THE SPECIAL TECHNOLOGY ZONE ORDINANCE, 2020: AN UNREMARKABLE INNOVATION OR A MAGNIFICENT BREAKTHROUGH?

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ABSTRACT

This legislative review discusses the Special Technology Zone Ordinance, 2020, the promulgation of which was publicized as the harbinger of a new era in the realm of technology and innovation in Pakistan, as well as its potential as a source of foreign direct investment. It will do this by carrying out a brief discussion of the theoretical framework surrounding Special Technology Zones (STZs), followed by a subsequent section on factors which may impact the performance of this initiative. Additionally, specific provisions of the Ordinance will be highlighted regarding topics such as definitional ambiguities and dispute resolution mechanisms. Lastly, a comparative analysis will be conducted to derive best practices adopted by foreign jurisdictions to ensure effective functioning of STZs. As this is a relatively nascent legal regime in Pakistan, the aim of this paper is to briefly highlight some policy considerations to ensure an effective legal and regulatory environment exists for STZs, so that they do not suffer the same fate as that of Special Economic Zones which have been established in the past.

1. EXECUTIVE SUMMARY

There is no caveat to the proposition that technology has acquired an irreplaceable role in modern life. With the advent of COVID-19, there is an increased emphasis on technological solutions and innovation, which have become two very important indicators of progress in any society. Additionally, for a developing country like Pakistan - 'foreign investment,'

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'economic prosperity' and 'job creation' are buzzwords which have been used by many governments to justify both their policies and politics. In January 2021, when the Federal Government of Pakistan established the Special Technology Zones Authority (STZA) under the ambit of the Special Technology Zones Authority Ordinance, 2020 (the Ordinance) the same words were used by the Prime Minister, who is serving as the President of the STZA.[1] As per this regime, geographical zones are to be developed where duty and tax incentives for a period of 10 years are to be provided to local and foreign investors.[2] The central aim of the Authority is to "provide institutional and legislative support for the technology sector" and "accelerate technology development in the country."[3] This article will discuss the legislation governing the Special Technology Zones (STZs) in Pakistan, and compare the regulatory framework established by the STZA Ordinance, 2020 with those existing abroad. It will do this by first providing the background and theoretical framework behind Special Economic Zones (SEZs), also known as 'clusters' in foreign jurisdictions. It will then discuss in detail the failures and successes of SEZs as the concept of STZs emerges from SEZs, so that the future legislation regarding STZs may be improved to anticipate any shortfalls which were suffered by SEZs. Furthermore, the definitional overlaps and ambiguities which arise from the STZA Ordinance are highlighted, along with a comparative analysis of the incentives and tax

[1] Special Technology Zones Authority Ordinance, 2020 (Ordinance No. XIII of 2020), s 6 (a); APP; 'PM launches Special Technology Zones Authority' (Dawn, January 9, 2021), available at: https://www.dawn.com/news/1600514/pm-launches-special-technology-zones-authority

[2] Special Technology Zones Authority Ordinance, 2020 (Ordinance No. XIII of 2020), s 21, 22 (f); Shahnawaz Akhter, 'Ten-year tax incentives granted to special technology zones' (The News, December 15, 2020), available at: https://www.thenews.com.pk/print/758664-ten-year-tax-incentives-granted-to-special-technology-zones.

[3] Preamble to the Special Technology Zones Authority Ordinance, 2020 (Ordinance No. XIII of 2020).

benefits as well as the dispute resolution provided under the STZA ordinance with foreign jurisdictions. The aim of this paper is to provide policy points which could lead to the establishment of an effective legislative and regulatory framework to govern STZs in Pakistan.

2. Background

2.1 Special Economic Zones

Before undertaking a legislative review, it is first prudent to provide sufficient context regarding STZs. The concept of Special Technology Zones emanates from Special Economic Zones – which gained popularity as part of the "export-oriented approach" that developing countries had adopted in the late 1960s and early 1970s to attract advanced technology and foreign direct investment (FDI) to their industrial sector.[4] In return for these economic benefits, SEZs provided raw material, land, labour and industrial infrastructure. The rationale for such geographically defined zones was simple – outside these zones existed the unfavourable policies of the state, and the structural weaknesses of the unhealthy business environment loomed large.

2.2 Innovation Clusters

Internationally, Special Technology Zones are better known as "clusters" or "innovation clusters" - terms which are used interchangeably - as the

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[4] Thomas Farole, Special Economic Zones in Africa: Comparing Performance and Learning from Global Experience (2011) World Bank, 17-18; Karim Khan and Saba Anwar, Special Economic Zones (SEZs) and CPEC: Background, Challenges and Strategies (2017) Pakistan Development Review, 2015, 17; Shuhei Nishitateno, China's Special Economic Zones: Experimental Units for Economic Reform (1983) The International and Comparative Law Quarter, 32, 175–185.

development of clusters is linked to increased innovation.[5] Clusters as a concept emanates from a renowned economist, Alfred Marshall's "industrial district" which was used to describe certain aspects of the industrial organization of a nation, where firms and workers who were specialized in a particular industry were clustered and worked.[6]

However, the concept was popularized through Michael Porter's studies, which had the underlying hypothesis that clusters contribute to competitive advantage by driving innovation in the field, increasing the productivity of companies located within the clusters and stimulating the growth of new businesses in the field.[7] Practical demonstrations of the cluster concept which have gained a favourable reputation on an international level are Silicon Valley in the US[8], Zhongguancun in China[9] and Tokyo- Yokohama in Japan (which was ranked as the best Innovation Cluster in the Global Innovation Index 2020.[10])

2.2.1 Benefits of Innovation Clusters

At this juncture, it prudent to briefly delve into the benefits of innovation clusters and the underlying theoretical underpinnings which govern them, as the efforts to establish STZs are in pursuance of the same benefits. Cluster

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5 Brigitte Preissl and Laura Solimene, Dynamics of Clusters and Innovation (2003) Physica-Verlag: Heidelberg, Germany, 41-72.
6 Alfred Marshall, Principles of Political Economy (1890) Maxmillan: London, UK, 169, 225-227.
7 Michael E. Porter, The Competitive Advantage of Nations (1990); Harvard Business Review <https://hbr.org/1990/03/the-competitive-advantage-of-nations> accessed 24 March 2020.
8 AnnaLee Saxenian, Regional Advantage: Culture and Competition in Silicon Valley and Route 128; Harvard University Press: Cambridge, MA, USA, 1996.
9 Justin Tan, Growth of industry clusters and innovation: Lessons from Beijing Zhongguancun Science Park. (2006) Journal of Business Venturing, 21, 827–850
10 Kyle Bergquist and Carsten Fink, The Top 100 Science and Technology Clusters (2020) World Intellectual Property Organization, 44.

formation has been derived from the concept of agglomeration economies.[11] Alfred Marshall had proposed three external economies of scale: knowledge spillover, labour pooling and specialization,[12] and these are the underlying economic concepts describing the benefits of cluster formation.

Knowledge spillover is often cited as the benefit of clusters because "mysteries of trade are in the air," as geographical proximity allows for such a spillover between workers, firms, public research infrastructure, customers and suppliers.[13] The spillover effect occurs due to different mechanisms such as formal and informal interactions, spin-offs and employment turnover. Secondly, Labour pooling occurs due to the spatial proximity of connected firms which leads to pooling in of workers with similar skills. This, in turn, reduces the premium risk and search cost for employers.[14] Employees, on the other hand, benefit due to employers investing in industry-specific human capital and the availability of multiple job opportunities. Additionally, local access to industry-specific human capital as well as universities also attracts knowledge-based firms.[15] Lastly, specialization is the most prominent feature of clusters which operate upon the industrial-complex model. Such a model implies spatial proximity as well as explicit links between both customers and suppliers in order to reduce costs associated with search, transportation and

[11] Max Nathan and Henry Overman, Agglomeration, clusters, and industrial policy, (2013) 29(2) Oxford Review of Economic Policy, 390-400.
[12] Jianyi Li, Douglas Webster, Jianming Cai and Larissa Muller, Innovation Clusters Revisited: On Dimensions of Agglomeration, Institution, and Built-Environment (2019) MDPI, 2-3.
[13] Karl Wennberg and Göran Lindqvist, The Effect of Clusters on the Survival and Performance of New Firms (2010) Small Business Economics, 33-34, 220–24.
[14] Rui Baptista; Peter Swann, Do firms in clusters innovate more? (1998) 27 (2) Research Policy, 525–540.
[15] Rui Baptista and Joana Mendonça, Proximity to knowledge sources and the location of knowledge-based start-ups (2010) The Annals of Regional Science, 45, 5–29.

monitoring.[16] Inside these clusters, enterprises have the opportunity to adopt niche strategies. This occurs because of the availability of a myriad of service inputs such as venture capital and consulting.[17] Moreover, sophisticated and industry-specific demands from consumers encourage adoption of new trends.[18] Lastly, horizontal competition between enterprises drives efficiency and diversity.[19] All in all, these benefits are all reflected in real life examples of innovation clusters, all of which showcase these individualistic strengths to varying degrees. For example, many of what Hart refers to as 'Type B Clusters,' are responsible for the production of lightweight, but urgently required goods.[20] These in context, require a specific skillset (in the case of the worker) to meet user needs while ensuring speedy supply. For this reason, a high concentration of specialized workers remain at their disposal, where labour pooling remains essential to efficiency. Examples of such clusters include but are not limited to Silicon Valley in the United States and the M4 motorway corridor in Britain, both of which realize these anomalistic characteristics around the periphery of urban areas. Similarly, clusters are part of what Hart refers to as the "innovative milieux", he also highlight their benefits rooted in social capital and interdependence. Examples of such are clusters situated in Emilia-Romagna and parts of Northeastern Milan, where firms within the clusters jointly pursue common goals in the quest for innovation.[21] Proximity clusters take these advantages to the next level, an

[16] Paul Krugman, Increasing Returns and Economic Geography (1991) Journal of Political Economy, 99, 483–499.
[17] Timothy B. Folta, Arnold C. Cooper.; Yoon-suk Baik, Geographic cluster size and firm performance (2006) Journal of Business Venturing, 21, 217–242.
[18] Eric Von Hippel, The Sources of Innovation (1988) Oxford University Press: Oxford, UK, 1-25
[19] Michael E. Porter, Clusters and the new economics of competition (1998) Harvard Business Review 76, 77–90.
[20] D.A Hart, Innovation Clusters: Key Concepts (2000) University of Reading, 6,8.
[21] Ibid, 8-9.

example being the cluster within Hertfordshire, which is popular for spatial bunching, knowledge-based interventions, stronger external linkages and customer specific batch productions. [22]

However, these advantages are based on international studies and research on clusters, and the availability of a proper regulatory environment and supportive policies of the state are essential to reap the benefits of innovation clusters or - in the case of Pakistan - STZs.

3. LESSONS FROM SEZS

3.1 Failure of Previous SEZs

Given the conceptual overlap between SEZs and STZs, at this juncture it is relevant to explore the reasons behind the failure of previous attempts to allocate geographical clusters with the aim of encouraging investment, job creation etc. SEZs in the past have been categorized as "white elephants" for the host economy as enterprises used the large investment in the infrastructure of SEZs merely for utilizing the tax exemptions without creating employment or producing export products.[23] As mentioned in Section 2, SEZs were established in Pakistan so that it moves its economy to adopt the export-oriented approach rather than the traditional import substitution industrialization. Following the promulgation of the Special Economic Zone Act, 2012, around seven additional SEZs were established

[22] Ibid.

[23] Uzma Mukhtar; Syed Ain ud Din, Zohur ul Islam.; Saubia Ramzan, Identification of Impediments in Export Promotion Zones of Pakistan. (2013) 2 (11) JISR-MSSE, 101–116; Zafar Mahmood, Opportunities and Challenges of Special Economic Zones under CPEC for Pakistan, (2018) the International Academic Seminar on Industrial Cooperation and Construction of Industrial Zones, Beijing, China, 9, 16.

in Pakistan.[24] However, these Zones yielded dismal results due to the structural deficiencies, lack of infrastructure, and incompetent policymaking by the government.[25] In 1983, Karachi was chosen as the location for Pakistan's first SEZ, and by 2005 the number of SEZs had increased to seven. However, even after 35 years (i.e., 2017), the zones provided employment to only 35,000 people and contributed to a humble 3% of total exports.

To fully appreciate the potential of such SEZs, a comparative study is essential. The eight SEZs in Bangladesh not only attracted 412 firms – employing 350,000 people – it also brought in investment amounting to $2.6 billion.[26] Similarly, the average annual FDI flow to Poland increased by USD 152 billion in just 40 years, as a direct result of an elaborate SEZ program. Alongside this, the amount of investments increased fivefold, from 19.9 billion zlotys to 93.1 billion zlotys in 2010, making Poland the 43rd best country (out of 189) on the ease of business rankings. [27] The case of Poland is complemented by that of the Dominican Republic, where SEZs had a positive effect on employment as well - witnessing a rise from 500 people in 1970 to 200,000 in 2017.

A study carried out on SEZs with a sample size of 22 countries between 2007-2012 showed that it was only SEZs in Pakistan which experienced an

[24] Iftikhar Ahmad & Zhou Taidong, 'Special Economic Zones in Pakistan: Promises & Perils' (2020) Pakistan Institute of Development Economics, 23.
[25] Ibid. 30-39
[26] Douglas Zhihua Zeng, 'Special Economic Zones: Lessons from the Global Experience' (2016) Private Enterprise Development in Low- Income Countries Synthesis Paper, 1–9.
[27] Pawel Tynel, Agnieszka Skret Bednarz, Agnieszka Roman, Marek Rozkrut and Anna Pietrzak, 'Poland—A True Special Economic Zone' (2013) Ernst & Young Global Limited, available at: https://www.ksse.com.pl/files/page/Centrum%20prasowe/Raporty/EY.pdf accessed 12 February 2021.

"absolute negative growth rate."[28] Additionally, there was another study which uncovered the root causes which led to the failure of SEZs: political instability, the law and order situation, insufficient infrastructure, the lack of security, frequent power failures and lack of skilled labour.[29] Alongside inadequate performance, SEZs in Pakistan have also been historically susceptible to misuse. As an example, the Quaid-e-Azam Industrial Estate (QIE) stands out. Being close to the provincial capital, Lahore, the QIE was subject to the misuse of land. In light of high property prices in Lahore, many QIE investors strategically chose to relocate to Sundar to take advantage of low real estate cost and better connectivity. As a consequent step, and as a result of insufficient oversight, their lands in QIE were rented out for other commercial activities. In negation to the purpose of the SEZ, this strategy significantly brought down the overall economic productivity of QIE.[30]

3.2 Legal Regimes of SEZs

While a detailed review of SEZ laws is beyond the scope of this paper, a few insights from previous legislation on a similar subject are essential to critique the STZA Ordinance, 2020. From a legal standpoint, while Pakistan has a very elaborate legal regime for SEZs – comprising of the SEZ Act, 2012, the SEZ Rules, 2013 and the SEZ Amendment Act, 2016 – it should be noted the SEZs did not enjoy many incentives or exclusive legal treatment, as no blanket exemption was provided from the commercial and civil laws prevalent in Pakistan. The lack of such an exemption was a deterrent for

[28] Susanne A. Frick, Andrés Rodríguez-Pose, Michael D. Wong, 'Toward Economically Dynamic Special Economic Zones in Emerging Countries' (2018) 95 (1) Economic Geography, 30–64.
[29] Mukhtar, Din, Islam and Ramzan, 'Identification of Impediments in Export Promotion Zones of Pakistan' supra (n. 23).
[30] Ahmad and Taidong, 'Special Economic Zones in Pakistan: Promises & Perils' supra (n. 24), 30.

potential investors, who did not look favourably upon the business environment in Pakistan outside these zones. Moreover, Section 38 of the SEZ Act, 2012 prescribes the High Courts and District Courts of the respective province to have exclusive original civil jurisdiction over disputes within the SEZ. This means that even foreign zone enterprises had to seek justice in Pakistani Courts - which led to prolonged litigation as there were no specialized local Tribunals dedicated to offering a low-cost and speedy alternative to the Courts. Moreover, the provincial governments had little role to play in the development of SEZs, while the federal government enjoyed undue powers. Moreover, the exemption from all taxes on income for a number of years leads to companies "taking out dividends rather than reinvesting the profits."[31] Therefore, it is important that the shortcomings of SEZ laws are adequately addressed in STZ laws - so that history is not repeated.

3.3 Drivers of Success: Rashakai & FIEDMC

For policy and legislative purposes, it is useful at this stage to look back at successful SEZs, considering that, as highlighted above, STZs have been derived from SEZs. As far as local successes go, both Faisalabad Industrial Estate Development & Management Company (FIEDMC) and the upcoming Rashakai SEZ offer unique insights into factors driving success.

The Rashakai SEZ, to be established under the China-Pakistan Economic Corridor (CPEC), is an example which may be used to avoid the fate of previous SEZs in Pakistan, and in turn lead to the establishment of successful

[31] Hasaan Khawar, 'Why is our SEZ Law flawed,' (the Express Tribune, 28 July 2020) https://tribune.com.pk/story/2257113/why-is-our-sez-law-flawed (accessed 25 April 2021)

STZs.[32] Located in the Khyber Pakhtunkhwa (KPK) province, the SEZ will predominantly be established by the Khyber Pakhtunkhwa Economic Zones Development and Management Company (KPEZDMC) and will be the first SEZ which was set up under the Public Private Partnership Model.[33] Indeed, the SEZ has reportedly attracted over 2000 investors already[34] and is expected to contribute 2.3 percent to the Provincial GDP of KPK while generating over two hundred thousand jobs. Moreover, research conducted on the Rashakai SEZ has determined that the development of SEZ at Rashakai will have a positive impact on per capita income, education per capita and employment, leading to considerable socioeconomic impact on households located within Rashakai.[35] Similarly, the FIEDMC was established in 1984, serving as a key government entity primarily in-charge of creating SEZ's throughout the nation. As of today, it has created and operated 3 successful SEZs in Pakistan: 1) M-3 Industrial City, 2) Value Addition City and 3) Allama Iqbal Industrial City. Along all SEZs, more than 600,000 jobs have been created, with approximately 7,500 acres of land utilised by around 557 industries in total. In terms of investment, FIEDMC has a total contribution of 817 billion. It is claimed that USD 1 billion was committed only during the year 2018, with multinationals like Hyundai, Renault etc. showing significant interest. The land holdings today range from 1-100 acres, with 5-7

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[32] Rashakai Economic Zone, M-1, Nowshera available at: http://cpec.gov.pk/project-details/53 (accessed 26 April 2021)

[33] INP, 'Rashakai SEZ attracts over 2000 investors,' (the Nation, 21 March, 2021) available at : https://nation.com.pk/21-Mar-2021/rashakai-sez-attracts-over-2000-investors (accessed 26 April 2021)

[34] Ibid.

[35] Ejaz Gul and Imran Sharif Chaudhry, 'Imminent Prosperity at the Doorsteps of Households: Evidence from Socio-kinetics of Rashakai Economic Zone Using Dynamic Two Point Model'(2017) Pakistan Institute of Development Economics, available at: https://www.pide.org.pk/psde/pdf/AGM33/papers/Ejaz%20Gul.pdf

multinational groups with 100-acre holdings. These include both Renault and Hyundai.[36]

These examples, surely crowning jewels of the Pakistani SEZ landscape, offer concrete insights into how Pakistan can go about creating trifling advantages realised in countries such as Poland and the Dominican Republic. All in all, 4 drivers of success can clearly be identified, with their evidence extending beyond Pakistan.[37] Firstly, SEZs should have a clear vision and be actively devoid of any political influence.[38] The 3 SEZs created by the FIEDMC were particularly successful because of this very reason, as being promulgated via a separate organisation helped avoid political influences. Similarly, examples of successful SEZs devoid of external control also exist in India and Shenzhen.[39] Secondly, SEZs should promote specialised activity, creating a cluster of similar industries.[40] This again was one of drivers of success for FIEDMC SEZs, as focus industries were identified and targeted. Thirdly, any financial incentives offered should be both lucrative and long-term.[41] Both these factors were ensured by Rashakai and FIEDMC, with tax incentives being long term and substantial enough to attract multinational companies like Renault. Lastly, government support/facilitation is key to success as it

[36] Frick, Rodríguez-Pose, Wong, 'Toward Economically Dynamic Special Economic Zones in Emerging Countries supra (n 28), 40-50.
[37] Saira Naeem, Abdul Waheed & Muhammad Naeem Khan, 'Drivers and Barriers for Successful Special Economic Zones (SEZs): Case of SEZs under China Pakistan Economic Corridor', MDPI, available at: https://www.mdpi.com/2071-1050/12/11/4675/htm
[38] ADB. The Role of Special Economic Zones in Improving Effectiveness of Greater Mekong Subregion Economic Corridors; Asian Development Bank: Mandaluyong City, Philippines, 2016; pp. 1–45.
[39] Farole, Special Economic Zones performance, policy and practice- with a focus on Sub-Saharan Africa. supra (n. 4) 83–92.
[40] UNCTAD. World Investment Report; 2019. Available online: https://unctad.org/en/PublicationsLibrary/wir2019_en.pdf (accessed 5 January 2020).
[41] Zeng, 'Special Economic Zones: Lessons from the Global Experience' supra (n. 26).

contributes to the ease of doing business.[42] This specifically helped the 3 SEZs created by FIEDMC as all these zones were established within the purview of, and in consultation with, the government. For Pakistan, the only way forward is to ensure these 4 drivers of success are fully accounted for any future SEZ development within the country.

4. Overlap with Technology parks

4.1 Pakistan Software Export Board

Encouraging technological investment is not a unique policy point which has been adopted by the current government. Indeed, previous governments have also tried to incentivize and boost the Information Technology (IT) sector by establishment of Software Technology Parks (STPs).[43] STPs are also derived from the cluster principle mentioned above, and are tasked with the provision of ICT connectivity, office space and backup power to a cluster of software firms within a certain geographical area. Currently, there are around fifteen STPs which are operational in Karachi, Lahore and Rawalpindi/Islamabad under the Pakistan Software Export Board (PSEB).[44] The PSED is a Guarantee limited Company with a Board of Directors comprising of representatives from the private sector, industry associations as well as the Government. As per the official website, the largest Software Technology Park is the Shaheen Complex in Lahore, stretching over 360,000 square feet. The highest number of Software Technology Parks are in Lahore,

[42] Lotta Moberg, 'The Political Economy of Special Economic Zones' (2015) 11 (1) Journal of Institutional Economics 175–190.
[43] Anonymous, 'On "Special Technology Zones"' (Business Recorder, 12 January 2021) available at: <https://www.brecorder.com/news/40049900> (accessed 25 April 2021).
[44] 'Software Technology Parks,' Pakistan Software Export Board, available at: <https://www.pseb.org.pk/pseb-programs/it-parks> (accessed 25th April 2021).

followed by Islamabad.[45] Therefore, it can be deduced that there are already efforts underway to boost the IT sector.

4.1. Definitional Ambiguity

There is a clear overlap between the mission statement of the PSEB and the STZA, as it is also within the mandate of the PSEB to "[r]egister IT companies in Pakistan, propose and provide fiscal, regulatory and corporate incentives and facilitation to them" and also "[a]ct as a bridge between private IT companies and various Government bodies."[46] However, under the STZA Ordinance, 2020, a "zone" is defined as containing "information technology parks" as well as "knowledge parks" along with other IT-related infrastructure within a defined geographical area.[47] It should be noted that the term "software technology parks" does not appear within the STZA Ordinance, 2020 even though there are many similarities between STZs and STPs. Moreover, it is not clear if the latter will come under the ambit of the former, or if the STZA will manage STPs along with the PSEB. Such ambiguity may cause unnecessary bureaucratic hurdles and confusion for investors and customers alike.

5. DEFINING A ZONE

The term "zone" has been defined by the STZA Ordinance, 2020, and is essentially a geographically defined cluster which contains infrastructure related to technological advancement and innovation.[48] As per the STZA

[45] Ibid.
[46] 'Aims and Objectives,' Pakistan Software Export Board, available at: <https://www.pseb.org.pk/about-us/aims-objectives≥ (accessed 25th April 2021)
[47] Special Technology Zones Authority Ordinance, 2020 (Ordinance No. XIII of 2020), s 2 (r).
[48] Ibid.

Ordinance, 2020, the definition of a zone is not restricted to STZs, information technology parks, free technology zones, etc. Instead, zones are interpreted more openly to include any defined geographical area notified by the authority with any such name. Ideally speaking, such a definition can clearly, in legal terms be characterised as wanting, as it could lead to differentiation of the Zones based on the geographical area. A better approach would be to ensure a more specific definition, one not following the principles of being defined geographically along acreage but rather the performance of the zone itself. This is to ensure that the STZs do not end up becoming a real-estate project, with zone developers and zone enterprises along with the STZA aims at utilizing a large tract of land without fully utilizing it. Similarly, the STZA Ordinance, 2020 also offers a vague understanding of zone developers and zone enterprises, with both definitions clearly overlapping. As per the Ordinance (in Section 2), both consist of public, private and public private legal entities, all authorised by the authority in question. The minor difference at hand stems from zone developers being a group (or a consortium) as opposed to enterprise being a single enterprise operating within the said zone.

To bring to light shortcomings in the approach taken in the STZA Ordinance, 2020 to define these concepts, a comparative analysis with other international legal instruments could be relevant. The Special Economic Zones Act, 2015 in Kenya[49] has deviated from including such definitions in the preliminary definition section. On the contrary, an entire section has been committed to adequately define SEZs and everything they contain. For instance, Section 4 of the Economic Zones Act defines limits to a declaration of an SEZ alongside its specific definition. To complement this, Sections 5-9 go as far

[49] The Economic Zones Act, 2015, s 4-9.

as defining criteria for designating SEZs, outlining a mechanism for goods control, within and beyond the SEZ and a concrete method of governing receipts and payments within SEZs. Similarly, as opposed to the STZA Ordinance in Pakistan, the Kenyan Act offers a clear distinction between a zone enterprise and a developer, with the former being any corporate body licensed under the law and the latter too being a singular body which is engaged in/plans on developing or operating an SEZ. Such clarity is missing from the Ordinance in Pakistan, and unless such legal guidance is not readily available to our developers, our SEZ progress will continue to suffer.

6. INCENTIVES AND TAX BENEFITS

The driving force for investment in any of the innovation clusters, industrial zones or technology parks mentioned thus far are the incentives which are granted to investors. The STZA Ordinance, 2020, provides for such incentives to Zone developers and Zone enterprises as well.[50] As per the Ordinance in Section 21, Zone developers are offered incentives amounting to a long-term exemption of all income accruable, all custom duties and general sales tax. Similarly, Section 22 summarises incentives for zone enterprises. These incentives, spread across 10 years, include exemptions from all income taxes (withholding tax, presumptive tax etc), custom duties, property tax, general sales tax and tax on dividend income and long-term capital gains from investment.

When scrutinised, these benefits help provide a detailed framework for incentivisation and therefore can be used to attract the top companies in the world. Alongside this, these incentives meet both the requirement to be long

[50] Special Technology Zones Authority Ordinance, 2020 (Ordinance No. XIII of 2020), s 19, 21-22.

term and substantial, as identified via the pillars of success. These are met mainly through incentives being both absolute and spread over a period of 10 years. A competitor analysis can also help uncover how such incentives under the purview of the STZA are substantial. For instance, the Incheon SEZ in South Korea offers tax exemptions to both foreign companies and local developers for a 5-year period as opposed to the STZAs 10. Similarly, these tax incentives are absolute (100%) only for the first 3 years, with 50% of the tax exempted for the remaining two years.[51] There are also stringent requirements which must be met to avail such benefits. For example, tax exemptions for developers only are availed in cases where the foreign direct investment is over USD 30 million with a total development project cost of over USD 400 million. These requirements are not present within the STZA Ordinance, making it an attractive overall package for investors.

7. DISPUTE RESOLUTION MECHANISM

The STZA Ordinance, 2020 mentions that the STZA will establish an alternate dispute resolution mechanism (ADR) for the settlement of any disputes between zone enterprises and zone developers.[52] Alternate dispute resolution can be in terms of mediation as well as arbitration.[53] This trend of alternate dispute mechanisms is also preferred in advanced jurisdictions such

[51] Chungjin Kim, 'A Study On The Development Plan Of Incheon Free Economic Zone, Korea: Based On a Comparison To a Free Economic Zone In Pudong, China'(2007) Department of Planning, Public Policy & Management of the University of Oregon, 37.
[52] Special Technology Zones Authority Ordinance, 2020 (Ordinance No. XIII of 2020), s 23.
[53] Mediation enables parties to settle disputes in a timely manner without resorting to court proceedings, and is particularly useful in case negotiations fail. Arbitration, on the other hand, refers to practical and focused resolution of disputes on the merits without the inefficiency and uncertainty of litigation; Silicon Valley Arbitration and Mediation Centre, 'Dispute Resolution,' available at: https://svamc.org/dispute-resolution/ accessed (5 May 2021)

as the United States, where the Silicon Valley Arbitration and Mediation Centre (SVAMC)[54] operates in the Silicon Valley. This NGO does not administer cases, rather, it links leading ADR providers[55] to law firms, technology companies and universities, allowing these different stakeholders support to utilize arbitration and mediation to resolve technology and technology-related disputes. From this fact it can be gauged that such a practice of resorting to alternate dispute resolution is looked upon favourably by investors in foreign jurisdiction. Therefore, the provision of ADR may be seen as a welcome measure by foreign investors who do not wish to entangle themselves in the litigation system in Pakistan.[56]

However, it should be noted that despite these dispute resolution mechanisms, the constitutional jurisdiction of the High Court under Article 199 of the Constitution of Pakistan, 1973 may be invoked. As per this Article, the Constitution has conferred wide powers of judicial review on the Provincial High Courts of Pakistan, which are even wider than the powers conferred on the Supreme Court under Article 184 (3). On a broad level, the jurisdiction of the High court under Article 199 is invoked against a public

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[54] The SVAMC was formed as a non-profit organization under section 501(c) (3) of the United States Internal Revenue Code.

[55] These range from the American Arbitration Association (AAA) to the World Intellectual Property Organization (WIPO) . Silicon Valley Arbitration and Mediation Centre, 'Arbitral Institutions,' available at: <https://svamc.org/arbitral-institutions/> accessed (5 May 2021).

[56] The judicial system of Pakistan is known for being inefficient, slow and cumbersome. Pakistan's premier tax agency i.e. the Federal Board of Revenue, has recently claimed that due to pending litigation, around PKR1.8 trillion of tax revenue are yet to be recovered from the courts. Moreover, the enforcement of contracts through the Court system is also inefficient, as is reflected in the country's rankings by the World Bank's Ease of Doing Business where Pakistan, though has improved recently, is still ranked at 108 out of 190 countries. Bakhtawar Bilal Soofi, Muhammad Yar Lak, Tajwer Khan 'Trends and Developments', Chambers and Partners, available at: https://practiceguides.chambers.com/practice-guides/litigation-2021/pakistan/trends-and-developments (accessed 5th May 2021); World Bank, 'Doing Business' available at: https://www.doingbusiness.org/en/rankings (accessed 5th May 2021)

functionary which can be an agency, official, a court, or any authority. In this regard, disputes arising with the STZA, being a public body, will be challengeable in the respective High Court of the province where the STZA is located. In the event that Special Tribunals for the resolution of all disputes arising were established, even then if any order by such Tribunals if found to be based on mala fide then such order may also be challenged in the High Court of that respective province. In this regard, the Constitutional Jurisdiction of the High Court cannot be taken away.

8. CONCLUSION

Special Economic Zones have been in existence for decades but their derivative i.e., Special Technology Zones have attracted renewed attention in recent years. Despite failures in the past, Pakistan has made a strategic commitment to ameliorate its legislative regime on SEZs, however, from a legislative standpoint, there is still a long way to go. To maximise its legislative potential, any Ordinance governing SEZs in Pakistan must ensure clarity of content, intrinsic and extrinsic legitimacy, accuracy of subject matter and a well-rounded incentive program. Without doing so, the full economic impact of the regulation may become difficult to realise.

From the very outset, there were conflicting opinions on the formation of special economic zones, with many fearing that intellectual and economical effort into these zones could easily be misplaced. Slow growth may be equivalent to regression and stagnation. Special Economic Zones offer a strategic economic opportunity that any nation with ambition must immediately grasp.

It is of course a matter of impossibility to have a formula associated with certainly successful SEZs. However, analysing the experiences in Poland, South Korea, India, China and Pakistan help uncover essential elements of success any strategic STZ policy must implement. As the outside economy progresses into more advanced stages and economic realities change, STZ policies and the vision needs to be reoriented to make them responsive to changing economic environments and needs. The same is true for the law, which must adapt to give Pakistan an impetus to long term economic growth.

The reforms of the future must not only be innovative but also bold. Shenzhen was a tiny fishing village that chose to be brave (in setting up SEZs) and is reaping the rewards ever since. Pakistan must follow suit. Its laws must be flexible and relevant.