

Special Economic Zones Workshop

Legal and Regulatory Issues for SEZs

Gokhan Akinci

Foreign Investment Advisory Services

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Components of Legal and Regulatory Framework of Free Zones

Special Economic Zones need flexibility and competitiveness

- Economic development through integrated, multi-disciplinary planning
- Aims to develop new competitive advantages through integration of: larger areas, usage of integrated infrastructure, broader economic activities, policy liberalization, deregulation of utilities and one-stop administration

⇒ Optimal SEZ legal and regulatory framework should incorporate three sets of factors:

- Configured to offset the constraints operating in the host country, and should reflect that country's comparative advantages
- Meet the needs of foreign and local investors in terms of incentives, services, and amenities
- Package of services and incentives offered reflect the experience of successful SEZs worldwide, and should be competitive with these zones



Overall Framework

- Whole idea of quality in all aspects of the SEZ investment climate aiming to offset market/policy inefficiencies
- In line with int'l best practice/standards
 - Application of national regimes
- More streamlined approach
- Post audit
- Tailored to the needs of occupants
- Benefits from being in an environment of
 - Compliance

Regulatory Hierarchy

International Agreements

- WTO
- ILO
- Bilateral trade agreements
- Other measures (e.g. security)

Home Country Laws

- SEZ Law
- Investment
- Labor
- Customs
- Immigration
- Ports and Transport
- Land

Individual SEZ Regulations

- Policies
- Operating Guidelines
- Internal Regulations
- Procedures Manuals
- Emergency Plans

Internal Investor Guidelines

- Employee Regulations and Codes
- Operating Manuals
- Occup. Safety and Health Policies
- Emergency Plans





Components of Legal and Regulatory Framework of Free Zones

Three methods:

1. Contract with individual zone manager
2. SEZ legislation
3. Implementing regulations (bylaws)

Major components:

- Overall objectives/basic concept
- Zone designation criteria including qualifying/eligible activities
- Customs Regime
- Tax regime
 - Incentives package
- Development contract
 - Rights and obligations of zone enterprises
 - Rights and obligations of the zone manager



SEZ Designation Criteria



■ Typical criteria include:

- ▶ Compatibility with overall land use plan
- ▶ Financial commitments to the project
- ▶ Minimum physical design standards
- ▶ Proposed development schedule
- ▶ Financial and technical references of the zone development group
- ▶ Infrastructure and other requirements from national and local authorities
- ▶ Impact on off-site infrastructure, services





Customs Practices/Procedures

■ Streamlined inspection procedures

- ▶ Use of a single declaration form
- ▶ Single-point, on-site inspections
- ▶ Responsibility of FZ enterprise to report overages, shortages & damaged material
- ▶ Reliance on ex-post enforcement

■ Transfer procedures

- ▶ No examination at port of entry/exit
- ▶ Provision of rapid transfer privileges
- ▶ Application of EDI links



SEZ Incentives

Basic incentive ingredients of a successful SEZ regime:

- Import and Export Duty Relief
- Streamlined licensing requirements
- Tax relief
- Liberalized labor regulations (ILO standards)
- Access to Foreign Exchange
- Free Repatriation of Capital and Profits
- Local Market Access
- Procedural incentives
- ...



Critical Components of SEZ Legal/Regulatory/Institutional Framework

- De-monopolization/deregulation of utilities and transportation
- Contractual arrangements with the developers
- Land and building policy
 - Land use and zoning
 - Property Development
 - Municipal Services
- Environmental Policy
- Labor and immigration
- Regulatory Agency
- Enterprise/Resident Registration





Contract With Zone Developer

Contractual forms

- ▶ BOT or BOO concession agreement
- ▶ Simple lease or related contract
- ▶ Equity-shifting joint venture

Main components

- ▶ Rights of developer/manager
- ▶ Obligations of developer/manager
 - ▶ development schedule
 - ▶ financial commitments
 - ▶ operating commitments



Contract With Zone Developer

Obligations of the Government

- ▶ Off-site infrastructure provision
- ▶ Consolidation of land for long-term lease
- ▶ Financing of on-site infrastructure
- ▶ Development rights on other properties, or related projects
- ▶ Tax and other concessions
- ▶ Investment promotion support



SEZ Firms: Rights

Basic rights

- Repatriation, remittance of earnings, loans/contracts
- Freedom from expropriation, requisition of investment, etc.

Specific rights

- lease or purchase properties, make/own improvements, sub-lease with approval
- freely sell, lease, transfer articles, services with other SEZ firms or overseas; associate with other firms
- engage in any licensed activity, change activity upon prior written notification
- enter into any foreign loan, contract





SEZ Firms: Obligations

Obligations of SEZ-registered firms

- ▶ Engage in lawful and licensed activity
- ▶ Not utilize or produce prohibited goods
- ▶ Not engage in activities with negative environmental impact
- ▶ Comply with all applicable national laws and regulations
- ▶ Provide reports on a timely basis on production activities



SEZ Developers/Operators: Rights

Same privileges as an SEZ firms as well as:

- ▶ Sell, lease, sub-lease its property or improvements without control
- ▶ Develop zone infrastructure & facilities
- ▶ Provide utility/other services
- ▶ Freely receive debt or equity financing
- ▶ Freely make investments; issue bonds, etc
- ▶ Freely assign rights to zone revenues to foreign or domestic body
- ▶ Freely charge and modify fees
- ▶ Adopt rules and regulations for the zone
- ▶ Promote zone or contract with others to do so





SEZ Developers/Operators: Obligations

- ▶ Comply with law and regulations
- ▶ Maintain proper records and accounts
- ▶ Maintain adequate security measures
- ▶ Meet contractual obligations
- ▶ Provide on-site facilities for government



Immigration

- **Visas and work permits:**
 - **Freeport Investor (perm/temp)**
 - **Freeport Foreign Worker**
 - **Foreign nationals for business or tourism**
- **Streamlined procedures (possibly by the SEZ Authority):**
 - **Foreign visitor entry**
 - **Residency approvals**
 - **Work permits issued by Freeport Authority**
- **Visitors:**
 - **Includes anyone who is not a Freeport Resident**
 - **Different classes, rights/duties set in rules**



Land Planning

- Regional Plan, objectives and policies: population, employment, environment
- Zoning map and implementation ordinance, including rules for land development & occupancy
- Construction Permits
- Occupancy Permits required for all sites
- Water conservation rules and standards.

Environmental Protection

- ❑ Environmental Management System
- ❑ Conservation/Protection Strategies
 - Air Quality Management Strategy
 - Regional Water Quality Management Strategy
 - Solid Waste Management Strategy
 - Designated Conservation Areas
- ❑ Clearances and Permits
 - Registration Clearance
 - Groundwater Use Permit
 - Discharge Permit
 - Air Quality Point Source Permit
- ❑ Emergency and Contingency Planning
- ❑ Penalties and Fines



Transportation and Utilities



- Surface Transportation Office
 - *Vehicles Department*
 - *Public Transportation Office*

- Public Works Office
 - *plans, constructs and operates public works and utilities systems in the Freeport Area*

- Utilities Regulation Commission
 - *licenses and regulates public works and utilities systems in the Freeport Area*



Enterprise/Resident Registration

- Eligibility Criteria set in rules
 - negative list of economic activities
 - flexibility on residence standards
- Specific Procedures for Review
 - Zoning and Environmental approval for enterprises
 - Visa approval for foreign residents
- Automatic Approvals
- Conversion of Existing Enterprises/Residents
- Banks and Financial Services



Legal/Regulatory Issues for SEZs in South Asia

- 1ST MODEL in India happening.
 - How does it fit with best practices?
 - Major factors for success?
 - Privately operated
 - Infrastructure provision
 - Land Management
 - Environmental Protection
 - Labor/immigration issues
 - Tax Evasion/Distortion
 - WTO Compatibility
 - MFA issues