concerning the physical borders may be necessary for the optimal development of a zone. It is conceivable that a new company wants to construct facilities with great advantages for the zone, but the zone borders are suboptimal for its projects. It is therefore advisable to allow subsequent changes to the zone boundaries, to which certain requirements are imposed in order to prevent any arbitrary expansion.

3.4. Developer and Operator Design

Although it does not seem that the type of developer or operator design (private, public or private-public partnership) has a major impact on the overall performance of the zone (Frick et al., 2019), it is recommended to implement the 3 options in the framework. On the one hand, the government can establish the zones where it considers it useful and administer and operate them according to its vision. However, if those public zones fail, the public budget may be heavily burdened. This in turn may weaken the support of the entire zoning program in parliament or among the population and may lead to its termination. On the other hand, private individuals could be given the opportunity to develop and manage zones and, if successful, contribute to the fulfilment of the goals stated in the purpose. Should a private zone fail, only the private participants bear the losses and do not charge the state treasury. The state would be “out of responsibility”. Besides, private participants might solve the knowledge problem better. Zones do not exist and operate in a void, detached from the surrounding environment, but must fit into it, especially to be successful (Frick et al., 2019). This integration and connection with the environment, with the infrastructure outside the zone and the linkages with local businesses, could often be better achieved and planned by private parties due to their detailed knowledge and existing connections to local businesses. They also usually already have a large network of potential investors to the zone, which can help to kickstart its activities. Due to their entrepreneurial risk of loss, but likewise the possible prospects of profit, private developers mostly plan their zones faster and more efficiently than state actors (Hachmeier/Mösle, 2019).

In addition, various forms of public-private partnerships could prove to be the ideal solution for zone management in certain situations, as it depends on good cooperation with the local authorities. Especially in structural weak areas, good off-side infrastructure is very important, as goods need to be delivered and picked up efficiently. Here, the competent authorities play a central role in developing the off-side infrastructure and efficient cooperation in form of different public-private partnerships can be crucial for the success of a zone (e.g. Zimbabwe, Part VII with detailed regulations concerning public-private partnerships). There is no perfect, universal applicable developer or operator model, but it is of great importance to be able to respond to different challenges in different ways, with the best option in the specific situation.

3.5. Powers of Developers and Operators and Licensing

Each zone is different, both in terms of infrastructure and future development. The person or entity who best knows the opportunities as well as the problems and needs of a specific zone is the respective zone operator. It is therefore sometimes counterproductive to leave the licensing of new businesses or enterprises solely to a central state authority that does not know all the particularities of a zone. It is more effective to either let the operator decide for himself which new business is suitable for the zone or to involve him in the decision-making process (e.g. Pakistan, Art. 20). For example, a new application for a licence might be forwarded to the operator first, who then, if accepted, forwards it to the authority that gives its final approval. The operator bears the risk of loss of profit in case of bad zone management and hence has no intention to accept not suitable companies. In this way, it could be ensured that the businesses within the zone match together and use the infrastructure in the best possible way so the zone can develop at best. Besides, the licensing process should be as clearly structured and bundled as possible, and not complicated by different competent authorities for different forms. Especially for zones that want to promote local industry and attract small regional businesses, a complicated administrative structure can often be a hindrance. It is the small businesses without their own legal office that tend to fail due to formalities.

The broader a developer's or operator's competencies are, the faster and more efficiently he can respond to changes or problems within the zone, ideally ensuring efficient zone management. However, there are core competencies, for instance customs control, that an authority does not necessarily want to give away. Of importance at this point is merely to clearly delineate the competences of the authority and the developer or operator so that no problems or disputes about competence arise that waste resources and thus hinder progress of the zones.

3.6. Incentives or Legal Regime

Tax incentives are certainly of interest to many investors, especially at first glance, but they are usually not enough to create successful zones in the long term (Farole & Akinci, 2011; Frick et al., 2019). Due to various requirements and regulations, especially in the area of labour laws, conducting business can be complicated and cumbersome, a temporary exemption on the corporate tax cannot always compensate for this. Therefore, it is much more important to offer companies an attractive framework for their business activities, which is not available in the rest of the country. This includes the regulatory incentives mentioned under 2.7.2., and the economic regime, but is not limited to them. It is not about circumventing workers' rights, but rather about finding alternative solutions to national rules which sometimes pointlessly complicate the conduct of business in some industrial or economic sectors. If the rules

applied in the zones prove their worth, they could further be applied in the rest of the national territory. Another important incentive that should be considered when formulating a new zoning law is the establishment of a one-stop shop. To avoid bureaucratic hurdles and inefficiency through long waiting times and many visits to different authorities, it is advisable to set up a one-stop service centre in each zone. This guarantees that with one stop at the shop most matters can be resolved, even if there is uncertainty about the competences of special authorities. Especially for small companies, this will avoid bureaucratic obstacles and grants fast administrative procedures.

3.7. Disputes

No matter how sophisticated a law is, there will always be disputes. It is therefore inevitable that the procedure to be followed in the event of a dispute must also be regulated or negotiated. The most straightforward option, at least from a regulator's point of view, is to simply refer to the ordinary procedure before the national courts. Nonetheless, the possibility of dispute resolution before international arbitration courts should still be considered. Especially if the intention is to attract as much foreign direct investment as possible. It may be the case that foreign investors in particular do not necessarily favour the national regulations. The possibility of using international arbitration, similarly between licensees and state actors such as operators or even authorities, can put such concerns aside and, above all, keep the zones internationally competitive and attractive.

3.8. Miscellaneous

The final provisions should foremost regulate, if not already done elsewhere, how to proceed should the zone cease its operations. Larger investments in the form of factories or other facilities are regularly only made if the investor does not have to fear losing ownership of the investment and if there are no adverse changes in the laws to be suspected. In addition to a guarantee against expropriation, it could therefore be beneficial to implement legal safeguards that protect the law within the zone from changes or additions in the national law. For example, even if there are new tax laws introduced on a national level, zone businesses will not be subject to those new laws due to safeguards implemented in the zone framework. In case of a zone shutdown, the government might end the zone status for that area and deprive all the granted incentives, but the companies continue to operate normally under national rules. A purchase option could be created for the leased land, e.g. after the actual end of the zone (Kazakhstan, Art. 24; Serbia, Art. 30).

The given recommendations have the advantage that they are independent of zone types and can therefore be implemented in almost any framework in order to profit from the described benefits. There are certainly many other factors that might influence the success or failure of a zone. For example, the provision of enhanced services within the zone, such as hospitals, restaurants or sports fields can contribute to its prosperity. However, this is country and zone specific, as not all want such activities in their zones, but sometimes want to limit them to just conducting business activities. These, as well as factors external to the law, must always be decided by the people involved according to the circumstances and needs of the respective country or region.

4. CONCLUSION

A framework for special economic zones must not only be desirable and well planned, but furthermore survive the government offensives that can (and will) take place over several decades. In other words, a good framework still needs relevant acceptance by society and policymakers to not succumb to the speeches and wishes of those who believe that there is injustice in this process.

It is noted that there is no magic formula for creating an area of prosperity within a country's territory. Although several options might fit in different countries, all alternatives mainly point in three directions: to reduce the amount of taxes paid by individuals and companies, to reduce the complexity of laws and rules, which often are impractical or actually irrational, and to allow the option of private participation in organization and operation of each zone. To the point that this becomes clearer, it is possible to understand that the natural demand for private governance services (which already exists today) tends to increase considerably over the next few years and the effort to adjust to this is already happening. Bearing in mind that the path to private governance zones is very desirable, its economic viability can be questioned, and it makes sense. The framework has the function of protecting the investments and interests of the stakeholders, both for the pioneers in the project and for all parties that are interested in the region in the long term. Private participation might be essential for the success of the project and there is a fundamental difference, but little observed, in how the business model can prove to be superior to established state governance. The equity participation model is the alternative that seeks to overcome problems of traditional state projects in terms of results. There is an incentive to improve the goods and services that exist, since costs and profits are directly felt by the shareholders, who will make smarter decisions for supply their needs and directing the demand for goods and services more efficient than it is done today. This simple vision of how to provide private governance, or partnership with governments, might be a big change for the acceptance of these proposals by the public and by policymakers. A single solution to create successful zones worldwide is impossible; each place, people and culture presents its unique barriers that can and should be reduced with ideas and projects well executed for that situation.

A legal framework therefore faces the challenge of, on the one hand, allowing the necessary flexibility to respond to the specificities of each zone and its environment, but, on the other hand, creating clear rules and structures to avoid conflicts of competence and to ensure efficiency.

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