



Proposed amendments to SEZ Regulations

How effective will these proposed amendments be?

Introduction

One of the key challenges facing Export Processing Zones (EPZs) as highlighted in the EPZ Annual Performance Reports is consistent changes in regulations affecting the scheme with minimal stakeholder participation.

The Special Economic Zone Authority (SEZA) in a bid to avoid what bedeviled the EPZs has drafted various laws to regulate the SEZ framework. This includes the SEZ Act, 2016 SEZ regulations and the proposed Supplemental Special Economic Zones Regulations 2019. All of which work in tandem with tax, labor and other key legislation.

In this analysis we shall look at the proposed amendments to the 2016 SEZ regulations and the gaps these amendments shall cover.

Proposed Amendments

1. Definition of SEZ Stakeholders

The proposed amendments seek to broaden the scope of the definition of SEZ stakeholders by defining what special economic zone worker, resident and visitor are.

This is a move to distinguish between other stakeholders such as SEZ developers, operators and enterprises.

An SEZ worker will be an employee or independent contractor working for SEZ enterprises. SEZ residents will be registered residents living in the SEZ zone. SEZ visitor” means any individual who will temporarily be in the SEZ zone.

SEZ End User has been expanded to include business permit holders operating in the Special economic zone. This is to ensure many players benefit from the incentives offered thus make the model attractive to investors.

However, questions arise to whether SEZ worker, resident and visitor will enjoy the same benefits as SEZ developer, enterprise and Operator?

2. Financing Requirements

Currently there is no specific requirements to demonstrate financial capability of SEZ developer, Operator or Enterprise. This has led to uncertainty during applications.

The proposal to include financial capability is fundamental to create certainty for Investors who want to invest in the SEZ regime.

3. Minimum investment and land size thresholds

Currently there are no specifications with regards to minimum investment and land thresholds.

However, the SEZ Authority should be careful in setting these thresholds. The setting of these thresholds can have two adverse effects. The thresholds should be reasonable to include rather than exclude majority of applications.

In trying to decipher the investment and Land thresholds we shall look at the Chinese and Dubai model which our SEZ program is modelled from.

Chinese Model

China has operated SEZs since the 1980s. Its SEZ were located far from the political capital Beijing. The Chinese model also comprises of comprehensive SEZ where an entire province is designated as an SEZ. Shenzhen SEZ for instance covers 327.6 square kilometers. This large size is ideal for industrial parks.

The four SEZs were quite similar in that they comprised large areas within which the objective was to facilitate broadly based, comprehensive economic development, and they all enjoyed special financial, investment, and trade privilege.

Dubai Model

Dubai main SEZ areas include Jebel Ali which is the largest port in the Middle East and the world's largest manmade port and the biggest port in the Middle-East. Jebel Ali Port is located on the southern outskirts of Dubai. With 67 berths and a size of 134.68 square kilometers (52.00 sq.

mi).¹ This zone accounts for 33.4 per cent and 10.7 per cent of the Gross Domestic Product (GDP) of Dubai and the UAE respectively

Secondly, the Dubai Multi Commodity Centre which is a Free Zone and leading trade and enterprise hub. Its unrestrictive nature has attracted over 1700 companies.

Commonalities between Dubai and Chinese Models

The two countries leveraged on their geographical locations to attract FDI. Further Dubai leveraged on their location to create a trade hub. Key among the two countries is the large scale of the designated area and the desire to create forward and backward linkages especially in manufacturing.

The key takeaway here being these two models have set high investment and land thresholds, taking into account location as well as other key features such as economic activities undertaken, geographical location among others something SEZA can borrow from in determining the thresholds.

4. Limit or Quota

There is no limit for the number of SEZ Residents and Enterprises to be registered as long as they comply with the relevant laws. The regulations however do not expound on SEZ developers or operators.

This Proposal raises a fundamental question of whether the SEZ authority has the resources and capacity to carry out its functions. Functions which can be delegated or shared with SEZ developers or operators. Would a restriction in the limit be a restriction in terms of capacity?

However, the government can opt to set up bodies to oversee individual zones a model successfully adopted in the case of Dubai Multi Commodity Centre which has over 1700 SEZ entities.

5. List of Prohibited Businesses in an SEZ

The SEZ Regulations 2016 had outlined the following activities in the negative list. This include activities that pose a threat to health, safety, national security, culture, financial stability and consumer protection.

The proposal seeks to do away with the negative list in the regulations and instead listing these activities via gazette notice.

This is a good move as its easier to change the various activities in the negative list through a gazette notice compared to amending the regulations.

6. One Stop Shop Services

Owing to the challenges that may arise to implement services relating to registration, licensing and regulation of SEZ zones by SEZA, SEZA has opted to adopt the use of Service Level Agreements (SLA). SEZA will conclude SLAs with government bodies to operationalize the One Stop Shop (OSS).

The OSS will therefore be able to represent the interests of these Government bodies during these processes. This will help increase efficiency in provision of these services and ease the SEZ stakeholders experience and interaction with SEZA and these Government bodies. It will therefore be essential to onboard all the relevant bodies and account for all the key processes.

7. Investment Rules

The investment rules under the current regulations only applied to SEZ residents but developers and operators were precluded from this provision.

However, the Proposed amendment seeks to bring SEZ developers and Operators under the realm of this provision. The amendments will outline key requirements for accountability,

¹ Christopher Gunson, 'Second Meeting of the Working Group on Investment Zones in Iraq' 20.

record keeping and operations of SEZ developers and operators in the zone.

These proposals will come in handy to curb predator investors who are fixated on exploring the tax incentives.

8. Zoning and Master Plans

The CS proposes the inclusion of other relevant government agencies in the preparation of zoning and masterplans.

This is to ensure the relevant agencies are involved in offering services to SEZ developers and Operators.

9. Gazettement of Procedures and Criteria

The proposed amendment seeks to remove the requirement to gazette of procedures and criteria for various stages in the SEZ process. Alternatively, the procedures will be published by the Cabinet Secretary, through the Authority.

This will ease the rigidity that is currently witnessed since the SEZ projects differ for example it will be impracticable to set similar size requirements for an industrial park with a technological hub.

Therefore, publishing the requirements would be easier taking into account the different dynamics of various SEZ projects.

Let's talk

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10. General Environmental Management and regulatory responsibility

The SEZ Regulations 2016 provide a list of activities that do not require special economic zone environmental permits.

These include activities that are not reasonably predicted to have a significant impact on the environment, either because of their nature or scale under which they will be performed.

The proposed amendments seek to scrap this provision to be dealt with under relevant environmental laws.

Conclusion

Regulations will be key in the success of the SEZ model. However, caution ought to be taken to avoid over regulation which can push away investors. At the same time these regulations have to be enforced in a way that ensures effective roll out of the SEZ program. In the next article we review the proposed draft Supplemental Special Economic Zones Regulations 2019 and the impact of the proposed amendments.