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LATEST TRENDS IN THE DEVELOPMENT OF SPECIAL ECONOMIC ZONES: CONSTITUTIONAL REGULATION, LEGISLATIVE DELEGATION AND ORGANIZATIONAL INDEPENDENCE

Special economic zones (SEZ) proved themselves as an effective tool for the countries to attract foreign direct investments into the national economy. Although, despite the fact that their number and variety is increasing worldwide, special economic zones in the financial sphere seem to be the platform for the most innovative and comprehensive experiments to be tested in Asian continent. In the early 1980s the China started an economic reform and after conducting the investigation, the state leadership decided to apply several bold decisions, including organizational decentralization of the local SEZ administration as well as legislative delegation. Later, given measures were supplemented with the constitutional reforms. The desired results were not long in coming and the new generation of autonomous SEZ in financial sphere continued to be created in China. Two decades later, states from the Gulf region presented a similar yet modified method of developing SEZ with a comprehensive organizational framework and legislative autonomy resembling the concept of the 'state within a state'. Whereas the latest country adopting Gulf experience is the Republic of Kazakhstan which employed similar strategy and established an Astana International Financial Center financial center in the capital of the state. Overall, important lessons to be learned from the successful special economic zones in the financial sphere are the organizational autonomy, legislative delegation, implementation of the common law principles and constitutional regulation of all the mentioned policies.

Key words: Special economic zones, constitutional reforms, legislative delegation, organizational autonomy, common law, Astana International Financial Center.

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Арнайы экономикалық аймақтарды реттеудің соңғы тенденциялары: конституциялық реттеу, заң шығару бастамасы және ұйымдастық тәуелсіздігі

Арнайы экономикалық аймақтар (АЭА) елдің ұлттық экономикасына тікелей шетелдік инвестицияларды тартудың тиімді құралы екенін дәлелдеді. Олардың алуандығы мен саны дүние жүзінде артып келе жатқанына қарамастан, қаржы секторындағы Арнайы Экономикалық Аймақтар қазіргі уақытта Азияның әртүрлі бөліктерінде жүзеге асырылып жатқан ең инновациялық және жан-жақты бастамалардың алаңы болып табылады. Мысалы, 1980 жылдардың басында Қытайда экономикалық реформалар басталды, зерттеу жүргізгеннен кейін ел басшылығы бірнеше батыл шешімдерді жүзеге асыруға шешім қабылдады, соның ішінде АЭА-ның жергілікті әкімшілігін ұйымдастырушылық орталықсыздандыру, сондай-ақ заңнамалық автономия енгізу. Кейінірек бұл шаралар конституциялық реформалармен толықтырылды және нәтижелер көп күттірмеді, ал Қытай қазіргі уақытта әлемдегі ең қарқынды дамып жатқан экономикалардың бірі болып табылады. Ал жиырма жылдан кейін Парсы шығанағы мемлекеттері өте ұқсас, бірақ жетілдірілген әдісін енгізді. Олар конституциялық реформалардың арқасында тәуелсіз ЕЭА басқару органдарын құру және АЭА аймағында ағылшын заңнамасын енгізуге шешім қабылдады. Осылайша, жаңа АЭА «Мемлекет ішіндегі мемлекет» концепциясына ұқсайтын болы. Соңғы халықаралық тенденцияларға сүйене отырып, Қазақстан Республикасы осыған ұқсас стратегияны қолданып, мемлекет астанасында «Астана Халықаралық Қаржы Орталығын» құрған соңғы елдердің бірі болды. Жалпы, қаржы секторындағы Арнайы Экономикалық Аймақтардан алынатын маңызды сабақтар – конституциялық реформалар арқасында АЭА органдарының ұйымдастырушылық дербестігі мен заң шығару бастамасын қамтамасыз ету, ағылшын жалпы құқық жүйесін енгізу болып табылады.

Түйін сөздер: арнайы экономикалық аймақтар, конституциялық реформалар, заңнамалық делегация, ұйымдастырушылық автономия, жалпы құқық, «Астана» халықаралық қаржы орталығы.

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**Последние тенденции в регулировании специальных экономических зон:
конституционное регулирование, законодательная инициатива
и организационная самостоятельность**

Специальные экономические зоны (СЭЗ) одним из действенных инструментов для привлечения иностранных инвесторов в национальную экономику страны. Даже несмотря на тот факт, что их количество и разнообразие увеличивается во всем мире, СЭЗ в финансовой сфере на данный момент являются площадкой для самых инновационных и комплексных инициатив, которые осуществляются в различных странах Азии. К примеру, в начале 1980-х годов Китай начал экономическую реформу, и после проведения исследования, руководство страны решило реализовать несколько смелых решений, включая организационную децентрализацию местной администрации СЭЗ, а также представить законодательную автономность. Позднее данные меры были дополнены конституционными реформами и желаемые результаты не заставили себя ждать и Китай на данный момент является одной из самых быстро развивающихся экономик мира. Далее, в Китае продолжилось создание автономных СЭЗ нового поколения в финансовой сфере и два десятилетия спустя государства Персидского залива представили аналогичный, но усовершенствованный метод развития СЭЗ, с проведением Конституционных реформ, созданием независимых органов управления СЭЗ и созданием уникальной правовой системы на основе английского общего права. Тем самым, новые СЭЗ стали напоминать концепцию «государства в государстве». Следуя последним международным тенденциям, Республика Казахстан стала одной из последних стран, которая применила аналогичную стратегию и создала «Международный Финансовый Центр Астана» в столице государства. В целом, важными уроками, которые следует извлечь из успешных специальных экономических зон в финансовой сфере, являются организационная автономия и законодательная инициатива органов СЭЗ, внедрение или использование системы английского общего права и конституционное регулирование деятельности СЭЗ.

Ключевые слова: Специальные экономические зоны, конституционные реформы, законодательное делегирование, организационная автономия, общее право, Международный финансовый центр «Астана».

Introduction

Special economic zones are considered to be critically important for the international economic system, being one of the most notable institutions of the unilateral economic law (Chaisse and Dimitropoulos 2021: 232). Starting from the late 1950s the SEZ passed through a long path and undergone a series of transformations becoming an instrument for the regulatory and legislative development which complemented or at times even substituted the International Economic Law (Chaisse and Dimitropoulos 2021: 232).

There are many approaches used to identify the special economic zones and the vast majority boils down to define its major characteristics, such as: attracting foreign direct investment, serving as “pressure valves” to alleviate large-scale unemployment, supporting a wider economic reform strategy and existing as experimental laboratories for the application of new policies and approaches (Farole, 2011: 4). Whereas, according to the World Bank’s definition, SEZ is identified “as

geographically delimited areas administered by a single body, offering certain incentives (generally duty-free importing and streamlined customs procedures, for instance) to businesses which are physically located within the zone”(FIAS, Special Economic Zone: Performance, Lessons Learned, and Implication for Zone Development (Washington, DC: World Bank, 2008).

Hence, one of the biggest advantages of the SEZ is an opportunity to use different legislative tools for creation of favorable conditions to foreign investors without amending the national legislation or entering into international treaties. So, there are many legal approaches that could be used in order to develop an SEZ, including reducing the authority of the central government, creating an investor friendly environment as well as the freedom to experiment with other policies and measures (Yeung, 2009: 226).

The given article analyzes an increasing trend that is spreading all over the Asian continent for the development of special economic zones in the financial sphere, which are more often referred as an ‘international financial centers’.

Section II of the article covers the historical background of the events that took place in China back in the 1980s, then in Gulf states at the beginning of the XXI century and summarizes with the latest Kazakhstani experience. Section III highlights the common features of special economic zones in mentioned countries. It includes the examination of following main characteristics – the organizational independence, legislative delegation, increasing role of the common law system and necessity for conducting constitutional reforms to apply all of the listed policies. The last section provides the overall analysis and concludes the article.

Methodology

The conducted analysis was based on several different methodological approaches. First of all, historical approach was utilized in order to understand the development of Special Economic Zones in financial sphere. At the same time, dialectical method is one of the basic methods necessary to make comprehensive research of the subject.

In order to compare and analyze the legislative regulation of different states, such as China, United Arab Emirates, Qatar and Central Asian countries, the comparative legal approach was employed. Correspondingly, legal modeling was another tool used in order to understand the differences and similarities between various Asian countries. Finally, legal forecasting approach was required to get an insight into the future perspectives of an existing SEZ such as Astana International Financial Center and the one's that is planning to be created in Republic of Uzbekistan and Kyrgyz Republic.

Results

According to the World Investment Report, the number of the SEZ worldwide increased from 79 in 1975 to almost 5400 in 2018 (UNCTAD, 2019). One of the main reasons is that an SEZ, being the flexible instrument of the domestic law or 'unilateral economic law' (Chaisse and Dimitropoulos 2021: 231), provides a greater control to states over the international economic regime (Chaisse and Dimitropoulos 2021: 232).

Although, despite the current popularity of special economic zones, there is no universal theory with regard to its emergence as well as its further evolution. Since each and every state uses different approaches for creating and developing SEZ depending on their current needs, it is no

wonder that many researchers struggle to come up with the unified theory on SEZ history. However, the common view is that one of the first SEZ in the west appeared on the Greek island of Delos approximately in a year 166 BC in the form of the toll-free zone (Farole, 2011: 31). Nevertheless, the term itself was introduced in China in late 1970s after the considerable semantic debate, when Chinese leadership decided to name it as 'special economic zones' referring to diverse and complex economic initiatives to be implemented on different territories of the country (Yeung, 2009: 223).

So, in the midst of 1970s there were already 28 economies with 79 special economic zones (UNCTAD, 2019). However, China decided not only to apply the international experience, but to go one step further and developed new policies which included providing local administration with the power of self-administration and later even granted legislative delegation (Feng, 2017: 6). This was one of the first steps of the leadership of People's Republic of China (PRC) to open its markets for the international investors (Zheng 1987: 196).

So, the rationale of Chinese leadership in the early 1970s was to learn from European, American and Hong Kong experiences (Feng 2017: 3) and apply it within the framework of newly developed zones. The Chinese government decided to establish special economic zones in two provinces – Guangdong and Fujian which were located near to Hong Kong and had a long history of trade and other relations with the city (Yeung 2009: 223). Such close proximity also created an opportunity to study the capitalist methods of economic development of the large cities (Yeung, 2009: 223).

Hence, the initial decision was made to create five special economic zones in Shenzhen, Xiamen, Shantou, Zhuhai and Hainan Island (Zheng 1987: 199). All of the mentioned SEZ played a significant role in the transformation of the China on the current global economy, however, the place of Shenzhen is distinct in many senses. It was one of the first SEZ established in China in 1980 (Vogel, 2011: 398). Also, prior to implementing economic policies, it was initially tested in Shenzhen (Zheng, 1987: 200). Thus, if taken measures being proven successful, given policies were to be applied not only in other SEZ, but also in other regions of the state (Feng, 2017: 3).

The policies introduced by the Chinese government became one of the main reasons for the rapid transformation and development not only in China but also in other Asian tigers (Zeng, 2021: 4). Within a short span of time Shenzhen grew from

a small fishing village with a population of 20,000 people into one of the most developed manufacturing and high-tech research bases in China (Feng, 2017: 2) with a population of 14 million, whereas its GDP increased for an astounding amount of 100 times within the 30 years as it was launched in 1980s (Farole and Akinci, 2011:1) (UNCTAD, 2019).

Hence, after conducting successful experiments in Guandong and Zhuhai provinces, the central government of China was eager to continue the development of its economy in other parts of the country. As the Shenzhen became a breakthrough three decades earlier, now another similar experimental policy was to be applied in Shanghai, consequently, the word “pilot” in the name of the zone. So, the Shanghai Pilot Free Trade Zone (FTZ) was considered to be another wave of decentralization of the local administration for the implementation of the economic reforms (Wan 2014: 6). However, this time financial and banking sectors were identified as spheres of priority (Song 2014: 13).

This zone is already considered as one of the most innovative types of free trade zones which expanded the boundaries of open trade and service sectors in the sphere of finance through application of liberal rules on both foreign and domestic business (Zeng, 2021: 5). As in case with the Shenzhen in 1980s, the selection of the Shanghai is also not random. Shanghai was transformed from an industrial and commercial city to a national economic center of China (Yang, 2002: 1). So, it is planned that in the near future it will become the largest financial center in China by overtaking the position of the rival Hong Kong (Sheng, 2018: 173), which seems to be very important for the central government of China to accomplish (Delimatsis 2021: 278).

Generally, Shanghai FTZ is not a single zone, rather it is a conjunction of seven different zones. It was established in September 29, 2013 and initially consisted of four zones – Waigaoqiao Free Trade Zone, Waigaoqiao Free Trade Logistics Park, Yangshan Free Trade Port Area and Pudong Airport Free Trade Zone (http://en.china-SFTZ.gov.cn/2021-09/04/c_263780.htm). Later, on 28 December 2014 the State Council expanded FTZ by incorporating Lujiazui Financial and Trade Zone, Jinqiao Economic and Technological Development Zone, and Zhangjiang Hi-Tech Park, thus, increasing its territory from 28,78 to 120.72 square kilometers (http://en.china-SFTZ.gov.cn/2021-09/04/c_263780.htm).

So, after creating additional special zones within the Shanghai FTZ the four main strategic areas were identified for the policies, which included

implementation of the “negative list” of cross-border trade in services, new policies in the financial sphere related to the capital account convertibility, decentralization of institutions for trade supervision as well as reducing the bureaucracy in the administration (Yao 2015: 3).

Currently, Shanghai FTZ is receiving a substantial support from the government ((Wan, 2014: 6) and one of the main tools used by the state is the decentralization of the local administration and active legislative policies directed at the facilitation of the economic reforms. Hence, the central government announced that after the assessment of the trial run of Shanghai FTZ and if proven as successful, it could have a huge potential, so that similar policies would be applied in other regions of the country (Wan, 2014: 6).

Hence, it is apparent that one of the latest trends in the development of an SEZ is reorientation from the traditional free ports and export processing zones to zones which aimed to attract foreign investments in services, especially financial services (Chaisse and Dimitropoulos 2021: 224). As in the case with the Shanghai FTZ, the countries of Gulf region primarily targeted facilitation of the financial sphere and aimed at developing leading international financial centers (<https://www.difc.ae/>).

Two Gulf states – United Arab Emirates (UAE) and Qatar implemented policies similar to Chinese, but used a more comprehensive approach from the standpoint of the organizational structure. The main similarities of UAE and Qatar is that both states made an effort to develop a financial sector of the state, however, using slightly different, yet innovative methods with regard to the structuring and regulating special economic zones. Hence, it is viewed as another step to break away from the traditional trans-shipment and manufacturing zones towards the zones that facilitate economic and social activities (Chaisse and Dimitropoulos 2021: 245).

The basis for the establishing an SEZ in the UAE started on the 27 March 2004 in accordance to the Federal Law Number 8, Regarding the Financial Free Zones (FFZ). The first international financial free zone itself was launched in the Emirate of Dubai the same year in accordance with the Federal Decree Number 35, To Establish Financial Free Zone in Dubai, whereas the bodies of the FFZ were approved by the Dubai Law Number 9, in Respect of DIFC (DIFC Law). The rapid development of the DIFC assured the leadership of the UAE to create another financial center and nine years later second FFZ was established according to the Federal Decree No. 15 of 2013, Concerning Establishing a Financial Free

Zone in the Emirates of Abu Dhabi. The first article of the given Decree stated that ‘a financial free zone shall be established under the name Abu Dhabi Global Market’ (UAE Federal Decree Concerning Establishing a Financial Free Zone in the Emirates of Abu Dhabi, Decree No. 15 of 2013) (ADGM).

Neighboring state of Qatar implemented similar policies to establish a financial and business center to be named Qatar Financial Center (QFC) located in the capital city of Doha in accordance to the Law No. (7) of 2005 on Qatar Financial Centre (QFC Law). Whereas, the uniqueness of the Qatar experience stems from the fact that unlike the Chinese and UAE zones, which has strictly established boundaries within the respective territories, the QFC is not tied to the specific territory of the capital city Doha where it is technically located. Instead, it is characterized as the rare case of the ‘on shore’ zone, which means that companies registered in the QFC are allowed to be located and do business from any part of the country (Chaisse and Dimitropoulos 2021: 245). This might be considered to be a great advantage in comparison with the traditional zonal approach of developing an SEZ, allowing investors to choose location from anywhere in the Qatar state and not to be tied within fixed borders, which could be far from the financial and administrative center of the city or country.

It is important to notice that after the creation of DIFC and QFC, the special economic zones in financial sphere now are strongly associated with the concept of an ‘international financial center’. So currently, the latest county to adopt the Gulf state approach is the Republic of Kazakhstan which established Astana International Financial Center (AIFC) in accordance with the Constitutional Statute on AIFC in 2015. It was inspired by the experience of the UAE and was initially introduced in the Plan of the Nation, announced by the First President as a part of the election campaign (Baskakova, 2017: 91). Five paragraphs of the given plan – 24, 70 to 73 explicitly stated that the Dubai International Financial Center shall be used as a model plan to create an AIFC (<https://online.zakon.kz/document>).

Meanwhile, the Kyrgyz Republic is actively studying the Kazakhstani experience to create the similar international financial center in the state capital – Bishkek. The Constitutional Statute on the “Bishkek International Financial Center” was recently published and the Ministry of Economy of the Kyrgyz Republic started the public discussion of the draft law (Djamilya, 2021). Important to note that text and the structure of the statute fully resemble the Constitutional Statute on AIFC. It

proposes the creation of similar internal bodies, their independence to exercise their powers, authority to adopt own rules and regulations, special legal regime based on the principles of common law of England and Wales and so on. Generally, it is potentially the third version of the Dubai International Financial Center.

Whereas, one of the latest states which is on the process of developing a similar international financial center is Uzbekistan. Jointly with the government of the United Kingdom they have approved a technical assistance to start the second phase of studying the concept of creating an International Financial Center in the city of Tashkent (Yeung, 2009: 223), with similar attributes of DIFC, QFC and AIFC. Therefore, we can see the substantial impact was made by the UAE and Qatar to create SEZ in the financial sphere.

Therefore, in order to effectively develop the special economic zones in financial sphere, or as it is often referred – international financial centers, three main policies were introduced by China, Gulf states and Kazakhstan, it is increasing the autonomy of the local SEZ administration and providing legislative delegation, finally, the constitutional reforms were conducted.

Discussion

1. Organizational independence

Now, if we look at the historical path of the development of the Shenzhen SEZ, it started one year prior to its official creation. In July 1979 the Third Plenum of the 11th Congress of the Chinese Communist Party adopted the Open Door Policy where Guangdong and Fujian were identified as the provinces where economic transformation should begin for implementing “special policies and flexible measures” (Yeung, 2009: 223). So, the official launch of the Shenzhen SEZ took place in 1980 and the local administration of the SEZ was vested with the local governments of the corresponding provinces. Hence, at the beginning, the Shenzhen SEZ was administered by the Guangdong provinces, which in turn were supervised by the central government of the PRC (Zheng, 1987: 210). However, the SEZ administration as well as central government understood that such a bureaucratic system will be detrimental for the prompt implementation of the new policies. So, the execution of the new strategy included three main aspects, such as upgrading the status of the Shenzhen Administration from the county level to the prefectural level, which also included increasing independence of an

SEZ Administration by establishing Provincial Committees and finally upgrading the Shenzhen from the province to the status of the City, thus providing an economic management authority (Feng, 2017: 4).

Shanghai Pilot Free Trade Zone is governed in similar manner as Shenzhen SEZ. According to the Regulations of Shanghai FTZ from 2014 (FTZ Regulations), the Municipal People's Government organizes the pilot reforms. General management of the reforms is vested with the municipal government. Article 6 of the FTZ Regulations specifies that deepening of the reforms requires to "streamline administration and delegate powers to the lower levels, combine the delegation and supervision, actively promote the notification-promise system and others, and establish an administrative management system in the FTZ with the scientific division of powers and efficient, unified management and open, transparent operation" (Regulations of China (Shanghai) Pilot Free Trade Zone from 2014). So, the actual implementation of the reforms is conducted by the local administration, referred as an "Administrative Committee", which is responsible for the carrying out the pilot reforms and conducting overall management and coordination of administrative affairs as well as "drawing up the relevant administrative management system" (Regulations of China (Shanghai) Pilot Free Trade Zone from 2014).

In addition to local SEZ administrations, the Chinese government realized that creation of impartial commercial courts will be essential for the protection of the interests of foreign investors. Thus, the China International Commercial Courts (CICC) were established in 2018 in the cities of Xian and Shenzhen (Sausmikat, 2022). However, the main difference between the CICC and the international commercial courts in UAE, Qatar and Kazakhstan, is that it exists not as an independent structure within the SEZ. Rather it operates in the framework of regular court structure of the state, so China is one of the first states to pioneer the dispute resolution centers outside the territory of the SEZ (Dimitropoulos, 2021: 6-7). However, the main function of the CICC is the resolution of the international commercial disputes.

The experience of Gulf states has its own peculiarities in comparison to the Chinese SEZ's. Generally, the organizational structure of the financial free zones in the UAE, as well as in Qatar and Kazakhstan, allows them to be autonomous from the central government in the execution of the policies, identified by the laws and regulations. Both UAE

free zones have a similar organizational structure which explicitly establishes their administrative and financial independence from the state bodies (UAE Law No 9 of 2004 and Federal Decree No. 15 of 2013). Although, it does not imply total independence of the free zone administration from the state, since, they are unilaterally established by the government without any bilateral or multilateral international negotiations. Hence, they are subject for the modification or termination on behalf of the state (Chaisse and Dimitropoulos 2021: 220).

Generally, there are several bodies within Dubai International Financial Center and Abu Dhabi Global Market which include the Higher Board of Directors chaired by the President in DIFC (Dubai Law No. 9 of 2014 in respect of Dubai International Financial Center), and Board of Directors chaired by the Chairman in ADGM (Abu Dhabi Law No. 4 of 2013 Concerning Abu Dhabi Global Market). The Board of Directors is the highest body within the financial free zone, whereas, the President, or Chairman, is responsible for supervising the Centre's other bodies and coordinates the work between them. There are also several authorities, which are responsible for the review and adoption of strategic policies – DIFC Authority in Dubai and the Global Market Authorities in Abu Dhabi. Also, there is a Dubai Financial Services Authority, which is solely responsible for the regulation of the financial services, including banking activities, insurance services, financial markets and brokerage services. Additionally, there is the Global Market Registration Bureau, which mainly focuses on registration and licensing of the business establishments in ADGM.

Finally, the Dispute Resolution Authority includes the Court and International Arbitration Center in both financial free zones. It is important to mention that Courts of DIFC and ADGM operate within the English common law framework (<https://www.adgm.com/adgm-courts>) which will be analyzed later in the subsequent paragraph. The administrative autonomy of the financial free zones is also supported with an authority of the bodies of the free zone to adopt its own rules and regulations which are also based on the standards and principles of common law (<https://www.adgm.com/adgm-courts/english-common-law>).

The Qatar Financial Center has a similar structure to the neighboring financial free zones. The business of operating the financial center is managed by the Qatar Financial Center Authority (QFC Authority). Hence, according to the Qatar Financial Centre Law No. 7 of 2005 (QFC Law), the QFC Authority shall have an independent legal personality and full

capacity to act as such in accordance with QFC Law. Article 3 of the QFC Law specifies that QFC Authority is managed by the Board of Directors, headed by the Chairman and consists of maximum of other nine members. The Chairman is also the Minister of Economy and Finance of Qatar state.

In order to operate in a center, the participants are also required to receive a license from another body – the Companies Registration Office, whereas the Regulatory Authority regulates the licensing and supervising banks, financial and insurance-related businesses carried on in or from the QFC.

The dispute resolution centers include the Civil and Commercial Court of the Qatar Financial Center which operates on the similar principles as the UEA FFZ – meaning on the principles of the English common law system (<https://www.qfc.qa/en/laws-and-regulations>) and is independent from the national court system.

As in case with UAE and Qatar financial centers, the Astana International Financial Center has a similar administration, including the highest body – Management Council, the Governor, AIFC Authority, Financial Services Authority, Court and International Arbitration Center. As in case with the Gulf states, the AIFC bodies are independent in exercising of their powers given to them by the Constitutional Statute on AIFC. For instance, according to the Constitutional Statute on AIFC the AIFC Court is an independent body and is not a part of the judicial system of the Republic of Kazakhstan.

In addition, the AIFC bodies are authorized to adopt own rules and regulations called acts, which are based on the ‘norms and principles, legislation and precedents of the law of England and Wales and the standards of leading global financial centres’, such as DIFC, ADGM and QFC.

2. Legislative delegation

Alongside with the increasing organizational or administrative autonomy, the next trend in the development of the SEZ is the legislative delegation. Generally, in order to develop effective policies and to quickly adapt them to the current and specific needs of each zone, it is crucial for the local SEZ administration to be able to develop own rules and regulations. Hence, such type of unilateral economic law is gaining increasing popularity, since countries do not apply the norms of the international trade or investment law, whereas foreign investors still enjoy liberal and trade rules within an SEZ (Zeng, 2021: 2).

It is worth to mention that it took almost a decade before an SEZ Administration of Shenzhen became autonomous with regard to the legislative authority.

The process was initiated at the beginning of the 1980 and was completed in two stages (Feng, 2017: 5). At the initial stage important role was played by the Shenzhen SEZ Administration itself, since the process of adopting new regulations was very slow. For instance, within the period from 1980 till 1990 the Shenzhen SEZ Administration submitted almost 200 drafts of rules and regulations to the Guangdong Provinces, where the Shenzhen is located, however, only 19 SEZ regulations were passed during this period (Feng, 2017: 9).

Such inactivity of the Guangdong Province convinced an SEZ Administration to pursue the legislative autonomy. So, at the first stage in July 1992 the Standing Committee of the National People’s Congress (NPCSC) granted a permission for the provincial people’s congresses (PC) and their standing committees (PCSC) to enact economic regulations within the boundaries of an SEZ (Feng, 2017: 5). Starting from the 1990s the second stage was initiated, when the legislative authority of the people’s congresses and their standing committees were increased, so that they had a competence to adopt regulations not only within the SEZ but throughout the Shenzhen city (Feng, 2017: 5), which was an unprecedented step at that time in China.

Hence, Shenzhen currently has the most established legal framework among the existing SEZ and it is no wonder that by 2016, in Shenzhen alone 129 SEZ regulations were valid, which is a little less than the number of valid regulations in all the other four zones in Guangdong and Fujian provinces – 158 (Feng, 2017: 16).

The main issue with the legislative delegation for Shenzhen SEZ was related to the fact that such authorization shall have a specific purpose, scope and timeline. However, given issues were resolved by the time, when the Shanghai FTZ was created by introducing amendments to the Chinese legislation, which will be discussed later in the article.

With regard to the legislative delegation in Shanghai FTZ, it is generally vested with the local administration – the Administrative Committee as well as Municipal People’s Government. At the same time, the decentralization is obtained by the involvement of the local people and businesses into the preparation of the regulations. Thus, the article 53 of the Regulation of Shanghai FTZ specifies that Administrative Committee prepares the normative documents, which may be reviewed by the Municipal People’s Government at the request of every citizen, legal person and other organizations. Later, the reviewed rules shall be formulated by the Municipal People’s Government.

After formulating local regulations and normative documents regarding the FTZ, the Municipality shall, after the passage thereof, be published in time, with an interpretation and explanation. The ineffective rules and regulations could be repealed by the request of the lower-level agencies to the higher-level ones. For instance, if “regulations do not adapt to the development of the Shanghai FTZ, the Administrative Committee may request the Municipal People’s Government to make relevant provisions on the application thereof in the Shanghai FTZ. Where this Municipality’s local bylaw does not adapt to the development of the Shanghai FTZ, the Municipal People’s Government may request the Municipal People’s Congress and its standing committee to make relevant provisions on the application thereof in the SFTZ”.

The financial centers of the UAE have a greater administrative authority in comparison to the Chinese SEZ. Moreover, as it was mentioned previously, the Dubai International Financial Center and the Abu Dhabi Global Market have own unique legal regime which is distinct from the rest of the state. The United Arab Emirates traditionally have a dual legal system of civil and Sharia laws, however, it was decided to create another legal system within the boundaries of the financial free zones that shall be based on the norms of the common law, or the laws of England and Wales in accordance with the DIFC Law No. 3 of 2004. The given fact makes the DIFC and ADGM a legal enclave within the emirates (Horigan, 2013: 2). One of the main reasons for selecting common law is that main financial hubs in the world, such as New York, London, Singapore and Hong Kong are operating on such principles (Horigan, 2013: 2). At the same time, the bodies of DIFC and ADGM have an authority to adopt new rules and regulations, which is provided by the laws of each corresponding Emirate – the Dubai Law No. 9 of 2014 in respect of DIFC and Abu Dhabi Law No. 4 of 2013, Concerning ADGM. The Board of Directors of both financial centers can issue the regulations. The legislative power is also vested with the President of DIFC, who can approve and submit the draft Centre’s Laws to the Ruler of the Dubai Emirate. Similarly, the Chairman of ADGM can issue Regulations relating to the organization of its work and the achievement of its objectives.

One of the main differences between the DIFC and ADGM is that Authorities of the Dubai financial center have more power to adopt regulations. For instance, the DIFC Authority and the Financial Center Authorities can propose draft laws of the center as well as issue own Regulations, falling

within the jurisdiction of each respective Authority. Also, the DIFC Court can approve and issue the Center’s Regulations relating to the Centre’s Courts, whereas the Global Market Registration Bureau and Financial Services Regulations Bureau of ADGM can only propose draft regulations that fall within the jurisdiction of the corresponding bureau. Similarly, the Chief Justice of the Global Market Courts can only propose the draft regulations related to the Court and submit it to the Board of Directors for approval.

Now, one of the main differences between the Qatar and UAE financial centers is that QFC bodies do not possess the direct legislative authority to adopt rules and regulations. It is due to peculiar internal structure of the financial center in Qatar. The main body of the center is the QFC Authority, which is governed by the Board of Directors and headed by the Chairman, who is simultaneously the Minister of Economy and Finance of Qatar. So, in accordance with the QFC Law No. 2 of 2009, the bodies of the financial center, including the QFC Authority, Regulatory Authority, Regulatory Tribunal and the Civil and Commercial Court can prepare and submit the Regulations to the Chairman of QFC Authority. Therefore, main legislative power belongs to the Chairman who enacts the regulations and also introduces amendments and modification and may repeal existing regulations in the QFC.

Now, if we look at the Kazakhstani experience, the legal system of the AIFC consists of both national legislation and the internal regulations called AIFC Acts. Constitutional Statute on AIFC stipulates that AIFC Acts may be based on the principles, legislation and the precedents of the law of England and Wales and the standards of leading global financial centers, adopted by the AIFC Bodies (Article 4).

So, the main normative documents regulating the AIFC bodies, its structure and powers are – Constitutional Statute on AIFC and the Resolution of the AIFC Management Council No. 20-27/1814 of 2016 «On the Structure of the Bodies of the AIFC» (AIFC Resolution).

According to Constitutional Statute on AIFC, the highest body of AIFC – Management Council, can adopt AIFC Acts in the form of resolutions, on matters within its competence. Also, the Governor adopts AIFC Acts in the form of regulatory provisions, which are not within the competence of the Management Council. In addition, AIFC Resolution stipulates that the Astana Financial Services Authority can adopt Acts in the form of regulatory provisions, on matters related to the regulation of financial services and related activities

in the AIFC, whereas the AIFC Authority can adopt Acts in the form of regulatory provisions, on matters not related to the regulation of financial services and related activities in the AIFC. Finally, AIFC Court do not possess authority to adopt AIFC Acts, however, it has several tools to shape the legal system of the AIFC as well. First of all, Constitutional Statute establishes that final judgements of the AIFC Court could be used as a precedent, therefore, it is a part of the acting law of the AIFC. At the same time, in case of any ambiguity in the text of the AIFC Acts, the Court has an exclusive jurisdiction to interpret AIFC Acts.

3. *Constitutional reforms*

Evidently, the review of the UAE, Kazakhstani and Chinese experience suggests that in order to provide legislative delegation and increase the autonomy of an SEZ, the local administration requires conducting Constitutional reforms.

For instance, prior to adopting the Federal Law Number 8 Regarding the Financial Free Zones, the Supreme Federal Council of the UAE introduced an amendment to the article 121 of the Constitution. According to the Constitutional Amendment No. 1 from 10 January 2004, the Basic Law of the country was amended as follows: ‘...the order and the manner of establishing Financial Free Zones and the boundaries within which they are exempted from having to apply rules and regulations of the Union’. Thereby, the UAE introduced amendments to the Basic Law with an aim of establishing financial free zones in two Emirates.

The similar process took place in Kazakhstan, however in a reverse manner. The Constitutional Statute of AIFC was adopted first on 7 December 2015. Whereas the Constitution itself was amended two years later in accordance with the Law of the Republic of Kazakhstan from 10 March 2017 No. 51-VI «On Amendments and Additions to the Constitution of the Republic of Kazakhstan». According to this statute, the second article of the Constitution was supplemented with paragraph 3-1, which stipulated that: ‘within the city of Nur-Sultan, a special legal regime in the financial sphere may be established in accordance with constitutional statute’. So, Kazakhstan also attributed the financial center with the constitutional status.

Now if we analyze the Chinese experience, the creation of special economic zones coincided with the beginning of the economic reforms and caused many controversies within the legal scholars. Later it was labeled as ‘benign unconstitutionality’, referring to the fact that pace of social and economic

transformation left far behind legal reforms (Martinek 2018: 277).

So, the Chinese central government initially refused to conduct constitutional reforms in order to delegate the legislative authority to Shenzhen and other SEZs. However, this resistance caused a lot of disputes in the legal community, since the basic law of the special economic zones in Guangdong and Fujian provinces – SEZ Regulation did not granted the local SEZ administrations with the legislative authority and it is viewed as the concession on behalf of the state and strong commitment from an SEZ officials (Feng 2017: 29).

Another issue was caused by the fact that according to the article 10 and 11 of the Legislation Law of the People’s Republic of China (Legislation Law) legislative delegation should have a specific purpose and scope, and should be withdrawn when the conditions for national legislation are ripe, which implies that the delegation should have a time limit. Therefore, Chinese leadership also had to conduct constitutional reforms, to regularize the activities of the existing special economic zones. So, by the time when Shanghai Pilot Free Trade Zone was established, the NPCSC prepared legislative background and introduced amendments in 2000 and 2015 to the Law on Legislation, which is part of the constitutional law of China (Feng 2017: 10).

Finally, the analysis of the Qatar experience suggests that there were no direct constitutional reforms to create the Qatar Financial Center. It was established in 2005 in accordance with the QFC Law No. 7. However, it is interesting to note that prior to emergence of the QFC, the new Constitution was adopted one year earlier. So, the public referendum was held in 2003 and the new Constitution was ratified on June 8, 2004 (Tok 2016: 42-43). Therefore, the creation of the Qatar Financial Center coincided with the constitutional reforms and the adoption of the new Basic Law.

4. *Increasing influence of common law system*

The spread of the common law became a perceptible trend in the development of an SEZ. Its influence could be traced from Middle East to Central Asia and all the way to East Asia. At certain parts of the Asian continent the common law received an official status. It is already had been discussed that the UAE, Qatar and Kazakhstani financial centers are all operating on the basis of the principles and precedents of England and Wales. However, all of the mentioned states, including China, traditionally have different legal systems.

For instance, the first article of Qatar Basic Law proclaims that ‘its religion is Islam, and the

Islamic Law is the main source of its legislation'. However, due to the fact that Qatar has long been under the influence of the British protection, it formed the duality of its legal system (Hamzeh, 1994: 79). Hence, during the creation of the QFC the application of the English common law system was a logical decision to develop an international financial center.

The United Arab Emirates have a very similar situation to neighboring Qatar. It also used to be under the British protectorate up until 1971 when both the UAE and Qatar gained their independence. The main difference is that the UAE has the mixed legal system of Islamic law and civil law, which was mainly influenced by the Egyptian and French civil laws.

China has also long historical links with the western Europe including British Empire, since the history of Western concessions in the northeastern Chinese port of Tianjin began in 1860 (Nuzzo, 2018: 1). Despite the long period of interaction with British Empire, after gaining independence, China became a communist state and English common law never officially was a part of its legal system. The Chinese law is a civil law tradition system with its own characteristics and peculiarities (Szpotakowski, 2020: 24).

Nevertheless, it is obvious that Chinese leadership also analyzed and took into consideration the common law principles during the creation of an SEZ in 1980s in Guandong and Fujian provinces. Such conclusion could be drawn from the fact that designation of the SEZ was inspired by the export processing zones of Singapore, Hong Kong and other neighboring countries (Tian, 2013: 7). Both Singapore and Hong Kong have the common law legal system. In addition to that, prior to obtaining legislative power, the local Shenzhen SEZ has prepared special 5-year legislative plan which was formulated after conducting a special investigative tour in Hong Kong, the USA and Europe (Tian, 2013: 9). Although, China did not incorporate the common law within existing special economic zones, nevertheless, there is no denial that the legal system of SEZs in China are inspired by the principles of the common law.

Finally, unlike Persian Gulf states or China, the Republic of Kazakhstan never directly contacted with the English legal system. Its historical path was closely linked firstly with the Russian Empire and later with the Soviet Union. Thus, Kazakhstan, alongside Uzbekistan and Kyrgyz Republic has

the civil law systems. Therefore, application of the common law system is an unprecedented step for the former post-soviet country, and Kazakhstan is the first country to create a legal enclave which operates on the principles of the common law system, which has a significant influence on the neighboring Central Asian countries.

Conclusion

The flexibility of the special economic zones makes it one of the most widespread tools of the unilateral economic law. However, despite being so easy to create, it might be very challenging to develop an effective SEZ which persistently attracts foreign investment into the national economy.

One of the main issues were related to the slowness of the reforms to be implemented within the special economic zones and inability of the central government to quickly assess and react to the current needs of the zones. Nevertheless, it seems that some states managed to create a comprehensive strategy which enhances the viability of an SEZ by employing several policies. One of such measures is increasing the autonomy of the local SEZ administration and authorizing them with self-regulatory powers. It also includes the legislative delegation to an SEZ administration to promptly develop a legislative basis within the zones. So, the modern SEZ in the financial sphere resembles the concept of the 'state within a state'. They are not just enclaves for the international business, but the special legal regimes with unique regulatory framework. The given framework is also substantially influenced by the principles of the English common law, which became the official legal system in the UAE, Qatar and Kazakhstani SEZs. Finally, the implementation of all of the mentioned initiatives requires from states conducting constitutional reforms, since the authorization of an SEZ administrations assume that it does not contradict to the Basic Law of the state and is incorporated into the constitutional law of the country.

The given trend seems to influence many countries, starting from China in 1980s, the UAE and Qatar in the early 2000s and recently Kazakhstan. Moreover, its impact reached other Central Asian countries, such as Uzbekistan and the Kyrgyz Republic who are actively discussing constitutional and other legislative reforms to implement necessary policies and to create similar special economic zones in financial sphere.

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