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LEGAL BASES FOR BUSINESS ACTIVITIES IN FREE (SPECIAL) ECONOMIC ZONES OF THE REPUBLIC OF UZBEKISTAN

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ABSTRACT

Free economic zones (FEZ) play an important role in economies worldwide – particularly, they are considered a bright opportunity to attract foreign investment for developing countries. In the development of FEZ, effective legislation and the legal framework for carrying out activities in such zones are crucial. In recent years, the Republic of Uzbekistan has comprehensively developed its economy, sharply increased the number of FEZ and begun to improve legislation in this area. At the same time, some issues and challenges still need to be addressed, and the present study analyzes these.

INTRODUCTION

Today, free economic zones are essential in the integration process of the national economy to the world economy and further development of foreign trade relations of the country. The first FEZ in the world was established centuries ago to stimulate trade in ports, since these were located on international trade routes¹.

In recent years, the increased tendency to create FEZ, further development of external trade and investment relations in these zones, massive flow of direct investments, brand-new high technologies and increased number of competitive and export-based commodities require the development and

¹The world is awash with free-trade zones and their offshoots. Many are not worth the effort. Available at: <http://www.economist.com/news/leaders/21647615-world-awash-free-trade-zones-and-their-offshoots-many-arent-worth-effort-not>

legal regulation on entrepreneurial activity in those areas. Nowadays, more than 4,300 FEZ are being operated worldwide².

The FEZ originally created were mostly city wide and located on international trade routes. The first ones were established in Gibraltar (1704), Singapore (1819), Hong Kong (China; 1848), Hamburg (1888) and Copenhagen (1891). The principles incorporated in the basic concept of a special economic zone include:

- Geographically delimited area, usually physically secured (fenced-in);
- Single management/administration;
- Eligibility for benefits based upon physical location within the zone;
- Separate customs area (duty-free benefits) and streamlined procedures³.

The most important elements of FEZ in terms of their significance for the national economy are:

- substantial improvement of the investment climate in the country as a whole, attraction of financial resources, which is ensured by preferential monetary and financial regimes operating in the zone;
- creating conditions to form an entrepreneurial potential within the FEZ, attracting finances, labor, information and other resources for the sale of new products in the world market; setting the manufacture of priority products for the country, as well as carrying out scientific research and experimental development; use of modern production, banking, financial and other technologies that developed in the world practice; development of the depressed areas of the country by establishing sub-zones and industries using local raw materials and labor, as well as capital, technology and managerial experiences attracted from abroad.

The definition of a free trade zone, as well as proposed guidelines and standards for them, are contained in the Revised Kyoto Convention of the World Customs Organization (WCO)⁴. According to this protocol, 'free zone' means a part of the territory of a Contracting Party where any goods introduced are generally regarded, insofar as import duties and taxes are concerned, as being outside the Customs territory⁹.

The World Bank and the International Labor Organization give the following definition of FEZ by assessing them as the export processing zones. Given the above, a FEZ is an industrial zone integrated into the national economy, specializing in the production of goods for export and the provision of free trade regime and liberal regulation to resident companies⁵.

²Special economic zones <http://www.economist.com>

³Special economic zones, performance, lessons, learned, and implications for zone development. The World Bank 1818 H Street, NW Washington, DC 20433, USA f. 202-522-2422 e-mail: pubrights@worldbank.org. Available at: <http://documents.worldbank.org/curated/en/343901468330977533/pdf/458690WP0Box331s0April200801PUBLIC1.pdf>

⁴Protocol of amendment to the international convention on the simplification and harmonization of customs procedures of 18 May 1973. Brussels, 26 June 1999. Available at: <http://www.ifrc.org/Docs/idr1/I273EN.pdf> ⁹ Protocol of amendment to the international convention on the simplification and harmonization of customs procedures of 18 May 1973. Brussels, 26 June 1999. Available at: <http://www.ifrc.org/Docs/idr1/I273EN.pdf>

⁵ Baranov V.I., Kostyunina G.M. Free economic zones (economic and legal issues of foreign and Russian practice). Moscow, 2016. *Infra-M.* –P.119.

The European Commission (EC) defines free zones under its customs policy as special areas within the customs territory of the European Union (EU). Goods placed in the zone are exempt from custom duties. When goods are imported into the zone from outside the EU territory ('non-Community goods'), VAT and excise duties are suspended until the goods are exported out of the Free Zone into the EU (where they become 'Community goods') or consumed within the zone, in production⁶.

Special economic zones became a cornerstone of trade and investment policy in countries shifting away from import-substitution policies and aiming to integrate into global markets through export-led growth policies⁷.

The Republic of Uzbekistan, according to the Strategy of Actions on Further Development of the Republic of Uzbekistan on five priority areas in 2017-2021, began actively developing its national economy. As a result, economic development shifted to a drastically new level, which provides for improvement of wellbeing and quality of life of the population.

In the last two years in Uzbekistan, more than 20 FEZ and more than 100 small industrial zones were created. Creation of FEZ, industrial parks and small industrial zones is seen as the main factor for directly attracting foreign investment, for developing new high-tech production, and effectively using natural and economic capacity of the regions.

The legal base of free economic zones functioning in Uzbekistan

The legal base of functioning of FEZ in Uzbekistan is the Law of the Republic of Uzbekistan 'On free economic zones' No.220-I adopted as of April 25, 1996⁸. In Article 9 of the Law, the norm that the Republic of Uzbekistan guarantees the observance of rights and legitimate interests of legal entities and individuals operating in a FEZ is established.

Several more Decrees of the President were adopted in this sphere. For instance, Decree of the President of the Republic of Uzbekistan 'On additional measures to strengthen and expand the activities of free economic zones' dated October 26, 2016 No.DP-4853⁹, Resolution of the Cabinet of the Ministers of the Republic of Uzbekistan 'On the measures to organize the

⁶Willemijn de Jong. //Establishing Free Zones for regional development. Library Briefing Library of the European Parliament. Europe, 2013.–P.1-6. Available at: [http://www.europarl.europa.eu/RegData/bibliotheque/briefing/130481/LDM_BRI\(2013\)130481_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/130481/LDM_BRI(2013)130481_REV1_EN.pdf)

⁷ Tomas Farole. Special Economic Zones: What Have We Learned? The World Bank, Economic Premise. September 2011. [www.worldbank.org/economic-premise](http://documents.worldbank.org/curated/en/275691468204537118/Special-economic-zones-what-have-we-learned). Available at: <http://documents.worldbank.org/curated/en/275691468204537118/Special-economic-zones-what-have-we-learned>

⁸ Law of the Republic of Uzbekistan "On free economic zones" as of April 25, 1996 №220-I // Gazette of the Oliy Majlis of the Republic of Uzbekistan, 1996, No. 5-6, art. 58; 2003, No. 5, art. 67; Collection of legislations of the Republic of Uzbekistan, 2005, No. 49-50, art. 365; 2006, No. 41, art. 405; 2009, No. 39, art. 424; 2015, No. 33, art. 439

⁹ Decree of the President of the Republic of Uzbekistan 'On additional measures on the activation and expansion of the activities of free economic zones' as of October 26, 2016 №DP-4853 //Collection of legislation of the Republic of Uzbekistan, 2016, No. 43, art. 498; 2017, No. 3, art. 40, No. 23, art. 448; National database of legislation, 01/19/2018, No. 06/18/5305/0592; 04/05/2018, No. 06/18/5398/1004.

activity of free economic zones' dated April 10, 2017 No.196¹⁰, Resolution of the President of the Republic of Uzbekistan 'On additional measures to improve the effectiveness of the activity of free economic zones and small industrial zones' as of 25 October of 2017 No.RP-3356¹¹, Resolution of the Cabinet of Ministers of the Republic of Uzbekistan 'On measures to implement the Resolution of the President of the Republic of Uzbekistan as of October 25, 2017 No.RP-3356 'On additional measures to improve the effectiveness of the activity of free economic zones and small industrial zones' as of January 16, 2018 No.29¹² and others.

Decree of the President of the Republic of Uzbekistan 'On additional measures to strengthen and expand the activities of free economic zones' establishes the most favorable conditions for further development of FEZ in the republic as the most important factor for attracting more direct foreign investment in order to create new high-tech industries. In addition, special legal regime including tax, currency and customs regimes, simplified procedure for entry, stay and departure as well as for obtaining the permission to carry out labor activity by non-residents of the Republic of Uzbekistan were established.

In other words, the business entities registered in aFEZ are exempted from all types of taxes including land tax, profit tax, corporate property tax, single tax payment for micro-firms and small enterprises, as well as mandatory contributions to the Republican Road Fund and the non-budgetary Fund for the development of the material and technical base of educational and medical institutions under the Ministry of Finance of the Republic of Uzbekistan; customs fees (except for fees for customs clearance) for equipment, raw materials, materials and components that are imported for their own production needs; customs fees (except for fees for customs clearance) for construction materials not produced in the country and imported in the framework of projects according to the lists approved by the Cabinet of Ministers of the Republic of Uzbekistan.

The main activity of the companies operating in aFEZ should be production of a wide range of high-tech goods with high added value that are competitive in both domestic and world markets. This is expected to be achieved through efficient use of production and resources of the region comprising aFEZ.

Establishment of FEZ aims to create a favorable environment for setting up and developing enterprises in the field of advanced processing of raw mineral

¹⁰ Resolution of the Cabinet of Ministers of the Republic of Uzbekistan "On measures of organization of the activity of free economic zones' as of April 10, 2017 // Collection of legislation of the Republic of Uzbekistan, 2017, No. 15, art. 252; № 33, art. 856; // National database of legislation, 01/18/2018, No. 09/18/29/0587

¹¹ Resolution of the President of the Republic of Uzbekistan 'On additional measures to improve the effectiveness of the activity of free economic zones and small industrial zones' as of October 25, 2017 № RP-3356//The national database of legislation, October 25, 2017, No. 07/17/3356/0179

¹²Resolution of the Cabinet of Ministers of the Republic of Uzbekistan "On measures to implement the Resolution of the President of the Republic of Uzbekistan as of October 25, 2017 №RP-3356 "On additional measures to improve the effectiveness of the activity of free economic zones and small industrial zones" as of January 16, 2018 №29. // National legislative database, 01/18/2018, No. 09/18/29/058

resources and of high-tech products based on local raw materials by establishing strong cooperation ties and developing industrial cooperation between enterprises within aFEZ and the republic as a whole.

Framework of business activities in FEZ

The participants of entrepreneurial activity in FEZ are the subjects of business activity registered in FEZ and incorporated to the register of entrepreneurs by Directorate of FEZ. The state is a significant participant in the activity of FEZ through the authorized organs and has a key point in creation and successful operation of FEZ. In many developing and developed countries, FEZ are established under the initiative of states, and the legal status of states in a FEZ has different characteristics.

The main bodies (considered administrative and authorized by state) in FEZ are the Administrative Councils and Directorates of FEZ.

The activity of the Administrative council and Directorate is regulated by the Resolution of the President of the Republic of Uzbekistan ‘On additional measures to improve the effectiveness of the activity of free economic zones and small industrial zones’ as of October 25, 2017, No.RP-3356.

On the basis of this Resolution, the Regulations ‘On the Republican Council for the coordination of activities of the Administrative council of free economic zones and small industrial zones’ and ‘On administrative councils of free economic zones and small industrial zones in the Republic of Karakalpakstan, regions and the city of Tashkent’ were adopted¹³.

This regulation includes the main tasks of the Administrative council, functions, rights, responsibilities and the main functional duties of the chairperson of the Administrative council, the responsibility of members of the Administrative council, the organization of the activities of the Administrative council of the FEZ and small industrial zones, evaluation criteria and operational indicators of its effectiveness and of reporting of the Administrative council to the Republican Council.

The Directorate of FEZ is a State Unitary Company. In the Republic of Uzbekistan, every FEZ has its Directorate. The main objective of Directorates is the operational management of FEZ activities by providing the full and timely implementation of state programs of development of FEZ, providing compliance with a special legal regime in a FEZ, as well as receiving profit from providing services to participants of economic activities in a FEZ and

¹³ Resolution of the President of the Republic of Uzbekistan “On additional measures to improve the effectiveness of the activity of free economic zones and small industrial zones” as of October 25, 2017, №RP-3356 // The national database of legislation, October 25, 2017, No. 07/17/3356/0179

performance (rendering) of other works (services) outlined for in this Charter¹⁴.

The significant work to ensure transparency of registration, permitting and licensing procedures with the wide introduction of modern information and communication technologies established in the districts and cities is being carried out through the unified centers of rendering state services to business entities on the principle of ‘one window’.

At the same time, the analysis of the work carried out in this area demonstrates the need for further improvement of the mechanisms for providing state services to business entities, establishing a vertical for the management of ‘one window’ centers, defining a systematic approach to organizations and coordination of activities, and their interaction with other government structures. Therefore, the Resolution of the President of the Republic of Uzbekistan ‘On additional measures to improve the mechanisms of rendering of state services to enterprise entities’ RP–2750 as of February 1, 2017 was adopted.

In this Regulation, the order of consideration of investment application by the Administrative council of FEZ is simplified. To facilitate the process for investors, the Administrative council of FEZ reviews investment applications during 5 working days from the date of them being sent and decides upon:

- the possibility of implementing an investment project in the FEZ;
- the necessity to revise submitted documents, indicating the specific and valid comments;

Inexpediency of implementing the investment project on a FEZ

In the previous edition, the investment application was considered within 10 days, and this meant delays for the investors. In addition, the operation of unified centralized Administrative council for the entire FEZ resulted in breaking the deadline of consideration of the investment projects.

The second stage includes the following activities. Based on the results of the selection of investment projects by the Administrative council, an investment agreement between the Directorate and the investor (investors) is signed and implemented, together with state registration of economic entity as a legal entity, and investor (investors) is registered as a participant of the FEZ¹⁵.

The reforms on development of the FEZ activity in the Republic of Uzbekistan allowed simplifying the registration procedure of participants in a FEZ. However, for further development and simplified selection of investment

¹⁴ Resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On measures for organization of the activity of free economic zones” as of April 10, 2017 // Collection of legislation of the Republic of Uzbekistan, 2017, No. 15, art. 252; № 33, art. 856; // National database of legislation, 01/18/2018, No. 09/18/29/0587

¹⁵ Regulation ‘On the procedure for selection of investment projects for registration in free economic zones and registration of participants of free economic zones’ affirmed on the basis of the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan dated on 16 January of 2018 // National database of legislation, 01/18/2018, No. 09/18/29/0587

projects and the registration procedure of participants there is needed to amend the Regulation ‘On the procedure of selecting investment projects for placement in the territory of free economic zones and registration of participants in free economic zones’.

The analysis of the world practice of participant’s registration and consideration of investment projects shows that abovementioned requirements are considered as superfluous, and this tendency makes foreign and domestic investors lose interests.

Legal regime of entrepreneurial activity in FEZ

The legal regime of entrepreneurship in SEZ is a special procedure for the legal regulation of entrepreneurial activity – a certain combination of legal means to create the desired social status and to satisfy the interests of the subjects of law operating in a SEZ.

This legal regime is expressed primarily in the permissive nature (type) of legal regulation, where permissions are a key element of regulation. The generally permissive legal regime characteristics of entrepreneurship as a whole prove themselves in all its legal forms. This is explained by the fact that the legal regime is an inseparable link between the legal form and content of regulated relations and is at the joint of law and social life¹⁶.

To attract foreign capital and enhance international trade in the FEZ, a special mechanism was developed, legislatively approved in practice which is considered as the basis of the legal regime of entrepreneurship in the FEZ and is expressed in the provision to certain economic subjects of various preferences and corresponding guarantees:

- Customs (foreign trade);
- Tax;
- Financial (various forms of subsidies that can be provided in the form of a reduction of rent for the use of land plots and production facilities, preferential loans, etc.);
- Administrative (simplification of the procedure for registration of organizations, simplified regime of entry and departure of foreign citizens, etc.).

The legal regime of entrepreneurial activity was studied in the works by A.Kurbatov, A.Belov and others¹⁷ which revealed that the legal regime of entrepreneurship is established by legal norms, allocated in legislation, is provided by the state and is characterized by a combination of various legal means of regulation of business relations.

¹⁶Popandapulo V. Legal regime of entrepreneurship, SPB. S.Petersburg publishing, 1994. –P.208.

¹⁷Popandapulo V. Legal regime of entrepreneurship, SPB. S.Petersburg publishing, 1994. –P.24.; Kurbatov A. The combination of private and public interests in the legal regulation of business. - M.: Yurinfo, 2001. - P. 3-14; Belov A. International business law. M.: Yustisinfo, 2001. P. 56.

The implementation of entrepreneurship is a sphere of private interest and of the right to carry out entrepreneurial activity, and is an element of the legal capacity of a private person. Therefore, this activity is regulated, first of all, by the norms of private law.

At the same time, private regulation is inevitably subject to public legal influence, which is connected with need to establish the limits of the private interests of entrepreneurs in order to protect the interests of society and the state¹⁸.

Thus, the legal regime of entrepreneurial activity is expressed in the use of both allowable and permissive type of legal regulation. The legal regime of entrepreneurship has several objectives which include establishing a common order, assuming some uniformity, transportability, controllability and manageability, protecting the rights of third parties and including the entrepreneur in the market infrastructure, ensuring the effectiveness of entrepreneurial activity¹⁹.

Comprehensively analyzing the legal regime of entrepreneurial activity, A.Gasumaynova divided it into several types: normative-legal regime, organizational-legal regime, contractual-legal regime, and law enforcement regime.

The legal regime of entrepreneurial activity, depending on its orientation, can be classified into a general legal regime and a special regime²⁰.

At the same time, the increasing role of special legal regimes is evident, meeting the needs of modern social practice where an increasing number of objects (territories), subjects, activities require the establishment of a certain regime for their future functioning.

FEZ are, primarily, formally delimited portions of the national territory and, secondarily, legal spaces provided with a set of investment, trade, and operating rules that are more liberal and administratively efficient than those prevailing in the rest of the national territory. Zones are therefore defined by a specific *regulatory regime*. This regime may be contained in one or several dedicated laws or through a set of measures contained in a number of texts²¹.

The provision of corporate and other tax incentives is a long-established practice in FEZ worldwide. Many FEZ regimes become overly reliant on granting general tax incentives rather than addressing other aspects of the investment environment, raising the risk of a race to the bottom with other zones. On the other hand, incentives played an important role in catalyzing

¹⁸Kurbatov A. The combination of private and public interests in the legal regulation of business. - M.: Yurinfo, 2001. - P. 118-123.

¹⁹Oleynik M. Business Law. - M.: Yurist, 2011. P.169.

²⁰Shamsunova E.F. Legal regimes: theoretical aspect. - Yekaterinburg, 2001. - S.8. Blagov D.A. "Legal regulation of relations in the field of entrepreneurial activity in the territory of special economic zones of the Russian Federation". Moscow, 2010. - P.17.

²¹ Claude Baissac. Brief history of SEZs and overview of policy debates // Tomas Farole. Special economic zones in Africa, Comparing Performance and Learning from Global Experience. P-24. Available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/2268/600590PUB0ID181onomic09780821386385.pdf?sequence=1&>

investment in some FEZ programs, particularly in the early stages of their development¹⁸⁵.

To increase the interest and speedy development of technological sectors and transport infrastructure, production of new products, legislation of the Republic of Uzbekistan in the sphere of FEZ provides certain privileges and preferences, weakens the tax burden on the residents, allows the placement and use of foreign goods without paying customs duties and also without applying economic prohibitions and restrictions (established in accordance with the legislation on the state regulations of foreign trade activities) to specified goods.

Analyzing the customs regime of a free customs zone set for FEZ, it is necessary to separate the general rules for the placement and use of goods in the free customs zone operating in all FEZ, from special rules for the placement and use of goods in the free zones.

According to the Law of the Republic of Uzbekistan ‘On free economic zones’, a special custom regime operates in the territory of FEZ and provides:

- cancellation or reduction of customs duties on import and export of goods;
- abolition or easing of non-tariff restrictions on exports or imports;
- Simplified procedure for moving goods across the customs border of FEZ with their mandatory declaration in accordance with the established procedure.

Custom relations in FEZ of the Republic of Uzbekistan are regulated through some normative-legal acts, for instance, the Decree of the President of the Republic of Uzbekistan ‘On additional measures to activate and expand the activities of free economic zones’ as of October 26, 2016, No.DP–4853, and Regulation ‘On the procedure for the implementation of tax benefits and customs payments on the territory of free economic zones’ affirmed by the Resolution of the Cabinet of Ministers of the Republic of Uzbekistan ‘On measures on organization of the activities of free economic zones’ as of April 10, 2017 No.196.

The validity period of customs and tax benefits is calculated from the date the FEZ participant receives their certificate.

In this regulation, the order of application of customs privileges for equipment, raw materials, materials and components imported for own production needs was established.

Given the above, the Directorate (within one day from the date of registration of the economic entity as a participant of the FEZ) notifies the state customs authorities of the location of the economic entity.

By now, many countries try to develop various types of preferences and facilitations to attract huge volume of investment in FEZ.

The tax regime in a FEZ is considered as special. Obviously, a peculiar instrument of policy - special tax regime – was introduced by the state to reform the activities of FEZ. The residents of FEZ are given an opportunity of using tax exemption while they use these special tax regimes. These possibilities facilitate the position of residents for accomplishing the entrepreneurial activity in FEZ.

In the Decree of the President of the Republic of Uzbekistan ‘On additional measures to activate and expand the activities of free economic zones’ as of October 26, 2016, No.DP–4853 the tax incentives for entrepreneurs of FEZ of the Republic of Uzbekistan were established²².

According to this Decree, the participants of FEZ are exempted from payment of land tax, profit tax, corporate property tax, the tax on improvement and development of social infrastructure, a single tax payment for microforms and small businesses, as well as mandatory contributions to the Republican road fund and an extra budgetary fund for the reconstruction, overhaul and equipping of secondary education of schools, vocational colleges, academic lyceums and medical institutions under the Ministry of finance of the Republic of Uzbekistan.

The analysis of tax incentives and preferences in FEZ of foreign countries shows that the tax relations are regulated with tax regimes. This tax regime includes the tax incentives and preferences for the accomplishing of business activity in FEZ.

CONCLUSION

FEZ are considered successful means of developing foreign trade relations and integrating a country to the world economy. Establishing FE is a successful clue to attracting foreign investments, developing social and economic competence of a country, and a clue to the profitable and effective way of development of international relations among countries. The world experience of establishing and operating FEZ shows that these economic areas successfully influenced to the prosperity to the economy of many countries.

The practice of developed countries in establishing FEZ indicates those countries tried not only to create FEZ with their appropriate characteristics but also intended to take various measures to significantly influence the growth of the country’s economy. The formation of FEZ and favorable regulations of activities of these zones depend on social, economic and political conditions of every country.

²²Decree of the President of the Republic of Uzbekistan ‘On additional measures to activate and expand the activities of Free economic zones’ as of October 26, 2016, №DP–4853 // Collection of the legislation of the Republic of Uzbekistan, 2016, №43, Article 498

Currently, Uzbekistan undertakes reforms aimed at completely improving the system of work with the appeals of individuals and legal entities, introduction of new effective mechanisms and methods for establishing an open dialogue with the population, as well as studying the opinion of the population on the development of all sectors. In this regard, the proposal on necessity (advantages) and order to study the opinions and interests of the local population before creating new FEZ was presented. Particularly, it was considered as expedient to study the opinions of investors operating in FEZ on the improvement of FEZ by conducting sociological surveys and other methods of study. This procedure is aimed at critical study and the creation of new ideas and strategies for improving the activities of FEZ.

In conclusion, it should be noted that FEZ in Uzbekistan are becoming one of the main factors contributing to the development of the country's economy. Therefore, the Government pays special attention to take measures on wide development of the FEZ activity.

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