



SEZs as regulatory sandboxes: A Harmonisation Phenomenon?

Junianto James Losari

Counsel, UMBRA Strategic Legal Solutions (PhD Cand. at CityU Hong Kong)

[RCAP@10] The Road Ahead: Regional trade, global standards, and the future of legal harmonization

11 November 2022

Why Special Economic Zones (SEZs)

Promote industrialization and economic transformation

1



Laboratories for reform and regulatory innovation
(Dimitropoulos 2021)

2



Types of SEZs (Zeng 2021)

Export Processing Zones

Labour-intensive manufacturing sectors to encourage exports.

Intelligent City

More digitised services, automated customs services, better digital infrastructure.
E.g. Changwon in South Korea, Cross Border E-Commerce Pilot Zones in China.

Multi-function SEZ

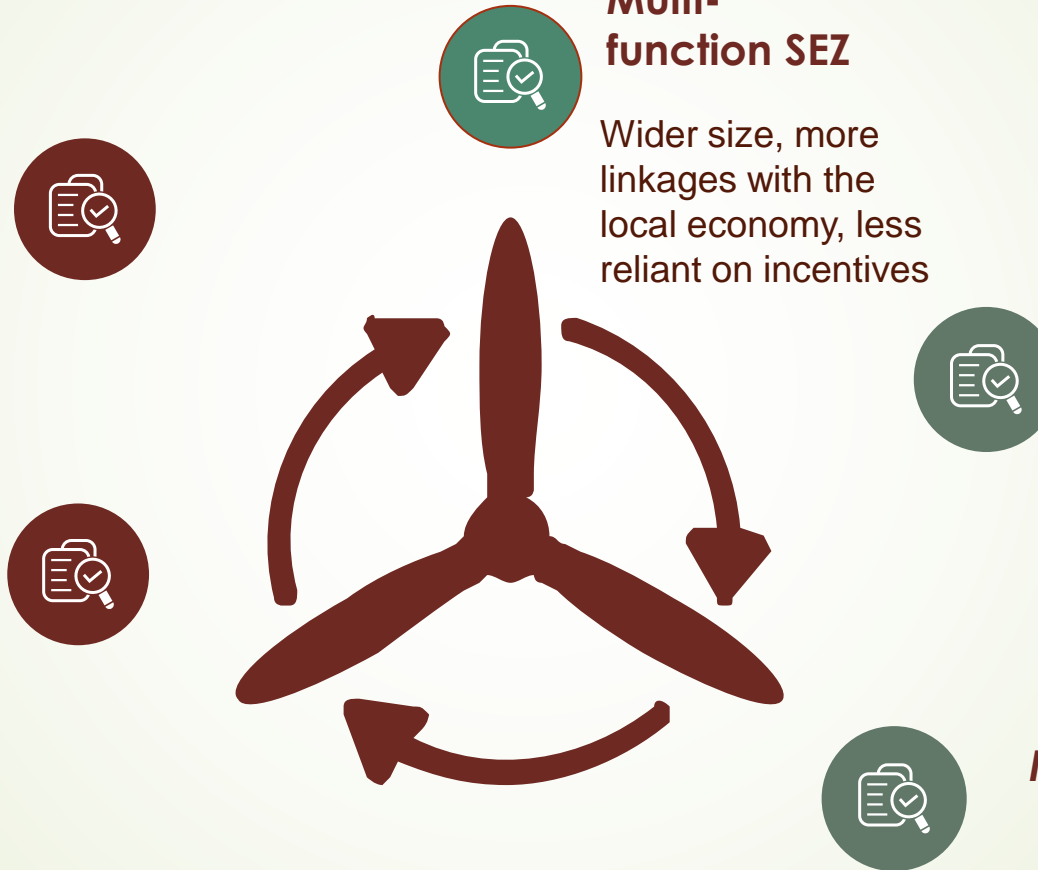
Wider size, more linkages with the local economy, less reliant on incentives

Eco-industrial parks

Ensures sustainability via integration of social, economic and environmental quality
E.g. Amata Industrial Park in Vietnam transitioning to EIP with the support of UNIDO.

Modern FTZs

Facilitate further trade and services liberalisation, simplified admin procedures.
E.g. DIFC.



Some characteristics of SEZs



Unilateral
economic law
(Chaisse 2021)



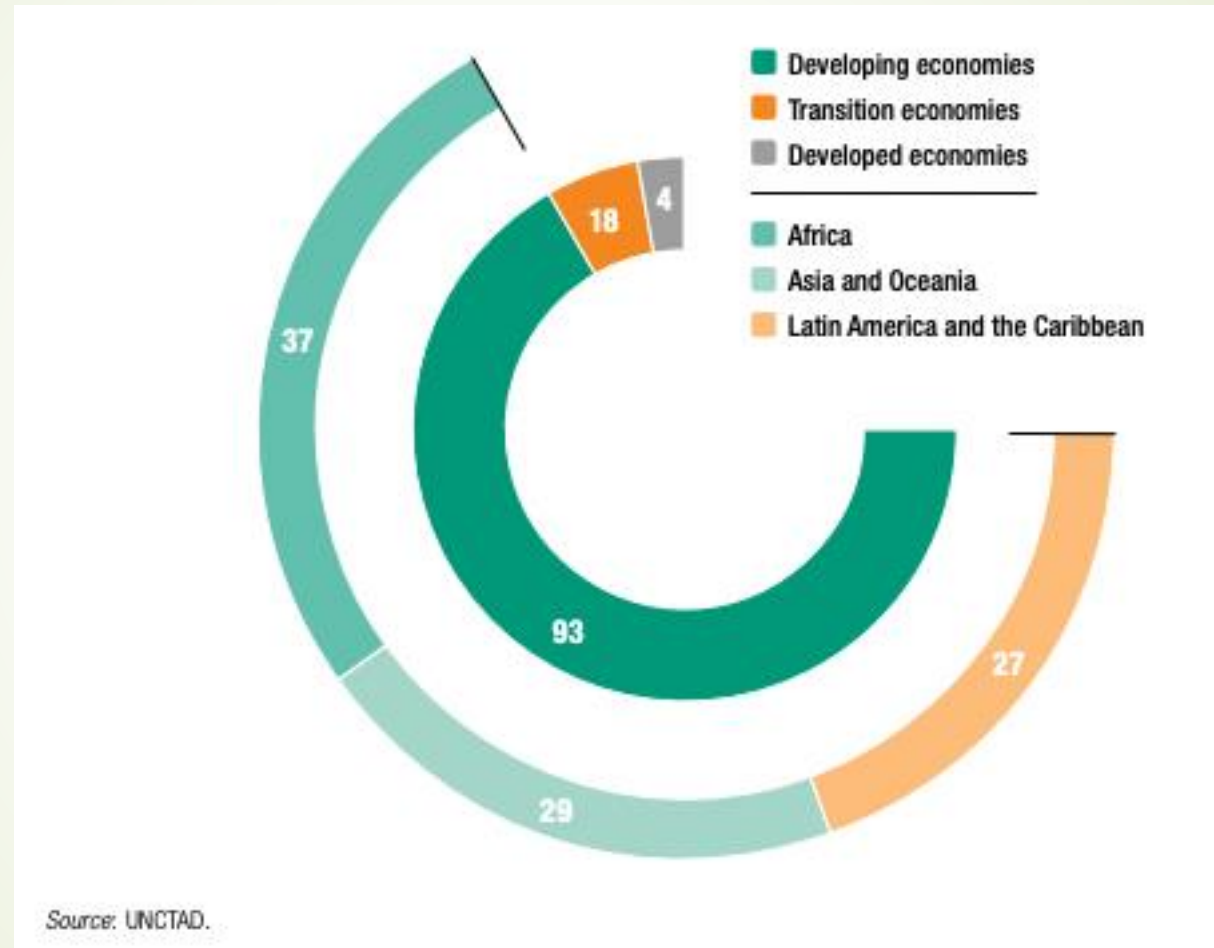
Intended to
attract foreign
investors through
incentives,
infrastructure, as
well as regulatory
regime



Regulatory
changes may
be subject to
Investor-State
Dispute
Settlement



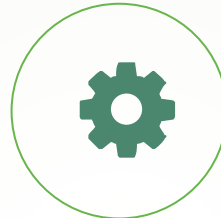
Regional Distribution of SEZ Laws



Source: UNCTAD World Investment Report 2019

Rule of Law Elements

Legality
Supremacy of law



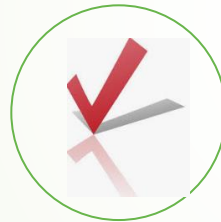
Access to Justice

- Independent and impartial justice system
- Fair trial



Certainty

- Predictability
- Stability
- Legitimate expectations



Equality before the law
Non-discrimination



Source: *Rule of Law Checklist*, Venice Commission Rule of Law (2016)

SEZs as regulatory sandboxes: some trends...



Int'l Commercial Courts – ensuring efficiency and familiarity



Adoption of English Common Law and/or other international best practices, e.g. UNCITRAL Model Law on Electronic Transferable Records



More liberal approach, e.g. allowing foreign arbitral institutions



Adoption of Arbitration Law based on the UNCITRAL Model Law

SEZs as regulatory sandboxes: Dubai International Financial Centre (DIFC)



DIFC Law which is based on the principles of English Law

1



Distinct Law than UAE Federal Law

Distinct Court



2

DIFC Courts that has authority over civil and commercial matters. Judges from common law countries.

Distinct arbitration law based on the UNCITRAL Model Law

3



Arbitration Law

Conclusion – A harmonisation phenomenon?

1

Harmonization effect to an extent

Adoption of English law, Arbitration Laws based on the Model Law, as well as amendment of certain laws to follow international best practices

2

Interesting further evolution in light of the current geopolitical environment

- Impasse at the multilateral fora in light of the heightened political tensions
- Volatile economic outlook



Further reading

- ▶ D Z Zeng, 'The Past, Present, and Future of Special Economic Zones and Their Impact' (2021) 24 Journal of Int'l Economic Law 259-275
- ▶ G Dimitropoulos, 'International Commercial Courts in the 'Modern Law of Nature': Adjudicatory Unilateralism in Special Economic Zones' (2021) 24 Journal of Int'l Economic Law 361-379
- ▶ J Chaisse, 'Dangerous Liaisons: The Story of Special Economic Zones, International Investment Agreements, and Investor-State Dispute Settlement' (2021) 24 Journal of Int'l Economic Law 443-471