

Chapter 4

Factors Affecting Performance of Special Economic Zones

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ABSTRACT

The chapter attempts to generalize and categorize the most common factors affecting SEZ performance globally. The effectiveness of SEZ functioning depends on its type and a variety of internal and external factors. These factors have different nature, importance, and scale of severity of influence. Many academic papers focus only on tax, foreign trade, and administrative incentives in SEZ. However, the general factors connected with country's investment climate, geographical location of SEZ, and other factors are not least influential. Thus, the chapter aims at identifying a system of main factors of different nature affecting SEZ performance.

INTRODUCTION

Special economic zone (SEZ) is an instrument widely used by many countries to accelerate economic growth in regions, including those which are underdeveloped and remote. SEZ is an isolated territory of a state with special favourable conditions of regulation of activities for foreign and national enterprises. The general objective of SEZ is promotion of regional social-economic development, but other specific objectives follow up the general one. By enabling a variety of incentives and granting waivers from obligations, a special legal regime in SEZ creates a different, preferable regulatory framework for manufacturing, trade, immigration, employment, education, etc. SEZ has a double-sided nature: on the one hand, it is a pure legal phenomenon representing a set of special regulations; on the other hand, it is a complex instrument to enhance social-economic development.

In light of the fact that law has evolved into instruments and vocabulary for constructing and debating development policies, a new interdisciplinary area of studies has emerged – “law and development”. “Law and development” theory is an area of legal science that explores the relationship between law, economics and social progress. It investigates the correlation between law and progress and analyses how to use laws to enhance economic and social development. The field of “law and development” studies

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is a highly interesting, yet academically challenging, juncture as can be seen from the literature review. Scholars have not yet developed a theory that systematically explains the interrelationship between law and development, which would establish law and development as a robust and coherent academic field. Nevertheless, some authors have underlined important ideas and suggestions on the question of the role of law in social-economic development.

Leading scholars, such as Trubek and Galanter (1974), Merryman (1977), Tamanaha (1995), Davis and Trebilcock (2001), Barr and Avi-Yonah, (2005), Dam (2006), Chukwumerije (2009), Prado (2009) and Lee (2017) have addressed a range of issues regarding “law and development” theory. The main thread of the research in this chapter follows the ideas of Professor Y.S. Lee from the Law and Development Institute, who has comprehensively described law and its elements as a factor directly influencing development processes.

As Prof. Lee suggests in his article, regulatory impact mechanisms comprise three categorical elements: “regulatory design,” “regulatory compliance,” and “quality of implementation”. These elements are conceptually different but interrelated and influence one another. In addition, one more element should be added – “assessment of regulatory needs”.

Interestingly, regulatory impact may appear at the stage when there is not yet enforced regulation. The idea or initiative to regulate something may be derived from two sources: demand from communities (suggested from below) or willingness from the government (sanctioned from above). Such an assessment of regulatory needs is the “zero” stage of regulatory impact. So, before regulations are developed, a clear idea and necessity for a particular regulation should crystalize.

After this, the stage of regulatory design commences. This is the stage when normative rules are to be created. Law, whether it is designed by legislation (e.g. statute) or has evolved gradually over time (e.g., customary law and case law), exhibits policy which forms regulatory objectives. For example, a law that requires the removal of land tax for foreign investors, because of the establishment of a special economic zone, advances the policies of attracting foreign direct investment and contributing to the economic growth of a region.

The quality of implementation is the third element of the regulatory impact mechanism and reflects regulatory enforcement. Implementation refers to the sovereign actions of the state to make the law actually work. For example, to implement a statute that allows foreigners to enter special economic zone without visas, the state must monitor its application at the border, enhance immigration control, review feedback from visitors and impose a penalty for violation of the terms. As Prof. Lee underlines, it is “the quality of implementation that determines the effectiveness of law, and it is measured by the extent to which a state meets the requirements set forth by the terms of law and fulfils the mandates under these terms, including its enforcement and monitoring terms”.

Regulatory compliance in law and development theory does not mean only the absence of rule violations, but also legal awareness and participation in the processes mandated by law. For example, judicial reform would not be effective where only a small part of a population knows how to use court services for dispute resolution.

The elements of law influencing development and elements of regulatory impact of law make it evident that law has a significant effect on social-economic development. Law serves both as an objective and as an instrument of progress. Examination of particular legal instruments can contribute to the enhancement of regional social-economic development policies. One such legal instrument is special legal regimes, and particularly the regime of special economic zones, which has been closely examined in the present chapter.

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