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**UNITED NATIONS
INDUSTRIAL DEVELOPMENT
ORGANIZATION**



Ministry of Trade and Industry

Technical Assistance:

**Review of the SEZ Policy and
Development of Industrial Parks in Rwanda**

PUTTING THE “SPECIAL” INTO THE SEZ POLICY

**STRATEGIC AND OPERATIONAL POLICY RECOMMENDATIONS,
OPTIONS, AND ROADMAP**

30 June 2015 (as revised, 11 January 2016)

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I. INTRODUCTION

For Rwanda's industrial sector to reach the Vision 2020 target of 20% of GDP from the current contribution of 15% of GDP requires a dynamic and innovative industrial sector capable of recording an annual growth of at least 14% annually. The present study forms part of an ongoing technical assistance program since April 2013 by UNIDO to guide Rwanda's Ministry of Trade and Industry (MINICOM) in its efforts to catalyze Rwandan industrial development. Special Economic Zones (SEZs) can play an important role in meeting these objectives by providing infrastructure and incentives to manufacturing firms.

Despite impressive improvements in recent years, obstacles to investment persist in Rwanda. Historically, SEZs have been shown effective as vehicles for removing these obstacles by acting as pilot zones for testing more liberal development policies. They do through specific zone-based policies designed to reduce risks for investors and thus improve the profitability of new activities.

Under the draft East Africa Community (EAC) SEZ Policy, an SEZ is "any designated part of a Partner State territory... that has economic and other laws that are more free-market oriented than a country's typical or national laws."¹ Similarly, according to Rwanda's 2010 SEZ Policy: "In general, successful SEZs offer less bureaucracy. In Rwanda's context, it is particularly important due to the high cost of doing business.... The aim of the policy is to ... [e]nsure that the administrative processes which are the most problematic and incur the highest compliance costs are addressed in SEZs."²

Further to initial UNIDO reviews of the Rwandan SEZ Policy in June and October 2015, the Minister of Industry, on the 25th of November 2015, also asked that UNIDO provide a "review the Rwandan SEZ Policy from an *operational* perspective." Such a review seems well warranted.

The purpose of this report is to provide options and make recommendations for improvements to the SEZ Policy, Institutional and Operational Frameworks for SEZ regulation in Rwanda, in view of best practices and international experience, recent regional developments, the questions raised by the new investment code and other laws and policies, and the Kigali SEZ's track record to date. The report concludes with a roadmap for how UNIDO's proposed recommendations could be implemented.

The report is based primarily on inputs from consultations with key stakeholders including MINICOM, The Special Economic Zones Authority of Rwanda (SEZAR), the Rwanda Development Board (RDB), Prime Economic Zones, Ltd (PEZ), and the private sector (KSEZ users and the private sector federation). Analysis was supplemented with desktop research and specialist legal advice.

¹ East African Community, *Draft EAC Special Economic Zones Policy* (April 2014), p. 9).

² Rwanda Special Economic Zones Policy (May 2010), p.42-45.

A. Background of the Kigali Special Economic Zone

In 2006, the idea of the then “Rwanda Free Zone”³ was born of a plan to leverage a specially designated industrial site in Kigali to service the nearby export markets. Studies were, at the time, conducted⁴ demonstrating demand for such a policy tool in a number of different investment sectors. However, the accession of the Rwanda to the EAC in 2007 presented challenges for this strategy, as several of these markets became part of a single East African Community (EAC) Customs Territory – exports to which could no longer qualify for tax breaks.

In 2009, it was thus decided to replace the concept of a “Kigali Free Zone” and of an adjacent “Kigali Industrial Park” with that of a single, unified “Kigali Special Economic Zone” (KSEZ) – whose users would be able to leverage the platform for both export and domestic sales, without restriction.

To undergird the new Kigali SEZ, the government began to establish a legal and policy framework. It issued an SEZ Policy in 2010, and a new SEZ Law in 2011. Since that time, key regulations have been drafted to implement the law, including a ‘negative list’ of activities prohibited in the SEZs, an order establishing the SEZ Authority of Rwanda (SEZAR) as a dedicated SEZ regulator, and orders determining developer, operator and user license fees.

No new study on demand was conducted to assess the feasibility of the Kigali area as an SEZ, rather than an industrial park or a free zone. The continued rationale for the newly renamed program was in part predicated on the absence, in current industrially zoned areas in Rwanda, of basic onsite or connective infrastructure, or common services – making the mere presence of such infrastructure in the Kigali Zone somewhat “special” in a Rwandan context. Indeed, the Private Sector Foundation (PSF) supports such an underlying rationale for SEZs in Rwanda, as buttressed by the following findings of the *Establishments Census (2014)*⁵:

- The need for well-sited, serviced land, with clear title and zoning, and ease of obtaining associated construction permits⁶;
- The need for such infrastructure and common/managed services as a constant and stable power supply, security, connective transport infrastructure, etc.;
- Possible other “shared services” requirements, such as banks;
- The possible opportunities that could arise through platforms for enterprise collaboration.

Although these needs point more to the need for industrial parks than for actual SEZs, as conventionally understood on the basis of international practice, the PSF also feels that

³ Devised with the advisory assistance of Jebel Ali Free Zone Authority (JAFZA) and TSG: JAFZA/TSG, *Kigali Free Zone : Master Planning & Market Assessment Study* (September 2006).

⁴ *Ibid.*

⁵ National Institute of Statistics of Rwanda (NISR) / World Bank, *The Establishment Census, 2014* (June 2015).

⁶ SEZAR notes that the process for securing a construction permit in the SEZs is different from that in the rest of the country, as it is managed directly by SEZAR.

the Government should live up to its commitments under the SEZ Policy, and that these should furthermore be extended to any new industrial parks developed.

(1) Whether the Change in Focus from a “Free Zone” to an “SEZ” was truly a Watershed

It is the prevailing assumption, in Rwanda, that the shift in focus, post EAC accession, from a Free Zone to a SEZ program to a large extent somehow invalidated the previous foundational rationale for a zones program, as well as its underlying market and demand analytics. As a result, the “Free Zone” demand and markets originally identified were never pursued, the proposed 2006 regulatory approach and investment attraction strategy never implemented. However, it bears asking whether such radical assumptions were or are appropriate.

According to the original 2006 JAFZA/TSG study: “The region around Kigali is potentially a market of 50m people, with a purchasing power of US\$1-2 billion in basic fast-moving consumer goods (FMCG), and another US\$ 1.5 billion in consumer durables, all imported. Improved distribution systems focused in Kigali could capture some of this market share.”⁷ Continuing this analysis, the report stated:

Almost all consumption in this area is satisfied by imports. Rwanda’s largest manufacturer, a company producing biscuits, sweets, detergents, soaps and other basic consumer items,⁸ has a total annual turnover of about US\$10 million, which would account for less than five per cent of the Rwandan FMCG market of about \$240 million and at most one percent of the regional market. For firms entering the FMGC market, this suggests two scenarios for growth in Rwanda: capturing local demand for FMGC goods by competing effectively against imported products; or, providing a more efficient distribution channel to move imports cheaply to domestic consumers.⁹

The following map of the Free Zone’s market potential was included in the report in this regard:¹⁰

⁷ JAFZA/TSG, *op. cit.*, p. 2

⁸ Including personal care products, matches, cigarettes, sweets, cooking utensils and clothing

⁹ JAFZA/TSG, *op. cit.*, pp. 3-18 and 3-19.

¹⁰ *Ibid.*, p. 4-31.

Map 6: Potential Market of the Kigali Free Trade Zone



It bears note that the 5 Westernmost of the 7 KFZ encatchment areas on the above map, including the 2 largest, are all in either the DRC or in Rwanda itself. Indeed, in its own commentary on the map, the report stated that:

At 150 km from Goma, and 268 km from Bukavu over a road network in good condition, the KFZ could serve as a logistic platform for all the Eastern and Central parts of the DRC. Using the access provided by the Kigali international airport and supplemented by Goma international airport, the potential market of KFZ could extend to at least seven of the most economically viable regions in the DRC. The map... illustrates the linkages that allow for this level of access.¹¹

Elsewhere, the study stated, as regarded the Free Zone's proposed investment focus, that the: "industrial sectors chosen... are: i) shared services/ICT, ii) high value trading¹², iii) cold storage horticulture, iv) tea/coffee storage/warehousing, v) limited textile/apparel, vi) dry goods warehousing/manufacturing, and vii) petroleum storage... JAFZA/TSG recommends initially approaching petroleum distributors, dry goods warehousing and retailers, high value traders, logistics providers, and ICT/Shared services providers... focusing on... Kenya as a potential source... of investors... through the business associations".¹³

The report also found the following sectors (highlighted in green) as particularly promising –as can be seen, not merely (nor even primarily) because of an EAC demand:¹⁴

¹¹ *Ibid.*, p. 4-32.

¹² Local gemstones, essential oils, etc.

¹³ JAFZA/TSG, *op. cit.*, pp. 8 and 9.

¹⁴ *Ibid.*, pp. 5-4 and 5-5.

Sector (1)	Sub-Sector (2)	Type of Industry (3)	Presence in Rwanda (4)	Rwanda Exports Increasing to World (5)	Increasing COMESA Demand ("Dynamic Sector")? (6)	Rwanda Increasing Exports to East Africa (7)	Increasing World Demand ("Dynamic Sector")? (8)	Transportation Requirements (9)
Electronics	Semiconductors	Other Manufacturing	No	No		No		A
	Transformers	Light Manufacturing						A
	Computers	Light Manufacturing						A
	Computer Parts and Accessories	Light Manufacturing						A
	Telecommunications Equipment	Light Manufacturing	Minimal	Yes	No	Yes	No	A
	Electrical Machinery (Lamps, Automotive, Power tools, etc.)	Manufacturing	Minimal	Yes	No	Yes	No	A, B
	Electrical Medical Apparatus	Non-Polluting Manufacturing	No	No	No	No	Yes	A, B
	Sound Equipment	Light Manufacturing	No	No	Yes	No	Yes	A, B
	Television Receivers	Light Manufacturing	Minimal	Yes	Yes	Yes	Yes	A, B
	Electrical Circuits	Light Manufacturing	Minimal	Yes	No	Yes	No	A
	Electric Motors	Other Manufacturing						A, B
	Electrical Distribution Equipment	Other Manufacturing	Minimal	Yes	Yes	Yes	No	A, B
	Radio Broadcast Receivers	Light Manufacturing	Minimal	Yes	No	Yes	No	A, B
	Office Machines	Light Manufacturing	Minimal	Yes	Yes	Yes	No	B
	Electrical Household Appliances	Light Manufacturing	Minimal	No	Yes	No	Yes	A, B
	Pumps, compressors, and fans	Other Manufacturing	Minimal	No	Yes	No	Yes	B
	Watches and clocks	Light Manufacturing	No	No	No	No	No	A, B
	Instruments	Measuring and Checking Instruments	Light Manufacturing	Minimal	Yes	Yes	Yes	No
Optical Instruments		Light Manufacturing	No	No	No	No	Yes	A, B
Optical goods		Light Manufacturing	No	No	Yes	No	No	A, B
Meters and Counters		Light Manufacturing	Minimal	Yes	No	Yes	Yes	A, B
Photographic equipment		Light Manufacturing	No	No	No	No	No	A, B
Medical Instruments and Appliances		Light Manufacturing	Minimal	Yes	Yes	Yes	Yes	A, B
Soap and Cleansing Products		Other Manufacturing	Minimal	No	Yes	No	Yes	A, B
Dyes		Chemicals	No	No	Yes	No	No	B
Paints, and Varnishes		Chemicals	Minimal	Yes	Yes	Yes	Yes	B
Disinfectants, Insecticides, and Fungicides		Other Manufacturing	No	No	Yes	No	Yes	B
Rubber and Plastic	Perfumes, Cosmetics, and Toiletries	Other Manufacturing	Minimal	No	Yes	No	Yes	A, B
	Essential oils and flavor materials	Other Manufacturing	Minimal	No	Yes	No	Yes	A, B
	Pharmaceuticals	Non-Polluting Manufacturing	Minimal	Yes	Yes	Yes	Yes	A
	Explosives and pyrotechnic products	Other Manufacturing	No	No	Yes	No	Yes	B
	Stiches and Glues	Other Manufacturing	No	No	Yes	No	Yes	B
	Synthetic rubber latex	Chemicals	No	No	Yes	No	No	B
	Plastic Products	Other Manufacturing	Minimal	Yes	No	Yes	Yes	A
	Rubber Products	Other Manufacturing	Minimal	No	Yes	No	Yes	A

Finally, the report stated that: “The future of the Kigali Free Zone will depend almost entirely on its ability to capture a substantial share of regional trade, especially into Eastern DRC, but also including Rwanda itself... Though the KFZ should welcome any manufacturing, service, ICT or other industries that want to locate there, the focus of zone development strategy should be on trade... and logistics. Any promotion strategy for the Kigali Free Zone should therefore target companies that will use the zone primarily as a logistics and redistribution hub for regional trade”.¹⁵

In UNIDO’s view, little of the above analysis is in fact invalidated by the accession of Rwanda to the EAC in 2007. These markets should still exist and Rwanda’s decision not to pursue them, or to give itself the policies which would facilitate this objective, is thus somewhat puzzling.

¹⁵ *Ibid.*, pp. pp. 5-19 and 5-20.

(2) Nature of KSEZ Investment and its Impact

The land allocated for KSEZ was expropriated and availed to the project by the government, which then undertook to compensate its previous occupants. The owner, developer and operator of the KSEZ is Prime Economic Zones Co. Ltd (PEZ), a private company with seven shareholders: the Government of Rwanda, RSSB, Sonatwa, BRD, Magerwa, Crystal Ventures and Prime Holdings. PEZ mobilized equity to the amount of US\$ 45 million for Phase 1 in order to develop the site's infrastructure, including its access and internal roads, water, electricity, fiber-optic and sewage system. Phase 1, which encompasses 98 ha, boasts some 28 operational investors to date, including seven companies relocated from Gikondo Industrial Park. All plots in Phase 1 have been sold.¹⁶ PEZ has also earmarked \$30 million for developing a 178ha Phase 2 to the zone, for 70% of which has already been pre-booked by investors.

Investment in KSEZ is reportedly largely attributable to the three following factors:

- Pent-up local industrial demand;
- Investors from Gikondo Industrial Park relocated into the KSEZ on land purchased therein by MINICOM; and
- Foreign investments mainly from Korea, China, India, Tanzania, UK, Belgium, France and Switzerland, and more recently from Chinese garments manufacturers.

Some of the principal current investors in KSEZ include companies engaged in the following sectors:

- Construction materials (e.g., aluminium, piping, steel structures, concrete, roofing and tiling, prefabricated drywall, etc.) –representing nearly 40% of all industrial investment –including Indian, Chinese and German investors;
- Agro-industry (e.g., wheat flour, baby food, biscuits, etc.) –including American and Lebanese investors; and
- Light manufacturing and assembly (e.g., garments, computers, cardboard packaging, LED lights, mattresses, etc.) –including Chinese, Indian and Argentinian investors .

Investment trends in the zone however seem to be shifting away from manufacturing. Indeed, 65% of Phase 1 investment is in manufacturing and 30% in services while, in Phase 2, just 58% of investment is expected to be in manufacturing and 37% in services (including warehousing and ICT). Furthermore, investment is shifting away from FDI. While 56% of Phase 1 investment is local and 44% foreign, in Phase 2 the local investment component is expected to rise to 74% (with just 26% FDI).¹⁷

¹⁶ Plots are sold to investors at a subsidized rate with incentives, including installments with a down payment of 30%, and a grace period of two years given after which they either fully pay the balance of 70% or pay in installments for five years with an interest rate of 10%.

¹⁷ MINICOM, *SEZ & Industrial Parks in Rwanda* (November 2015)

To date, this investment has generated 3,000 jobs. No other economic impact assessments have however been conducted on the causes or effects of this investment, whether by PEZ or by MINICOM.¹⁸

The Minister of Industry thus indicated to UNIDO that “there is no evidence of investor demand” for SEZs as such, as opposed to for a simple industrial park. PEZ does not explicitly refute this assessment –although it notes (as does PSF) that investors claim to be waiting for the Government to live up to the commitments contained in the SEZ Policy and the KSEZ marketing materials.

In UNIDO’s view, legitimate questions abound as to the degree to which any of the success in terms of land take-down and investment at the KSEZ is in fact attributable to the putative SEZ program, which has not yet been properly implemented in terms of its incentives or institutional governance. Going forward, equally valid questions however also need to be considered as to whether the success of the zone thus far can be sustained, based on the reasons for which the investment has occurred to date (e.g., pent-up local industrial demand), whether the KSEZ is likely to add much economic value in the context of current investment trends, what can be expected to occur in the provincial zones, and whether the initial “free zone” logic and investment promotion strategy should have been set aside in favor of an industrial policy.

B. Secondary City and District-level Industrial Parks

In addition to the KSEZ, the government has proposed that nine (9) new, secondary city and district-level industrial parks be developed. The sites total 756 ha in combined area in the following locations:

- **Bugesera** –where 330 ha¹⁹ has been allocated in order to deal with KSEZ overflow from the area’s existing industrial base,²⁰ to take advantage of the economic asset which the Kigali International Airport constitutes, and to target opportunities in the Ugandan marketplace as well as the local (subnational) market. According to its zoning plan,²¹ the proposed industrial park would cater to small, medium and heavy industry (in that order), but also plan for truck parking, a water treatment plant, a residential area, an expo trade and shopping centre, a recreation area, and a health centre. The project is currently underway, with a RWF 16 billion, 18-month EPC development contract for Phase 1 having been awarded to NPD COTRACO Ltd & Real Contractors Ltd (under the QS supervision of TECOS) in May 2015, with a view to completion by October 2016;
- **Nyabihu** –A proposed 44ha park set to target opportunities in the RDC marketplace from the more stable industrial investment location of Rwanda as well as the local (subnational) market;

¹⁸ MINICOM reports that it is discussing the possibility of such studies with the World Bank at this time.

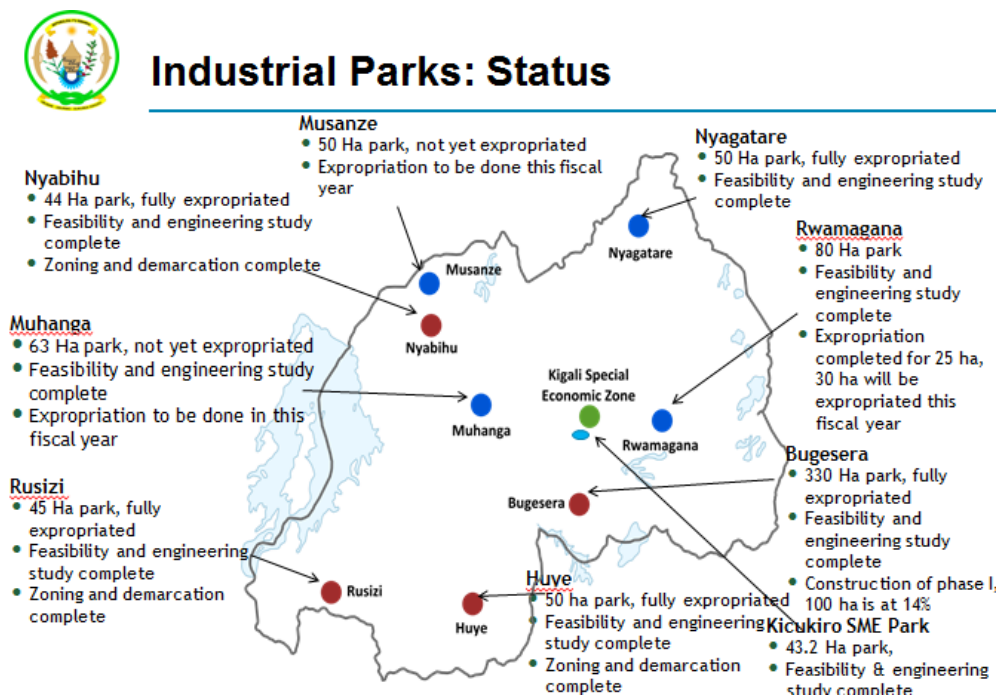
¹⁹ Including 100 ha, for Phase 1, and 230 ha, for Phases 2 and 3.

²⁰ Which already includes a bottling plant, and a pulp & paper plant, where there is reportedly investor demand from and a pipeline of 2-3 investors, and which MININFRA feels meets its “productive use area” (economic viability) criteria for infrastructure investment.

²¹ Prepared for MINICOM by “TECOS Bureau d’études et conseils”, in January 2014.

- **Nyagatare** –A proposed 50ha park slated to target opportunities in the Tanzanian marketplace as well as the local (subnational) market;
- **Musanze** –A proposed 50ha park targeting tourism sector opportunities;
- **Huye** –A proposed 50ha park for which there is reportedly some investor demand including a pipeline of 2-3 investors, and for which the District Government has agreed to finance roadworks under a Performance Contract;
- **Rusizi** –A proposed 45ha park where there is reportedly investor demand from and a pipeline of 2-3 investors, and the District Government has agreed to finance roadworks under a Performance Contract;
- **Kicukiro SME Park** –A proposed 43.2ha SME park in greater Kigali, in an area with existing investment in furniture, steel, paints, and warehousing, amongst others; as well as
- **Rwamagana**²²; and **Muhanga**.

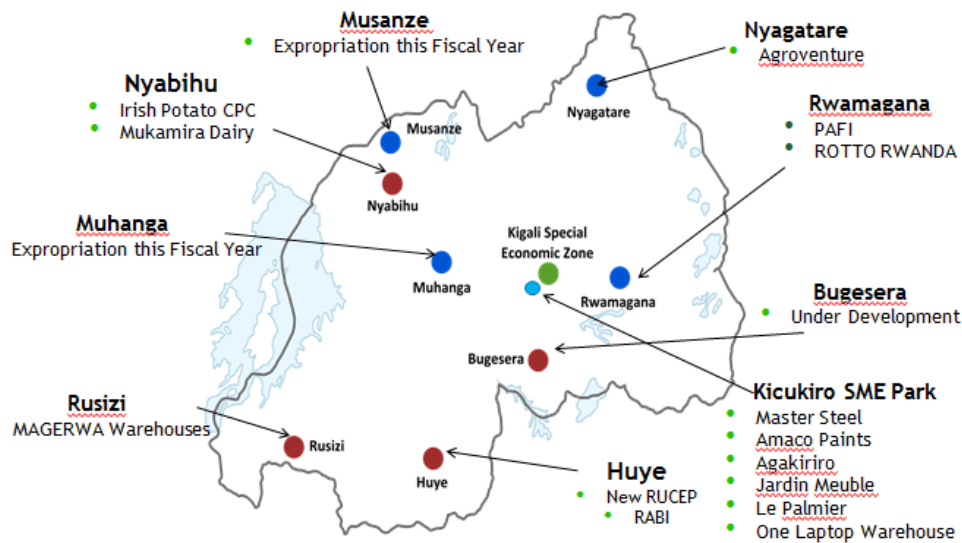
The status and argued logic for these new industrial parks is illustrated in the following two maps, prepared by MINICOM:



²² Which MININFRA also feels meets its “productive use area” (economic viability) criteria for infrastructure investment.



Industrial Parks: Existing Industries



(1) Justification for the Industrial Parks

MINICOM views the proposed new Rwandan industrial parks, outside of Kigali, as creating a “pull factor” for companies and employment in the regions, and for deconcentration of growth from Kigali. MINICOM however notes that, although some superficial feasibility studies have been conducted, there has been no robust market demand or economic analysis for these projects. It should be stressed from the outset that, in light of international experience, such a “build it and they will come” strategy for industrial decentralization and regional development has, unless supported by robust demand and economic analytics, proven a consistently failed strategy, in one country after another.

The value proposition for industrial parks depends on data regarding:

- Investor sector, origin, and size profiles;
- Markets investors will sell to;
- Investors’ alternative regional corporate locations and zones under construction;
- Specific investment climate constraints; and
- Regional/competitor lease rates, services, facilities and other factor costs.

For this reason, successful zones rely heavily on demand projections, which forecast the growth of various investment sectors in the zone over time. Further detail on methodologies for determining which locations are suitable for zones, as well as on demand projection approaches, is provided in Annex A.

Following a similar logic to that of the internationally tested approach, MININFRA has indicated that the national development priority should be on “productive use areas” within the country, noting that some of the proposed industrial parks would not qualify under such an approach. MININFRA indicated to UNIDO that it generally only itself proceeds with the financing of projects subject to stakeholder consultations, as well as

economic cost-benefit and impact, utilization, value-for-money, cost recoverability, and financial viability analyses.

Although MININFRA has included the industrial parks in its “Priority Infrastructure Plan for 2016-2017”, the budgeting of these projects remains subject to a final “Needs Assessment” exercise. In this context, MININFRA has asked MINICOM to update current feasibility studies for the proposed parks, including power load projections, etc. At this juncture, while the parks seem set to be publicly financed, the question of the level of government financing (and thus the potential size and scale of the parks) would thus appear to remain an open question.

As the required investment for the development of the various proposed industrial parks is enormous (at an estimated RWF 100 billion²³ *excluding the required funds for studies and expropriations*), MINICOM has reasonably proposed that they be prioritized, beginning with Bugesera Industrial Park, near the Entebbe Airport.

(2) Ownership and Management

It is proposed by MINICOM that, after their initial public development, the industrial parks then be operated by the private sector rather than by the Government. Indeed, MINICOM in October 2015 issued a RWF 150 million RFP for transaction advisory services regarding the conclusion of operator agreements for the industrial parks –and reported that it was, as of the UNIDO mission in late November 2015, in the process of shortlisting candidates for this advice. Cognizant of the link between investor demand and prospective operator demand, MINICOM is also planning on requesting additional funding for demand studies, from July 2016 onward. Similarly, SEZAR also intends to commission market demand and financial feasibility studies of its own for the new industrial parks.

MININFRA, through the Rwanda Housing Authority (a subsidiary agency) has indicated that it intends to finance the development of external access roads to the industrial park sites, internal arterial roads, as well as on-site water and power distribution systems, through a general fund at its disposal –with eventual maintenance charges however to be the responsibility of the users.

Furthermore, while private operators are being sought and identified, it is proposed by MINICOM that, on an interim basis, the District Governments be given both the land titles and responsibility for operation of the industrial parks, under guidelines to be issued by MINICOM and under overall MINICOM supervision.

SEZAR, MININFRA and the PSF alike have however expressed considerable reservations regarding this approach to the development and operation of the new proposed industrial parks, including for reasons relating to local technical capacity and bureaucracy, as well as low prospects for economic impact, and financial sustainability.

Indeed, it is contrary to best practice to proceed with industrial park or SEZ development without proper demand studies and developer searches. Neither the true level of investor

²³ Including RWF 65.8 billion for Phase 1 development plans alone (15bn for Muhanga, 13.7bn for Rwamagama, 12.8bn for Bugesera, 8bn for Musanze, 7bn for Nyagatare, 5.3bn for Rusizi, 4.5bn for Nyabihu and 4.4bn for Kicukiro).

demand for the parks, nor the appetite for their possible development and operation by private parties on a financially sustainable basis, appears to have been as yet evaluated. How exactly their location, size and infrastructure requirements, policy design, services, ownership structure, projected economic value, financial viability and other parameters have been determined in this context is thus highly questionable, from a good practice perspective.

It is entirely possible that, with proper demand and financial analytics supporting certain of the parks or infrastructure enablers, the private sector might for instance be prepared to absorb all or some of the associated development and operating costs instead of having to impute these expenditures to the Government –particularly if Government were willing to absorb a share of the financial risk, by providing the land and off-site infrastructure.

A new Rwandan Public Private Partnership (PPP) Framework Law (“the PPP Law”), championed by the RDB, was in fact adopted in on November 9th 2015.²⁴ Under the Law, a “PPP Unit” is to be established at the RDB, which will sit on and advise a “Public Investment Technical Team” (“PITT”) housed within the Ministry of Finance and Economic Planning (“MINECOFIN”),²⁵ as well as assist Government Contracting Authorities in their PPP negotiations. The PITT will fund PPP studies and approve all PPPs, based on value-for-money analytics. If the form of PPP opted for by a Government “Contracting Authority” (such as MINICOM or MININFRA) were to require the establishment of Special Purpose Vehicles (SPVs) with Government equity, this equity would nominally be held by the MINECOFIN’s “Participation Unit” –with Board representation from the technically concerned Contracting Authority. Additional equity in such investments can also be injected by the RSSB.

Power may also, in Rwanda, rather flexibly be supplied to the parks on an Independent Power Plant (“IPP”) basis, with the possibility of direct sales to end-consumers (as opposed to merely to the grid or to large consumers). IPP power producers can furthermore negotiate the applicable consumption tariffs for these users with RURA. This provides a strong legislative and regulatory basis for an alternative to Government investment in the parks’ power infrastructure –with its possible risk of over- or under-investment.

Finally, Rwanda has now begun issuing infrastructure bonds. A RWF 15 billion infrastructure bond was issued in November 2015,²⁶ and was heavily oversubscribed,

²⁴ The Law was only available in the official Kinyarwanda at the time of the drafting of this report and could thus not be formally consulted. See, for instance: <http://www.newtimes.co.rw/section/article/2015-11-10/194254/>

²⁵ <http://www.minecofin.gov.rw/index.php?id=2>

²⁶ See: <http://rwandaeye.com/featured/7460/rwanda-to-issue-rwf-15bn-for-infrastructure/>; <http://af.reuters.com/article/rwandaNews/idAFL1N12Y0B020151103>; <http://cma.rw/content/government-rwanda-successfully-issued-3-year-fixed-coupon-treasury-bond-worth-15-billion-frw>; <http://www.newtimes.co.rw/section/article/2014-11-22/183301/>; http://www.gov.rw/news_detail/?tx_ttnews%5Btt_news%5D=973&cHash=db341c63aaee47cbcd0ba1db14cf801f; <http://www.rnanews.com/economy/11085-rwanda-3year-bond-of-rwf15-billion-subscription-level-at-17639>; <http://en.starafrica.com/news/rwandas-3-year-bond-oversubscribed-by-176-percent.html>; <http://makuruki.rw/en/spip.php?article796>; and <http://www.twizigamire.com/category/irembo/>

following a similar bond issuance in February.²⁷ Earmarked for specific SEZ projects, they could be entirely financed by private investment.

A framework thus exists for bringing the private sector into the proposed industrial parks' development and operations from the outset, should the Government wish to take advantage of these possibilities.

It is UNIDO's recommendation that the development of the proposed new Rwandan district-level industrial parks, as well as the issuance of any RFP regarding transaction advisory services in connection with potential operators, be provisionally suspended, pending the completion of robust demand analytics, which can include a survey of priority industry needs and areas, for whether the projects should or should not be SEZs, whether there is any likely significant economic return from them, as well as an initial assessment of the interest of the private sector to develop and finance the projects –all of which would better inform decisions around rationale, financing, and prioritization of their development. Further detail on how demand assessments should be conducted is provided in Annex A. It is also this report's recommendation that MINICOM refrain from issuing guidelines for District management of the industrial parks pending these findings on private sector interest in the parks and in their development, management and financing. In this context, UNIDO commends MINICOM's indicated receptiveness toward perhaps including demand assessment tasks in the proposed transaction advisor's contract.

II. REGULATORY ANALYSIS AND STRATEGIC RECOMMENDATIONS FOR THE SEZ POLICY

Prior to evaluating the operational experience of the Rwandan zones program and the lessons which it yields, the first question UNIDO was asked by MINICOM to address in the context this study was to provide its assessment of the legal and regulatory aspects of the policy –which is what this section of the study shall therefore first discuss.

In this context, it bears noting from the outset that, when the laws and regulations establishing the SEZ program were adopted after 2011, they departed in several important ways from the 2010 SEZ policy. These early policy dissonances should be assessed, with a view to greater policy alignment with best practices and lessons learned from SEZs worldwide, as well as with the current investment climate in Rwanda.

Furthermore, in 2015, Rwanda passed a new Investment Code²⁸ that aims to improve revenue collection and clarify and realign incentives to investments in priority sectors, such as energy, ICT, transport and logistics, manufacturing, and business process outsourcing. The degree to which the Code and the SEZ program are aligned and are both necessary has raised questions in Rwanda policy circles.

Finally, Rwanda is now party to several regional trade agreements which may have implications on its SEZ program.

The time is ripe, therefore, to update the SEZ Policy to ensure it aligns with these new laws, treaty arrangements, and other investment and economic developments of the past half-decade.

²⁷ <http://www.newtimes.co.rw/section/article/2015-02-27/186405/>

²⁸ Law N° 06/2015 of 28/03/2015 Relating to Investment Promotion and Facilitation.

A. Investment Climate

As “end-to-end” investment climate solutions, SEZ programs are, at the base, a package of policies, basic infrastructure and common public goods, aimed at addressing gaps and failures in the business environment, in a geographically concentrated manner. It is thus relevant to ask whether the conditions in Rwanda are of such a nature that an SEZ policy is necessary. Though not all economic constraints can be eased through an SEZ, constraints resulting from poor business environments, such as a lack of services, quality infrastructure and services, bureaucratic and inefficient regulation, and access to inputs for processing, are particularly well-suited for a zones-based solution. In these contexts, zones can often help spark reforms in a country’s key economic growth nodes, prior to eventual nationwide implementation.

The 2010 SEZ Policy focused on two ways in which the SEZs would, in addition to quality infrastructure and serviced plots, address Rwanda’s economic challenges: (1) Through improvements to the general investment climate, especially removal of red tape and streamlining of regulatory approvals and government services; and (2) through “smart” tax incentives. Each of these issues is discussed in further detail below, along with a description of how UNIDO proposed the policy be updated in light of other considerations.

(1) 2010 SEZ Policy Matters Related to Investment Climate

The 2010 SEZ Policy noted that regulatory compliance costs are high in Rwanda and that addressing this issue was one of the “main goals” of the SEZs.²⁹ It stated that “compliance costs borne by formal businesses in Rwanda have been recently estimated at 3% of GDP.”³⁰ It further explained that zones can offer investors regulatory relief by reducing bureaucracy and streamlining processes for registration, permits, land titles, EIAs, and customs clearances through a single dedicated zones regulator and by piloting reforms in these areas throughout the country.³¹ As the policy noted:

“Regulatory relief (the simplification and streamlining of company registration, work permits, licenses, custom inspections, tax administration, etc.) for investors is frequently overlooked as a key benefit for SEZs. In general, successful SEZs offer less bureaucracy. In Rwanda’s context, it is particularly important due to the high cost of doing business.... The aim of the policy is to.... [e]nsure that the administrative processes which are the most problematic and incur the highest compliance costs are addressed in SEZs”³²

The policy called for streamlined procedures, reduced waiting times, fewer documentation requirements, accessible authorities, and business-friendly officials. It also noted that programs for skills development can increase the quality of the labor force, which could be an additional improvement to the business climate offered through SEZs.

²⁹ Government of Rwanda, *Special Economic Zone Policy* (May 2010), p. 61.

³⁰ *Id.*, p. 9.

³¹ *Id.*, p. 9.

³² *Id.*, p. 42-45.

In particular, the Policy highlighted the following regulatory processes as top candidates for simplification in the zones:

- Licensing of SEZ users;
- Land administration processes, such as those for issuing and/or approving deeds, plans, lease contracts and land titles, which would be indirectly streamlined by relying on the fact that SEZ land will have already been designated and their ownership and title established. The SEZ Policy envisioned that once land is designated as an SEZ and title transferred to the SEZ owner/developer, the deeds, plans, lease contracts, certificates of title, and land titles, could be made ready for SEZ users and provided to them as soon as the National Land Center (NLC) signs the land title (an action that should take no more than 7 days);
- Environmental Impact Assessment, construction permit, and certificate of occupancy processes, which would once again be indirectly streamlined by relying upon the strategic impact assessments already conducted upon zone land in the feasibility studies;
- Customs procedures, which are of particular importance in trade-oriented zones and could be simplified through having on-site customs officials, who would not have to assess and collect duties, focus on ensuring that merchandise does not enter the customs territory unauthorized, goods are transferred into and out of the zones quickly, and documentation is reduced through a single declaration form and single on-site inspection;
- Tax administration, which could be simplified so as to reduce compliance costs, including by reducing the burden of tax disputes with the Rwanda Revenue Authority (RRA), and having dedicated and knowledgeable RRA officials on site in the zones with defined timeframes for conducting their various procedures.

As discussed in further detail later in this report, the SEZ Policy recommended an autonomous regulator with authority over the bulk of these matters, including the ability to issue the majority of licenses and permits required of SEZ enterprises. This autonomous regulator would provide its services through a one-stop center, which would include company registration and licensing, land titling and administrative services, utilities connection, environmental clearances, immigration and labor related services, and tax clearances.³³ In asking oneself if the current SEZ program is truly a “special one,” the degree to which such a dedicated SEZ regulator, dealing with all of the above issues, was ever effectively put in place bears reflecting upon.

(2) Required Updates to the SEZ Policy based on Rwanda’s Current Investment Climate

SEZs are about more than serviced land and a One-Stop Shop. Indeed, internationally, there is relatively little in such a value proposition that would be considered “special” as an investment location. In this context, if Rwanda wishes to have a competitive SEZ offering, it must consider enhancing its incentives package in general –including through, but not limited to, its tax incentives offering. Non-fiscal investment incentives should however also be offered, particularly those targeted at reducing constraints in the business environment.

³³ Id., p. 61.

Rwanda has made significant strides to improving its business environment in recent years, particularly in the areas of registering property and access to credit. Its ranking on the World Bank's Doing Business reports improved more than any other in Sub-Saharan Africa, climbing to second in the region behind Mauritius.³⁴ Nevertheless, significant areas of improvement exist, as can be gleaned from the 2016 Doing Business Report:

Topics	DB 2016 Rank	DB 2015 Rank	Change in Rank
Starting a Business ✓	111	117	↑ 6
Dealing with Construction Permits ✓	37	36	↑ -1
Getting Electricity	118	115	↑ -3
Registering Property	12	12	No change
Getting Credit ✓	2	4	↑ 2
Protecting Minority Investors ✓	88	121	↑ 33
Paying Taxes ✓	48	47	↑ -1
Trading Across Borders X	156	77	↑ -79
Enforcing Contracts	127	123	↑ -4
Resolving Insolvency ✓	72	97	↑ 25

✓=Doing Business reform making it easier to do business. X=Change making it more difficult to do business.

Existing obstacles to starting a business persist and are of highly debatable social or economic value. One reason for Rwanda's low ranking in ease of starting a business is the requirement that companies buy an electronic billing machine from a certified supplier at a cost of approximately RWF 150,000. While reforming this requirement in SEZs would be relatively straightforward, there are other issues at play as well...

A Rwandan SEZ regime could also improve rankings in some of the Doing Business indicators where Rwanda performs least well through the following measures:

- Certain tax registrations (e.g., *Patente*, VAT) could be combined with the standard TIN registration;³⁵
- Import and export documentary requirements could be reduced for SEZ Users, as well as Pre-shipment Inspection (PSI) requirements waived, to bring these requirements in line with those of leading global performers; and
- Facilitated on-site access to arbitration should be availed to SEZ Users.

Reforms to the number, cost, and processing time of customs documents could also significantly improve Rwanda's ranking in ease of trading across borders. Comparing Rwandan import/export documentary requirements to those of Romania and of Burundi for instance reveals the following opportunities for optimization:

³⁴ World Bank, Doing Business in 2016, p. 13, 14.

³⁵ For independent corroboration of the requirement for separate registrations, see: <http://rwanda.eregulations.org/>

Rwandan Import/Export Requirements (in addition to PSI)

Export documents	Import documents
Cargo Release Order	Bill of lading
Certificate of origin	Cargo release order
Commercial invoice	Certificate of conformity
Export declaration	Certificate of origin
Export license	Customs Import Declaration
Packing list	Import license
Sanitary certificate by Minister of Agriculture	Packing list
Transit document	Transit document

Romanian Import/Export Requirements

Export documents	Import documents
CMR waybill	CMR waybill
Commercial invoice	Commercial invoice
Intrastat	Intrastat
Packing list	Packing list

Burundian Export Requirements

Export documents
Certificate of conformity
Certificate of origin
Commercial invoice
Export declaration
Export license
NIF (fiscal identification number)
Transit document

Note that Burundi (a fellow EAC Member State) for instance requires no Cargo Release Order and no Packing List for exports, whereas Rwanda does, in spite of its less favourable logistics positioning.

Other business constraints not measured by the Doing Business Report also appear to be present in Rwanda. Investors have cited the government's resistance to issuing visas to expatriate staff as one of the most significant limitations to business.³⁶ The Investment Code has brought a modicum of relief—under Point X of the Code's Annex, it is possible for foreign investors to obtain up to 4 residence permits for expatriate staff. While a useful measure, it is still not a particularly competitive one by international standards, which often allow up to 30% of payroll, 20% of staff, or all management positions to be taken up by expatriate, if necessary –according to the individual investor's requirements. It may be noted that, due to the prohibitive cost of expatriates, it is rare that investors actually avail themselves of these generous quotas –however, their effectiveness in signalling the openness of the regime to foreign investment is important.

Moreover, some investors have stated that coordination between the Rwanda Development Board (RDB), which is the authority responsible for streamlining business approvals for investors, and the RRA is weak.³⁷ In some instances, the RDB is reported to have given investors assurances that they are exempted from taxes or duties without the

³⁶ U.S. Department of State, *2015 Investment Climate Statement - Rwanda (May, 2015)*.

³⁷ *Ibid.*

necessary agreement from the RRA –rendering the RDB exemptions of little value and sending a weak message to investors regarding Rwanda’s commitment to them.³⁸

There does thus seem to be a rationale for an SEZ program as a “laboratory for reform” in the investment climate, as suggested by the 2010 SEZ Policy,³⁹ as Rwanda’s SEZ policy could be geared to improve these and other hindrances to the business climate.

Are Zones “Pressure Valves” or “Catalysts” of Reform?

Some economists have noted that SEZs sometimes can actually prevent or delay nationwide reforms rather than catalyze them.⁴⁰ In these cases, SEZs act as a ‘pressure valve’, diverting reform efforts to an enclave area and leaving the rest of the country to “muddle along” without reforms. Examples of “pressure valve” or enclave zones include the Dominican Republic and Tunisia. On the other hand, countries such as China, South Korea, Malaysia, Jamaica, Kuwait, and Jordan have all avoided this result and instead used their SEZs to spark reforms to the business environment. Such countries developed their zones policies in the context of broader strategic structural reform plans. To mention just a few examples:

- In **China**, the reform-minded Deng Xiaoping launched SEZs in the 1980s to experiment with market-oriented FDI, land, tax, and labor reforms, before extending them nationwide.
- **Jamaica** de-monopolized high-speed telecommunications services in the Montego Bay Free Zone before implementing a nationwide telecommunications deregulation program.
- Foreign investment ownership restrictions hindered growth in **Kuwait** and other Middle Eastern countries until they were piloted in zones, such as the Kuwait FTZ, and then extended to all companies.
- **Jordan’s** Aqaba SEZ launched automated, fast-tracked business registration and customs systems to pave the way for nationwide rollout.

SEZs can prove particularly useful pilots for reform when powerful political or economic stakeholders have a vested interest in preserving or are ideologically beholden to the status quo. In these situations, SEZs helped build the case for reforms by testing and proving their effectiveness, and thereby overcoming political opposition.

Despite aggressive reform efforts over the past two decades, residual economically inefficient “legacy” policies and practices have continued to hinder the business environment in Rwanda. The Kigali SEZ has attempted to address some of these inefficiencies, but further possible best practice policy solutions could still be implemented. Certain reforms, including regarding starting of a business, customs documentation, and expatriate entry, as discussed above, can and should be tested in Rwanda’s SEZs.

³⁸ Ibid.

³⁹ “The main potential economic benefits from zones are: [...] *Demonstration effects for new policies and reforms* – zones can act as experimental laboratories for application of new economic policies and approaches.” (Rwanda Special Economic Zone Policy, May 2010, p. 7)

⁴⁰ FIAS/World Bank, *Special Economic Zones: Performance, Lessons Learned, and Implications for Zone Development*, p. 41-43. (April 2008).

B. National Legislation Pertaining to the SEZ Program

(1) 2015 Investment Code

The 2015 Investment Code appears to impose requirements on investors that may not be necessary in all circumstances. For example, Articles 11 and 13 require all investors to submit business plans, which are to include a market survey, five-year income projection, and details of technology and knowledge transfer, and to not deviate from their business plan. Questions like how long it will take for a business to achieve a return on investment should not determine whether they are licensed, as the businesses' investors and, ultimately, the market are in better positions to determine whether business plans are viable. Relatedly, investment certificates should not be revoked if changes detrimental to the business are made, as Article 18(2) arguably suggests. Unless the government is acting as an investor itself, it does not need to consider the chances of a business's success.

If a business is applying for an incentive based on, for instance, its investment in a prioritized sector, it is reasonable to require the business to demonstrate that its activities fall within that sector. However, as discussed below, recognizing that SEZs in Rwanda are a multi-sector geo-economic policy rather than a sectoral policy instrument, this memorandum supports removal of sector-specific tax incentives in SEZs in favor of a low, flat tax applicable to all zones investors. If this recommendation is followed, it is not clear that a business plan should be necessary for regulatory approval purposes in the SEZs.

(2) SEZ Law and Regulations

While the SEZ Law and Regulations are strong in several respects, there are a few noticeable areas where they could be improved.⁴¹

First, to its credit, Article 6 of the SEZ Law adopts a "negative-list" model of licensing, allowing all business activities not on the negative list to be licensed. However, Article 9(3) also suggests that there will be separate negative lists for each zone.

It would be better for SEZ negative lists to be uniform in all zones and not overly restrictive as to the types of activity that may be conducted.

Second, these licenses should, if SEZ best practices were to be followed, replace any other business license, including the investment certificates required under the 2015 Investment Code. Nothing in the SEZ Law or regulations provides for this; indeed, Article 6(6) of the SEZ Users Regulation⁴² requires SEZ users to "obtain any other licenses required under applicable law." As a result, rather than reducing red tape, the SEZ Law adds an additional licensing requirement not present outside the SEZs.

Since many of the requirements to obtain an SEZ license under Article 4 of the SEZ Users Regulation appear rational, they should replace the requirement to obtain an investment certificate under the Investment code or any other related business license.

Third, the SEZ Users Regulation appears to take an unnecessarily punitive approach to SEZ users that seek bankruptcy protection or commit unintentional minor violations of

⁴¹ The current review of the SEZ Law and Regulations is not a comprehensive, but rather a strategic one, focusing on just a few key issues, rather than on every possible opportunity for improvements to them.

⁴² Regulation N°03/2012/SEZAR of 20/12/2012 of the Special Economic Zones Regulatory Authority of Rwanda Governing Special Economic Zone Users.

law. Articles 7(2) and (3) authorize SEZAR to strip SEZ licenses from users who file petitions for bankruptcy or insolvency and who have petitions filed against them that are not dismissed within 30 days. This is unnecessary as businesses that cannot afford to continue their activities in the zones will voluntarily withdraw. It also serves to deter investment by lessening the availability of bankruptcy protection. Additionally, Article 7(4) allows the SEZAR to withdraw licenses from users who engage in “unlawful or illicit activity.” Exceptions should be made for minor and unintentional violations. Though Article 7 provides that SEZAR may impose fines or other sanctions as a less harsh alternative to revoking licenses, the matters described above should not be left to SEZAR discretion if adequate protection is to be offered to zone investors. **Thus, draconian responses to bankruptcy and minor violations of law should be reformed.**

Fourth, the SEZ Law and Regulations are unclear on whether the SEZs will offer users greater freedom to hire expatriates and negotiate labor agreements. Restrictions on the ability to employ expatriates seem to be a constraint to investment. However, Article 38 of the SEZ Law only allows for visas to be “facilitated” in accordance with relevant immigration regulations. Article 5(5) of the SEZ Users Regulation offers some promise, stating that SEZ users have the right “to employ nationals and foreigners, including managers, without any legal impediments or restrictions subject to applicable national labor law and zones legislation.” While this could, arguably, be interpreted as allowing SEZ Users freedom from restrictions under the generally applicable Rwandan immigration laws, such an interpretation appears unlikely given that nothing in the SEZ Law, which is more authoritative, provides for exceptions to the immigration law.

Based on this report’s findings, UNIDO believes that the SEZ law should offer greater freedom to hire expatriates and negotiate labor agreements.

(3) Labor and Land Laws

While the SEZ Law appears to allow for modifications to the Labor Law in the zones context and, based on a cursory review of the Labor Law,⁴³ such modifications would appear to be in order, the SEZ Regulations have not yet made these modifications. Article 37, paragraph 1, provides that “labor and management relations” in the SEZs are the same as in the rest of Rwanda, but that the labor minister can establish labor standards specific to the SEZs “in consideration of the purposes for which a zone was created.” Several reforms could therefore be piloted in the zones. For example, Article 27 of the Labor Law requires notice periods before termination of an employee and compensation requirements upon dismissals. It may help improve investment (and, consequently, employment) if these requirements were altered for maximum negotiated flexibility in this regard in the SEZs.

To address challenges in the investment climate, the SEZ Law should provide SEZAR, in conjunction with the Ministry of Public Service and Labor, with the power to set forth definitions, tests, guidelines, and standards for suspension, termination, layoffs, and demotions, including with respect to severance packages and notice periods, in accordance with ILO-consistent international norms regarding flexible and negotiated labor regulation.

The 2013 Land Law made the positive step of removing domestic ownership requirements for land in the SEZs and generally treating foreigners no differently than

⁴³ Law N° 13/2009 of 27/05/2009 Regulating Labor in Rwanda.

nationals therein. Still, “freehold rights shall apply only to developed land where infrastructures are erected and its extent shall be strictly limited to the area of land that is necessary to support the authorized development of the land and their amenity.”⁴⁴ It is not entirely clear whether this restriction is meant to apply to SEZs.⁴⁵ It seems odd to allow freehold tenure only on developed land as it creates little incentive for foreign companies to actually come in and develop land (such as SEZs) in the first place. FDI is thus constrained in adding much value to the land. A better policy approach would be to allow acquisition of land for development purposes, and then impose sanctions on land speculation and non-development (for instance through withdrawal of title).

C. Fiscal Incentives

(1) 2010 SEZ Policy Regarding Fiscal Incentives

The 2010 SEZ Policy favored ‘smart’ tax incentives primarily as a means of making Rwanda’s SEZs competitive and differentiated from competitor locations both within and outside Rwanda, including Kenya and Tanzania. It explained that since tax collection rates should be higher in the zones because of formal registration and operation in demarcated spaces, without additional incentives, zone investors would have higher effective tax rates than their counterparts outside the zones. At the same time, it noted that targeted incentives and tax holidays resulted in enforcement problems and misaligned incentives.

Thus, the 2010 SEZ Policy laid out the following priorities for the SEZ tax regime:

- Low administration costs;
- Incentives that encourage investment, are competitive internationally, and have minimal distortionary effects; and
- Stability and reduced risk, compliance costs, and uncertainty for investors.

Based on these priorities, the Policy recommended a flat 15% corporate income tax rate for all SEZ Enterprises. According to the policy, a single flat rate would be simpler to enforce, which would increase the actual revenue collected and would avoid market distortion and perverse incentives that tend to result from tax holidays. 15% was determined by a market demand analysis to be low enough to make the SEZs competitive and attractive to investors. Significantly, the policy also recommended against applying discretionary incentives in the SEZs, noting that Rwanda had some of the highest tax incentives in the region, which had imposed significant costs on public finances.

(2) Existing Fiscal Incentives for Zone Companies

When the SEZ Law (as opposed to the SEZ Policy) was drafted, no specialized tax policy was included in it, which, as stated in Article 36, meant that the ordinary income tax regime in Rwanda continued to be applied to SEZ Enterprises. The Rwandan Revenue Authority (RRA) has accordingly applied the Investment Code to the issue of tax incentives for both businesses located in the SEZ and located throughout the country.

The current 2015 Investment Code departs from the simplified, uniform flat income tax rate recommended by the SEZ Policy. Though the Code improved upon the previous tax regime by adding clarity to tax exemptions and reductions, it also reinforced numerous

⁴⁴ Law N°43/2013 of 16/06/2013 43/2013 Governing Land in Rwanda, Art. 6.

⁴⁵ Id., Arts. 2(1), 24 and 29.

economically discriminatory “sectoral carve-outs” for various types of investors as well as economically inefficient tax holidays.

Incentives under the Investment Code include:

- Corporate income tax rates for investors in certain specified “priority economic sectors” (such as energy, ICT, manufacturing, and financial services) permanently reduced to 15%. Notably this reduced rate does not apply to manufacturing or tourism.
- Corporate income tax rates for investors who export at least 50% of their goods (except for coffee, tea, and minerals) is reduced to 15%.
- International companies that base their headquarters or regional offices in Kigali, invest a minimum of USD 10 million, and fulfil a number of other requirements, are exempt from corporate income tax.
- Seven-year tax holiday granted for investors who invest at least USD 50 million in manufacturing, export, tourism, energy projects of over 25MW, and certain ICT projects (not including business process outsourcing or repair work).
- Exemption from capital gains tax and eligible for VAT refunds for RDB registered investments;
- Accelerated depreciation rate of 50% for investors in prioritized sectors investing more than USD 50,000.

To facilitate trade, excise tax has furthermore been eliminated in Rwanda for all but nine products.

Absent SEZ-specific incentives, SEZAR is supplementing the Investment Code incentives by issuing EPZ licenses to companies within the SEZs that are exporting at least 80% of their output.⁴⁶ As these incentives are granted for a specified duration,⁴⁷ they do not however create any unmanageable “grandfathering” of companies’ overgenerous incentives, should a more robust SEZ incentives package be established in time.

Additionally, the RRA has opined⁴⁸ that SEZ businesses may enjoy zero-rated VAT in the SEZs, under VAT Law No. 37 (2012).⁴⁹

(3) Fiscal Incentives under the Draft EAC SEZ Policy and Regulations

Offering a reduced tax rate in SEZs is a practice affirmed by the 2014 draft East Africa Community (EAC) SEZ Policy.⁵⁰ The draft EAC policy and regulations direct member states to “develop a harmonized incentive framework” for their SEZ programs, including

⁴⁶ Such as, as of this time, China’s C&H.

⁴⁷ The EPZ licenses are granted for a period of one year, and can then be either renewed or revoked.

⁴⁸ The RRA Legislative Office has issued specific written opinions to SEZ taxpayers affirming zero-rated VAT for the SEZs.

⁴⁹ Arts. 5 and 6(15)g, http://rra.gov.rw/IMG/pdf/New_VAT_Law_2013.pdf

⁵⁰ East African Community, *Draft EAC Special Economic Zones Policy* (Apr. 2014).

both “fiscal” and “non-fiscal” incentives.⁵¹ Allowable fiscal incentives may include a combination of exemptions and remissions from various taxes.⁵²

In this context, under Schedules I and II to the Draft EAC SEZ Regulation, member states are offered the choice between several different corporate income tax packages for SEZ investors. They can for instance offer the same incentives as outside the SEZs, a 10 year tax holiday followed by a 15-20% flat corporate income tax, or a perpetual flat income tax rate of 15-20%.

The RRA Legislative Office correctly notes that “harmonization does not mean uniformization,” and that national tax differences that respect EAC criteria for harmonization will remain valid and licit. The RRA Legislative Office further opined, in discussions with UNIDO, that the Government of Rwanda retains the ability to issue SEZ tax rules in general, under the Draft EAC framework, provided it takes the principles set in the Draft EAC Policy (such as they are) into account.

UNIDO concurs with this assessment. The draft EAC SEZ Policy bolters this position by stating “Partner States shall... adopt harmonization of SEZ programs *through subsidiarity*. This will be done by harmonizing National SEZ laws and regulations.... *Partner States will also maintain autonomy to regulate domestic policies where not stipulated.*”⁵³ Additionally, the draft EAC SEZ Regulations state that “shall be applied in conjunction with existing legislation relating to [SEZs] in each Partner State.”⁵⁴ These positions give Rwanda some measure of latitude in setting SEZ tax policy.

(4) Recommended Approach to Fiscal Incentives

If Rwanda in fact wishes to have a *Special Economic Zones* policy as opposed to a more “vanilla flavoured” industrial park policy, it must be competitive with other SEZ programs in terms of the policy’s overall value proposition. In this regard, good practices suggest it should therefore also offer competitive (albeit socio-economically responsible) tax incentives.

This seems particularly relevant in the context of the country’s drive to attract manufacturing and tourism investment through the SEZ program. Curiously, neither the SEZ legislation (as finally adopted) nor the Investment Code offer the reduced 15% corporate income tax rate to these key sectors (instead merely offering a 7-year tax holiday to them –during which period any investments are likely to spend several years in an unprofitable position anyway). This stands in contrast with the practices of other countries with competing SEZ programs or which are potential sources for FDI –such as China, for instance, with its 15% corporate income tax on manufacturing activities in SEZs.

In UNIDO’s view the SEZ Policy articulates a rationale that should greatly improve tax collection and compliance burdens based on an easy-to-administer, permanent, flat tax, without discretionary incentives. Whether 15% is still the optimal rate for this flat tax may potentially be reassessed (principles for SEZ fiscal incentives and tax rates of

⁵¹ Ibid, p. 24.

⁵² Ibid.

⁵³ Draft EAC SEZ Policy (April 2014) (emphasis added).

⁵⁴ Draft EAC SEZ Regulations, Regulation 4(2).

competitor nations are provided in Annex D). The principle should however be retained, as one consistent with international best practices.

This report reaffirms the 2010 SEZ Policy's proposed flat income tax rate for all investors in SEZs, regardless of sector or level of investment. This tax rate should be viewed as a component of a broader national strategy for progressive tax harmonization, eventually leading to a single, flat national corporate income tax rate. This means that companies outside the SEZ would eventually enjoy the same tax rate as SEZ companies. If the EAC adopts its draft EAC SEZ Regulations, the approach recommended above would be consistent with the regulations' perpetual flat tax rate option (as opposed to the 10-year tax holiday). To implement this approach, tax holidays and exemptions for larger companies within SEZs qualifying for either the seven-year tax holiday or the full tax exemption should be phased out and not renewed.

As discussed in the SEZ Policy, tax holidays and exemptions are probably not in the country's best interest because they:

- Have been shown to have a much lower effect on corporate location decisions than the quality of the labor market, infrastructure, and general business regulatory climate;
- Are of little benefit to companies whose home countries tax income on a worldwide basis, such as the U.S., U.K. and China;
- Tend to only attract low-value-added 'footloose' investors, such as garments/textile manufacturers, that have fewer sunk costs and can relocate as soon as the exemptions expire with relative ease;
- Do not benefit new companies, which often do not turn a profit for the first few years of operation;
- Perversely incentivize firms to close down and sell their business at the end of the tax holiday only to re-open as 'new' investments to gain a further tax holiday;
- Perversely incentivize firms to funnel profits, through transfer pricing, from an existing profitable company through the 'tax exempt' company and avoid taxes altogether; and
- Deplete public resources with little economic benefits in return.

Additionally, in its *Industrial Park Guidelines* Policy Note⁵⁵, MINICOM recommended that the industrial parks be exempt from local taxes. This action would be consistent with SEZ best practices, provided that the overall development impact of the zones adequately compensates for foregone revenue opportunities in other respects.

UNIDO recommends that, provided a low flat income tax rate is adopted, SEZ investors receive capital gains tax exemptions, zero-rated VAT, as well as local tax exemptions, and should receive the accelerated depreciation rates offered outside the zones.

(5) Mitigating Market Distortion and Unfairness in the Specialized SEZ Tax Regime

By integrating the SEZ tax policy in with a broader national tax reform agenda that eventually harmonizes all corporate tax rates in Rwanda, market distortions would be kept to a minimum. It should however be acknowledged that, as a Keynesian policy tool, SEZs are, by their nature, somewhat distortionary. Their function is to provide special policies that improve upon the background business environment with the goal of

⁵⁵ MINICOM Directorate General of Industry and Entrepreneurship, *Industrial Park Policy Guidelines: Construction, Management and Finance* -Policy Note (30 April 2015 Draft), p.16.

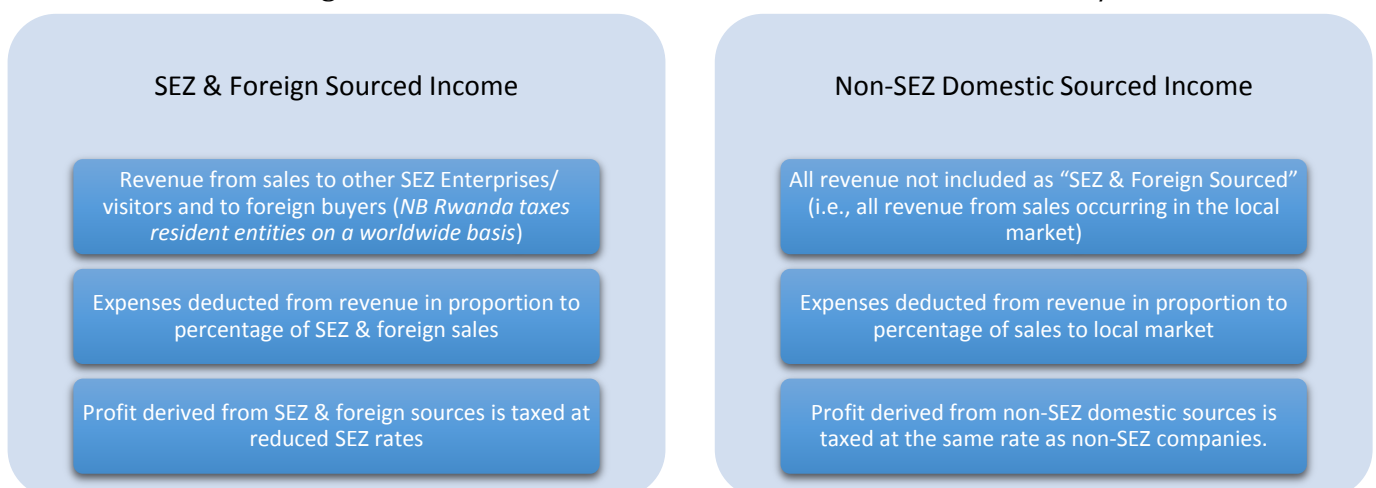
stimulating investment and catalyzing national reforms. The alternative is a nationally uniform industrial zones program, which is neither the stated policy choice of either the Rwandan SEZ Policy nor of the EAC.

During the transition to nationwide tax harmonization, unfairness to non-SEZ enterprises that do not qualify for existing incentives will, in any event, likely be minimal. Companies and investors naturally locate in places that are optimal from transport economics and labor-market standpoints. This is because often times, locations well connected to clients and labor input sources are more important than tax advantages. SEZs, on the other hand, are located in sites which may sometimes be less optimal from these standpoints –often because of the availability of the presence of a large enough piece of government land with unencumbered title at a given site to enable the development of a 50+ acre zone. Thus, there are in reality few significant advantages for SEZ enterprises over established ones.

Additionally, certain policies can accompany the SEZ tax policy to extend the benefits of an SEZ to non-SEZ enterprises. Taiwan (China) and South Korea, for example, developed “equal footing” policies and sub-contracting arrangements for this purpose. Such policies can involve the following:

- Domestic suppliers of capital and intermediate goods to SEZ enterprises receive duty free access to imports used as inputs for products sold to the SEZs and tax credits;
- Local suppliers are able to import components on the basis of the original letters of credit of the SEZ firm they are selling to;
- SEZ firms are encouraged to form subcontracting arrangements with non-SEZ businesses; and
- SEZ firms are encouraged to provide materials, technical assistance, and financing to non-SEZ suppliers.

Another method of minimizing distortion from SEZ incentives and perceived unfairness to non-SEZ businesses is to only apply tax incentives to the income an SEZ company derives from foreign sources and sources within the SEZ. National tax rates/ incentives



would, under this approach, only be applied to income from sales in the local market. This can be achieved through a tax regulation that requires SEZ businesses to keep separate accounts for: (1) SEZ & foreign-sourced income and expenses and (2) domestic income and expenses.

D. The Impact of Trade Agreements upon the SEZ Policy

While national SEZ programs can create exceptions to generally applicable national laws, they cannot transgress supranational trade agreement understandings. Thus, this section identifies aspects of the Rwandan SEZ Policy that must be made to conform to the regional trade agreements to which Rwanda is a party.

The Rwanda SEZ Law provides for the establishment of “Free Trade Zone Areas” (FTZAs) and “non Free Trade Zone Areas” within an SEZ.⁵⁶ FTZAs are designed so that goods introduced and processed⁵⁷ within the FTZA are regarded, in so far as import duties are concerned, as being outside the customs territory and able to be sold in any market.⁵⁸ Consequently, it is these FTZAs as special customs arrangements, real and potential, which must smoothly interface with Rwanda’s trade and regional integration agreements involving joint customs rules. In particular, this means the rules of the EAC Customs Union, the Common Market for Eastern and Southern Africa (COMESA) Customs Union, and the Tripartite Free Trade Area (TFTA) Agreement.

Additionally, the EAC has begun drafting an SEZ policy and SEZ regulations. Neither has been finalized or adopted yet, so they are not yet binding upon Rwanda. These documents are discussed in terms of their potential impact upon the SEZ program.

(1) Existing East African Community (EAC) Customs Law

Under the SEZ Law, imports to the FTZAs are exempt from customs taxes while goods removed from the SEZs into the Customs territory are subject to the regular import duties under applicable national and EAC laws, including the EAC Customs Management Act of 2004.⁵⁹ Article 6(15) of the 2012 VAT Regulation later exempted domestic goods and services sold into free economic zones (and, by RRA interpretation, into SEZs) from VAT.

The Protocol on the Establishment of the East African Customs Union (EAC Customs Protocol) contains provisions for two broad kinds of special customs arrangements within the EAC customs territory: *Special Economic Zones*, including “freeports” and “other arrangements”,⁶⁰ and *Export Processing Schemes*, including, *inter alia*, “export processing zones” (EPZs) and “other export promotion schemes”.⁶¹ As defined by EAC agreements, both EAC freeports and EAC EPZs are considered “in so far as import duties are concerned, as being outside the customs territory”,⁶² but goods entering EAC

⁵⁶ SEZ Law Art.2 & 5

⁵⁷ SEZ Law Art.6: “Any legal economic activity shall be allowed in a Zone, unless such an activity is prohibited by virtue of a negative list determined by an Order of the Minister in charge of trade and industry.

⁵⁸ SEZ Law Art.34 (Movement of goods and merchandises from a Free Trade Zone Area into the customs territory): “Foreign merchandise brought into a Free Trade Zone Area may be repacked, assembled, distributed, sorted, graded, cleaned, mixed with domestic or merchandises.

If such merchandises are sold outside the Custom Territory, they shall be considered to be imported, produced, or manufactured outside the Customs Territory and shall be duty-free.

If such merchandises are sold in the Customs Territory, they must be subject to the relevant duties determined by the customs regulations applicable to imported goods in Rwanda.”

⁵⁹ SEZ Law, Arts. 33 and 35.

⁶⁰ EAC Customs Protocol (2004), “Part G: Special Economic Zones”, Art.31—32.

⁶¹ EAC Customs Protocol (2004), “Part F: Export Promotion Schemes”, Art.25—30.

⁶² EAC Customs Protocol (2004), Art.1(1) (“freeport zone”); EAC Customs Management Act 2005 (2004), Art.1(1) (“export processing zone”).

freeports must be re-exported “in the same state”—without processing.⁶³ EAC EPZs permit the processing of goods, but goods benefiting from EAC’s export promotion schemes are limited to goods produced primarily for export⁶⁴—subjecting companies to a 20% limit on sales within the EAC customs territory.⁶⁵ These two defined cases of *Special Economic Zones* and *Export Processing Schemes* are not exhaustive—each broad arrangement provides for the EAC Council to, from time to time, approve the establishment of “other” export promotion schemes or special economic arrangements, “as may be deemed necessary”,⁶⁶ or “for purpose of the development of the economies of the Partner States”,⁶⁷ respectively.

The FTZAs, under Rwanda’s SEZ Law, combine sales unlimited by market of EAC’s freeports⁶⁸ with the processing activities of EAC’s EPZs.⁶⁹ Furthermore, they expand the scope of permissible activities available under either scheme. Thus, the FTZAs fit neither of the currently well-detailed categories for zones under the EAC rules. Instead, they must fall under the schemes permissible under “other arrangements” requiring EAC Council approval.⁷⁰

(2) Draft EAC SEZ Policy

The draft 2014 EAC SEZ policy recognizes that the “Freeport” / “EPZ” dichotomy in the EAC legislation no longer accounts for the reality of modern SEZs and the role they play.⁷¹ It takes initial steps to address the problem by setting forth general guidelines for states that are developing SEZs that simultaneously (i) are positioned toward both domestic and international markets and (ii) include both manufacturing and shipping/logistics.

The draft policy not only provides guidelines for such SEZs, but encourages them. Its objectives include:

- “Promote and support regional integration through forward and backward linkages” between the SEZs and the domestic market; and
- “Improve regional competitiveness to attract both domestic and foreign direct investment.”⁷²

⁶³ EAC Customs Protocol (2004), Art.1(1) & 31; EAC Customs Management Act 2005 (2004), Art.167(1)(b). Also see EAC Customs Protocol Annex VIII “EAC Customs Union (Freeport Operations) Regulations”.

⁶⁴ EAC Customs Protocol (2004), Art.1(1) & 29; EAC Customs Management Act 2005 (2004), Art.167(1)(a). Also see EAC Customs Protocol Annex VII “EAC Customs Union (Export Processing Zones) Regulations”.

⁶⁵ EAC Customs Protocol (2004), Art.25(3).

⁶⁶ EAC Customs Protocol (2004), Art.30.

⁶⁷ EAC Customs Protocol (2004), Art.32(1).

⁶⁸ SEZ Law Art.34 (Movement of goods and merchandises from a Free Trade Zone Area into the customs territory): “Foreign merchandise brought into a Free Trade Zone Area may be repacked, assembled, distributed, sorted, graded, cleaned, mixed with domestic or merchandises.

If such merchandises are sold outside the Custom Territory, they shall be considered to be imported, produced, or manufactured outside the Customs Territory and shall be duty-free.

If such merchandises are sold in the Customs Territory, they must be subject to the relevant duties determined by the customs regulations applicable to imported goods in Rwanda.”

⁶⁹ SEZ Law Art.6: “Any legal economic activity shall be allowed in a Zone, unless such an activity is prohibited by virtue of a negative list determined by an Order of the Minister in charge of trade and industry.

⁷⁰ EAC Customs Protocol (2004), “Part G: Special Economic Zones”, Art.31—32.

⁷¹ East African Community, *Draft EAC Special Economic Zones Policy*, (2014), p.15-17.

⁷² *Ibid*, p. 17.

Moreover, the draft EAC policy requires partner states to:

- “Facilitate goods and services from SEZs to access export markets”;
- “Allow access to domestic markets subject to fulfilment of the harmonized conditions applicable under each SEZ scheme including payment of duties and other applicable taxes and charges (including a surcharge) to provide for effective safeguard[s] to firms operating within the EAC Customs Territory”⁷³; and
- Put in place “[a]ppropriate laws and regulations... to encourage SEZ business entities to utilize raw materials sourced within the Community.”

So far, however, the EAC has not moved forward from its draft policy to concrete EAC legislation framing this more modern understanding of SEZs. Consequently, Rwanda must negotiate with the EAC Council to approve the establishment of modern SEZs as another economic arrangement within the EAC customs territory. An *Export Processing Scheme* without limits for sales in the customs territory would violate the general principles of such schemes under EAC rules;⁷⁴ and therefore, the best fit for the establishment of a special economic arrangement in alignment with Rwanda’s SEZ Law is under the “other” *Special Economic Zone* provision (Article 32(1)), with the general characteristics of the defined case EAC *Special Economic Zone* and the unlimited domestic sales of the FTZAs under Rwanda SEZ Law Article 34, as well as expanded types of economic activities. This approval may be facilitated by the existence of the Draft EAC SEZ Policy and Regulations, as well as by counterpart negotiations between the heads and members of EAC and COMESA as they seek to align their special customs rules under TFTA—see below.

(3) Draft EAC SEZ Regulations

The EAC drafted SEZ regulations in 2015 that have not yet been ratified. If/when these regulations are ratified, Rwanda’s SEZ legislation must conform to the regulations. Conflicting provisions will not be effective.

In the meantime, while ratification of the EAC SEZ regulations is pending, Rwanda is still free to structure its SEZ program as it chooses. Additionally, under the principle of subsidiarity, even after the regulations are passed, Rwanda may pass domestic legislation governing its zones program provided it does not conflict with the EAC SEZ regulations. Consequently, this section of the report reviews the current draft EAC regulations to note any potential conflicts the drafters for the new SEZ Policy should keep in mind.

The most significant features of the current draft EAC SEZ Regulations are as follow:

- Fiscal incentives are “harmonized,” in that partner states must choose to offer either the same tax policies prevailing outside the SEZs or must choose between one of two packages. Further detail on this matter has been discussed above in the section on fiscal incentives.
- A distinction is created between “core business activities” and “non-core business activities” with incentives only applicable to the former. The types activities that constitute core business activities is presently unclear, though it appears to have in view “manufacturing, processing, agricultural, commercial, or service activities.”⁷⁵ “Non-core business activities” apparently include “supplementary business

⁷³ Ibid, p. 22-23.

⁷⁴ EAC Customs Protocol (2004), Art.25.

⁷⁵ Draft EAC SEZ Regulations, Sec. 2, “SEZ Enterprises”

services” including financial services and insurance. It is difficult to see how such services could be deemed “non-core” for certain types of SEZs, such as “financial services zones” which are explicitly dedicated to activities like commercial banking and insurance.

- Regulation 16 requires the imposition of an EAC surcharge on goods sold from the SEZs to the customs territory. This measure is designed “to provide an effective safeguard to firms operating within the EAC Customs Territory.” As an essentially protectionist policy, this provision runs counter to the stated purposes of the EAC SEZ Policy, which states that the zones are to provide “access to the domestic market”⁷⁶ and that one of the principles of zones is to “promot[e] and facilitate[e] both export and domestic-market-oriented investments.”⁷⁷ Given that this surcharge is not imposed on foreign imports from non-EAC regions, it effectively disadvantages zones enterprises relative to non-EAC enterprises.

UNIDO recommends that Rwanda seek to remove the SEZ surcharge from the draft EAC Regulations.

(4) Recommendation: Inclusion of Free Trade Zone Areas in Rwanda’s SEZs

Given the positions taken by the EAC in the EAC Draft SEZ Policy, negotiations surrounding the specific EAC legal framework for SEZs appear likely to specifically include certain customs incentives provided to EAC EPZs under the EAC Customs Management Act 2005.

Currently, it does not appear that a FTZA has been designated within the Kigali FTZ. For policy reasons, SEZs should offer the most competitive trade regime in the region, so as to not detract investment through “jurisdiction shopping.” International experience has demonstrated that FTZAs such as those envisioned under the SEZ Act and 2010 SEZ Policy help accomplish this by reducing company production and transaction costs and compliance costs. Reducing costs enabling investors to increase the scale of their business, lower their prices to consumers, hire more labor, and add more economic value focus on their actual business at lower cost, at greater scale. Customs duties, as an indirect tax, are by contrast an economically regressive and a net-negative policy tool.

It is therefore important for Rwanda’s SEZs, such as the KFTZ, to specifically include FTZAs deemed outside the (EAC) customs territory, as originally envisioned and as SEZs generally do worldwide, and thereby offer at least the same benefits provided to investors in the EPZs and SEZs of regionally competitive states.

Where this is not already the case in implementing regulations or in their application in practice, these benefits should include:

- Customs duty suspension for imports, with tariffs imposed on finished products at the point of sale to the Customs Territory;
- Customs duty exemption for inputs to products sold outside the Customs Territory;

⁷⁶ Draft EAC SEZ Policy (2014), Section 5.0(f).

⁷⁷ Ibid, Section 8.0.

- Calculation of dutiable value based either on the value of the inputs or the value of the finished product, at the option of the SEZ manufacturers;
- Duty drawback for all goods and services sold to SEZ Enterprises by Customs Territory suppliers;
- Duty refund schemes, including rebates and/or remissions in the event of loss or damage to goods (if duties were at any point applied, whether at the port-of-entry customs post, border, or gate of the zone).
- Goods and services from one of Rwanda’s SEZs sold to a similar non-customs-territory zone in another EAC country, and vice versa, free of domestic taxes and duties, as both zones should be deemed to be outside the EAC Customs Territory.
- Finally, in a shift from current EAC SEZ practice, removal of Tariff and non-tariff barriers for goods and services moving to and from other EAC countries, including through streamlined border crossings, customs documentation and procedures, preclearance of goods before arrival, and the implementation of country-of-origin rules.

Imports from the SEZs into the Customs Territory should, like those from EPZs and Freeports, be charged import duties in accordance with the EAC Customs Management Act. In accordance with Article 168(2) of the EAC Customs Management Act, valuation of such imports must be made in accordance with Article 122 and Schedule 4 of the Act.⁷⁸

(5) COMESA Customs Union

Rwanda is also a member in the Common Market for Eastern and Southern Africa (COMESA) Customs Union. Under the COMESA treaty, Rwanda’s SEZs fall under the definition of “free zones,” which are defined based on their extraterritorial status—i.e., “part[s] of the territory of a Member State where any goods introduced into that State are considered, in so far as import duties are concerned, as being outside its customs territory and are not subject to the usual customs control.”⁷⁹

Under Article 229 of the COMESA Customs Management Regulations, different import duty exemptions are provided based on whether the zone is a “commercial free zone,” an “industrial free zone” or simply a “free zone.” Generally speaking, all goods related to a zone enterprise’s business activities and all capital equipment related thereto are however exempt from customs duties, as well as import and export licensing requirements, except those licenses required for public order, security, health, and related matters. Goods entering a customs territory from a free zone must be entered and treated as imports from outside the customs territory. Few other requirements are imposed.⁸⁰ It should be clarified whether Rwandan SEZs currently enjoy all the benefits the COMESA treaties call for.

(6) Tripartite Free Trade Area

The June 10, 2015 Tripartite Free Trade Area (“TFTA”) Agreement, to which Rwanda is a party, specifically envisions Special Economic Zones, but provides few details at this point

⁷⁸ This Memorandum, being strategic in nature, has not reviewed the EAC Rules of Origin, which are beyond its remit.

⁷⁹ The Common Market for Eastern and Southern Africa Treaty (1994), Art.1.

⁸⁰ This Memorandum, being strategic in nature, has not reviewed the COMESA Rules of Origin, which are beyond its remit.

to guide Rwanda’s SEZ Policy. Under the Agreement, a “special economic zone” is defined as “a designated economic area in a Tripartite Member/Partner State with regulations that may be different from other areas in the same Tripartite Member/Partner State for the purpose of attracting foreign and domestic investments, know-how, and technology.”⁸¹ All such zones are to be subject to any regulations made by the Tripartite Council of Ministers.⁸² Thus, it is likely that Rwanda’s SEZ program will at some future point need to be tweaked for compliance with these regulations, if and when they are made (assuming the reference is even to TFTA level regulations as opposed to national or EAC ones).

Additionally, Annex IV of the Tripartite Free Trade Area Agreement includes provisions for “Economic Free Zones,” which are defined as “designated area[s] located within... Tripartite Member State[s] benefiting from customs and tax exemptions, and less restrictive immigration procedures and regulations.”⁸³ Based on this definition, Rwanda’s SEZs may also be considered economic free zones. Annex IV, Article 35, in a very favourable development for Rwanda’s SEZs, requires member states, such as Rwanda, to ensure the proper treatment of goods emanating from such zones and to treat them as “non-originating goods” unless they meet the requirements to be deemed as originating from the Tripartite Free Trade Area.

UNIDO recommends that Rwanda adopt a negotiating position within the TFTA of promoting the alignment of rules of its members regarding special economic zones—based on the draft EAC SEZ Policy, as described above, but with a few reservations.⁸⁴ Furthermore, Rwanda should adopt the specific negotiating position toward the TFTA’s implementing regulations regarding the Rules of Origin of goods produced or transformed within its SEZs taken in Annex IV, Article 35, of the TFTA Agreement. In this respect, Rwanda should negotiate for a method of valuation of imports from the zones that excludes the value of all domestic inputs and SEZ-based value addition. This will help avoid making the zones an “enclave” and encourage zone manufacturers to source products from the domestic market, providing greater positive economic spill overs.

II. **INSTITUTIONAL FRAMEWORK RECOMMENDATIONS**

A. Institutional Recommendations for the SEZ Regulator

The 2010 SEZ Policy correctly stated that: “a SEZ program requires government regulatory control in the form of a Regulator/Authority which ensures that each of the stakeholders (owners, developer, operators, users from government and the private sector) in a SEZ program fulfils its functions... The effectiveness of the SEZ Authority depends on whether it has sufficient independence, autonomy and powers to carry out its functions.”⁸⁵

The Rwandan government now has the opportunity to re-evaluate the 2010 SEZ Policy to determine whether it should go ahead with implementation of the SEZ Policy as originally framed, with the subsequent SEZ Law, or if it should make changes. Of particular concern

⁸¹ Tripartite Free Trade Area Agreement (2015), Art.1.

⁸² Id., Art.23.

⁸³ Id., Annex IV, Art.1.

⁸⁴ Notably regarding the proposed SEZ surcharge, certain limitative definitions, the unclear restrictions relating to “new investment/primary place of business”, and the SEZ Enterprise single location requirement.

⁸⁵ Rwanda SEZ Policy, *op. cit.*, p. 48.

is whether the SEZ Regulator can be established as an independent entity directly under the Prime Minister (as suggested by international best practices in SEZ governance), as an entity under MINICOM or the RDB, or as a secretariat for an inter-ministerial commission operating based upon a framework of MoUs.

Also at issue is what model should be adopted to manage and operate (as opposed to regulate) the various provincial industrial parks. It has been suggested that either the management model currently in place for the KSEZ (under PEZ) or a co-operative model could be adopted. Other models might also be considered.

(1) Background

The SEZ Policy and implementing legislation called for a “SEZAR” (the Special Economic Zone Authority of Rwanda) to regulate both the KSEZ and the proposed industrial parks. This is, moreover, the stated intent of MINICOM.

However, such a SEZAR, at least as an “authority” in the conventional sense, has not yet been effectively or fully established. It currently has a skeleton complement of only 4 members of personnel and, instead of being semi-independent, was established as a department within the RDB, which itself reports to the Office of the President of the Republic. Regulation of the SEZ program is, for practical purposes, largely being carried out by MINICOM at this time. Indeed, it is MINICOM that has decided to establish new industrial parks, which has developed draft district policy guidelines for them, which chairs the PEZ Board and thus directs its governance, etc.

MINICOM and SEZAR are agreed that SEZAR’s status as a subsidiary, rather than an autonomous body, has handicapped its effectiveness as a regulator and limited its capacity.

SEZAR’s 4 staff members include its director, an engineer, a legal advisor, and a marketing specialist. It would like to retain a Financial Analyst, as well as a full Monitoring Team. However, without the administrative ability to independently put in a budgetary request, nor to retain any income derived from its issuance of construction permits and other licenses,⁸⁶ the body remains woefully understaffed.

MINICOM notes that the Prime Minister has ordered that SEZAR be a stand-alone institution, with a one-stop shop, and that it does not understand why the relevant Prime Ministerial Order⁸⁷ and Regulations⁸⁸ in this regard have not been implemented. SEZAR, for its part, notes that there is a contradiction between this Prime Ministerial Order and the SEZ Act, which states that the SEZAR Board is the RDB’s Board.

SEZAR has also been handicapped in its ability to license and regulate various parties within the SEZ regulatory framework by the following factors:

- SEZAR’s establishment in 2014, subsequent to that of PEZ and the KSEZ (the development of which began in 2008), leaving the former to contend with the

⁸⁶ Including EPZ Permits, Customs Permits, and Tax Exemption authorizations under the Investment Code.

⁸⁷ Prime Minister’s Order Establishing the Special Economic Zones Authority of Rwanda (SEZAR)

⁸⁸ Regulation of the Special Economic Zones Regulatory Authority of Rwanda (SEZAR) regulating One-Stop-Shops in Special Economic Zones No 02/2012/SEZAR of 20/12/2012; Regulation of the Special Economic Zones Regulatory Authority of Rwanda governing Special Economic Zones Users No 03/2012/SEZAR of 20/12/2012.

reality of their existence and modus operandi, with neither a SEZ license nor a Developer Agreement in place for PEZ;⁸⁹

- SEZAR's similar establishment subsequent to the approval by PEZ and investment of various KSEZ Enterprises in the zone;
- The fact that the Chair of PEZ is the Director General of MINICOM, who sets overall national SEZ strategy and oversees its implementation –whereas the head of SEZAR is a mere department head.

A number of potentially useful implementing regulations to the SEZ Act would still appear to be lacking. Indeed, SEZAR and PEZ alike feel there are still “regulatory gaps” to fill –a notion reinforced by the fact that, with IFC technical assistance, a number of draft implementing regulations prepared in 2011 were never in fact adopted.

(2) Review of Recommendations for SEZ regulators under the 2014 draft EAC SEZ Policy

To implement SEZ programs, the draft EAC SEZ Policy calls for EAC partner states to “establish or designate a Competent Authority to coordinate, regulate, promote, develop, facilitate, and operate” SEZs.⁹⁰ Partner states are further required to designate an appropriate ministry to take charge of policy matters and coordinate matters with other relevant ministries.⁹¹ They also must “direct other complementary departments and authorities such as customs, immigration, environmental management, transport, labor, etc., to prioritize support for the SEZ program and to the competent authority.”⁹²

Thus, the EAC's recommended framework for regulation of SEZs appears to call for one or, at most, two entities with the following characteristics:

- (1) A dedicated SEZ regulatory authority responsibility for day-to-day regulation of the SEZs; and
- (2) A ministry-level entity to provide general oversight over the SEZ program and to secure the engagement of all other government entities, which are to accommodate the SEZs' policies when performing their functions.

It is entirely possible for both of these characteristics to be combined in a single government entity. Indeed, international experience has shown that combining these characteristics helps ensure efficiency in the zones' regulatory environment. Such an entity would, were Rwanda to follow international best practice, have an exclusive focus on SEZs and have the authority to independently perform most regulatory functions for SEZ users and to coordinate and streamline all other functions, such as customs, with the relevant government entities.

⁸⁹ PEZ instead operates on the basis of a mere MINICOM-approved Business Plan. UNIDO was unsuccessful in securing a draft PEZ-SEZAR Operator Agreement –the existence of which, even in draft form, remains unsubstantiated.

⁹⁰ East African Community, *Draft EAC Special Economic Zones Policy*, (Apr. 2014, p. 24.

⁹¹ *Ibid*, p. 26.

⁹² *Ibid*.

Regarding the regulatory priorities of the SEZ authority, the EAC provides the following principles for SEZ programs:

- Promote participation of the private sector within SEZs;
- Promote innovation and adoption of technology within SEZs;
- Promote backward economic linkages through the use of local raw materials;
- Uphold environmental conservation laws and regulations; and
- Facilitate the access of goods and services from SEZs to export markets.⁹³

Also of relevance to the zones regulator, the EAC policy requires member states' SEZ policies to include the following:

- Legal designation of geographical areas as SEZs;
- Establishment of economic and other laws for SEZs that are more free-market-oriented than a country's typical or national laws;
- Streamlined SEZ investment and operational procedures; and
- Allowing access to domestic markets subject to fulfillment of EAC harmonized conditions.⁹⁴

(3) Review of Recommendations for Rwanda' SEZ Regulator under the 2010 SEZ Policy, and the Regulatory Framework under the current SEZ Laws and Regulations

Rwanda's SEZ Policy recommended establishing a dedicated SEZ regulator that was to be provided with sufficient administrative powers to approve most government permits and licenses, with adequate funding and staffing, and with external capacity-building technical assistance. By consolidating significant powers into a single agency, SEZ-related regulatory approvals and government services were to be streamlined and carried out through a one-stop center.

The Policy also emphasized that this regulatory/monitoring role should be kept distinct from the other roles in the SEZ institutional governance structure (i.e., those of SEZ ownership, development, and operation). The SEZ roles it envisioned are described in the table below. Reinforcing this notion, Article 4 of the Development and Operation Regulation⁹⁵ specifically prohibited SEZAR (the SEZ Regulator) from developing or operating any zones.

⁹³ Ibid, p.22.

⁹⁴ Ibid, p.22-23.

⁹⁵ Regulation N°01/2012/SEZAR of 20/12/2012 of the Special Economic Zones Regulatory Authority of Rwanda (SEZAR) on the Development and Operation of Special Economic Zones, Official Gazette n°8 of 25/02/2013.

Roles, Participants, and Functions in SEZ Program According to the SEZ Policy

Development Role	Participants	Functions
SEZ Regulator/ Authority	Government— through an SEZ Authority and other line ministries and agencies	Responsible for planning and administering the SEZ program, including: <ul style="list-style-type: none"> o Proposing designation of SEZ sites o Licensing and permitting developers, operators and users (tenants) o Provision of administrative services or coordinate other public agencies services/inputs o Marketing and promotion of SEZs o Monitoring and ensuring compliance
SEZ Owner	Government, private firm, private landowner, private holding company, or PPP	Owns the physical SEZ, and assumes risk for SEZ development. Collects all or a portion of the profits from SEZ operation.
SEZ Developer	Government, private firm, or PPP. The owner is often the developer but the developer can also be a separate entity under a contractual arrangement with the Owner.	Undertakes SEZ feasibility study. Physically develops the site, including financing, designing and constructing the SEZ infrastructure and facilities.
SEZ Operator	Government, private firm, or PPP. Can be the Owner, Developer, or private firm contracted.	Runs the day-to-day business of the SEZ. Leasing/sub leasing plots to users Provision of facilities and services
SEZ User	Private firms located in SEZ as tenants.	Licensed/permitted to establish business operations within SEZ.

This framework should be preserved in future regulations as it is in line with best practices regarding the separation of regulatory and development/operation functions. Preserving this separation helps avoid overlapping responsibilities and/or gaps in functions, facilitates specialization, and prevents conflicts of interest.

Recent MINICOM Industrial Park Guidelines mooted the idea that SEZAR take a participation in provincial industrial parks are thus contrary not only to good practice, but also to the intent of the SEZ Policy and the Development and Operation Regulation, and proposals in this respect should be reconsidered as inadvisable.

Even more importantly, however, neither the 2011 SEZ Law nor its regulations specified what entity SEZAR would be housed within, or whether it would be autonomous. The Law

also assigned relatively few well-defined responsibilities to SEZAR, except for the exclusive power to issue zone licenses under Article 16 and the ability to issue certificates of origin under Article 12(6).

UNIDO's summary of best practices for SEZ institutional governance roles and responsibilities is provided in Annex B. It is our recommendation that these best practice roles and responsibilities, as they pertain to SEZAR in particular, be those followed by Rwanda.

(4) One-Stop Shop

Under Article 32 of the SEZ Law, SEZAR was to be responsible for establishing, managing, and providing resources to a one-stop shop that was tasked with “facilitating” operations in the zones. The One-Stop Shop (OSS) Regulation assigned many more broad, though still somewhat vague, powers to the OSS, such as the responsibility to provide *all* services required for “entry, stay and residence, start-up, operation, and closing of business” for SEZ users. Each SEZ would have its OSS operated by the developer/operator, which would provide an office for such to the authorities. Little detail was provided on how far the OSS's power to provide these services extended, but the OSS was intended to perform its services through representatives from other government bodies assigned to the OSS under agreements with various agencies. The representatives were to be under the technical supervision of the agency assigning them to the OSS, but under the administrative supervision of SEZAR.

No such OSS however at this time exists at KSEZ, as PEZ has stated that there is a lack of funding to put one in place. Instead, SEZAR thus makes use of the RDB's and of City of Kigali's⁹⁶ respective one-stop centers (OSC), in order to *facilitate* the issuance of various permits and authorizations (such as EPZ licenses and the various permits obtained through the RDB's OSC) –and issues SEZ construction permits itself.

The RDB's OSC, housed within the RDB Investment Promotion Department, offers the following services:⁹⁷

- **RDB Investor Registration Service:** Assists investors in obtaining investment “Acceptance Letters” and Investment Registration Certificates, authorizing them to access incentives;
- **Notary Service:** Assists investors, from the company registration stage, with such formalities as the notarization of Company Articles of Association, Company Name Registration and changes, registration of company stock issuance and transfers, etc.;
- **Migration Service:** Issues Visas and Work Permits for foreign workers and their dependants, through the presence of detached personnel from the Rwanda Directorate General of Immigration and Emigration;⁹⁸
- **Environmental Impact Assessment (“EIA”) Service:** Provides EIA and mitigation plans approvals to investors, through powers delegated directly to the RDB by the Rwandan Environmental Management Authority (“REMA”) –which itself maintains a strictly *ex-post facto* audit function;

⁹⁶ <http://www.kigalicity.gov.rw/>

⁹⁷ <http://www.rdb.rw/one-stop-centre/>

⁹⁸ <https://www.migration.gov.rw/>

- **Water and Power Service:** Facilitates connections to WASAC and REG utilities;
- **Customs Service:** Responds to applications and issues permits authorization the application of Duty, VAT and Excise incentives on imports, through the presence of detached personnel from the RRA.⁹⁹

There is furthermore an RBD Aftercare Division, also housed within the RDB's Investment Promotion Department, as well as an RDB Export Promotion Division, and an RDB Companies Registration Department. The latter offers the following services:

- Company registration, with simultaneous RRA and Rwanda Social Security Board ("RSSB")¹⁰⁰ registration –and issuance of the associated single company number and Tax Identification Number ("TIN");
- The services of the Trademark and Intellectual Property Registration Division; and
- The services of the Mortgage Registration Division.

The Kigali City Council's OSC, for its part, offers the following services (offered by District Land Bureaux outside of Kigali):

- Land Permits (which the RBD Aftercare Division can assist in obtaining from them); and
- Construction permits (outside of SEZs –where it is handled directly by SEZAR).

It may finally be worth noting that:

- Telephone connections and account management (whether for MTN's fixed or mobile networks, or Orange's, Tigo's or Airtel's mobile networks) cannot be dealt with through either of the above OSS;
- Certain imports are subject to securing certifications from the Rwanda Standards Board;¹⁰¹
- Certificates of Origin must be obtained from the Customs Commission headquarters (and may not be obtained from the Customs Desk at the RDB OSC);
- Water and power bill management cannot be handled through the RDB OSC; and
- The "Kigali International Arbitration Center"¹⁰² –an independent private body established around 2012- offers services to investors in the area of commercial dispute resolution.

In UNIDO's view, if Rwanda wishes to have an internationally competitive service offering in its SEZ(s), it would be worth considering offering the full range of the above-listed services through an SEZ on-site OSS –rather than requiring the investor to obtain them from the various current other bodies listed in this report, which are located elsewhere. A sufficient budgetary allocation for its initial establishment (including for site rental or purchase, staff, equipment, etc.) should be made by Government. After an initial set-up period, operating expenses for the OSS can however thereafter be financed and borne through the revenue generated by its service charges to SEZ users. Furthermore, migrating to an SEZ empowered to make decisions, rather than merely facilitate matters

⁹⁹ <http://www.rra.gov.rw/spip.php?article199>

¹⁰⁰ <https://online.rssb.rw/index1152.php>

¹⁰¹ <http://www.rsb.gov.rw/>

¹⁰² <http://www.kiac.org.rw/>

through representatives of other bodies is justified under the SEZ Law and Regulations. These laws authorize the OSS to issue licenses itself.

(5) Recommendations under the 2015 Industrial Park Guidelines

The MINICOM Directorate General of Industry and Entrepreneurship has prepared policy guidelines for the construction, management, and finance of industrial parks in April 2015.¹⁰³

Generally, the Guidelines do not draw sufficient distinctions between Industrial Parks and SEZs, which are, in international practice, rather different concepts. SEZs are geographically delimited areas with a single management/administrative entity and the provide benefits based on physical location within the zone, typically including duty-free and streamlined customs procedures. Industrial parks, in contrast, typically exist without specialized policies apart from urban planning and tailored infrastructure and facilities. Indeed, industrial zones exist all over the world, and have done in several countries, including the UK, for several centuries. SEZ programs, therefore, generally offer more substantial policy and institutional/structural reforms than industrial parks and cater to investors with an international focus.

As a result, regulatory, development, and management procedures need to be more streamlined and institutions typically need to have a higher capacity to create a competitive business climate relative to other potential destinations for multinational investors. To provide just two examples among many, Pakistan and Vietnam have SEZ and EPZ programs that offer more extensive incentives than their industrial estates/zones, which tend are run at a subnational level.

It thus does not necessarily follow that because MINICOM might be the best placed institution to make certain decisions about industrial parks that this is also the case with respect to SEZs. This memorandum however takes a more narrow interest in the exclusive question of SEZs. Not all aspects of the Guidelines or its recommendations bore review in the context of this memorandum's narrow "strategic" remit. However, key items and recommendations were assessed, with a view to strengthening and more clearly articulating the SEZ program's distinct value proposition.

With regard to the specific recommendations of the Industrial Park Guidelines relevant to the regulatory framework of the industrial parks, the following observations are made:

- (p. 5) "...[T]he government's industrial park policy should emphasize that government services should be provided by SEZAR through an on-site one stop centre at the earliest opportunity, regardless of whether SEZ authorization has been granted or is being sought." This memorandum also endorses this recommendation, as formulated.
- (p.6) "Negotiation with users should be handled by districts." This memorandum disagrees with this recommendation and cannot find a compelling argument for such an approach. Plot issuance negotiations should always, for financial as well as practical operational reasons, be handled by the zone operators.

¹⁰³ MINICOM Directorate General of Industry and Entrepreneurship, *Industrial Park Policy Guidelines: Construction, Management and Finance* -Policy Note (30 April 2015 Draft).

- (pp. 9-10) “Make clear in industrial park policy that SEZAR must establish one-stop centers in all industrial parks, regardless of their SEZ status, at the earliest practical opportunity.” This memorandum agrees with this recommendation.
- (p. 10) “MINICOM should lead on SEZ policy decisions.” This memorandum tends to disagree with this proposal. It is not clear why MINICOM should be in the lead on SEZ policy decisions that potentially affect the prerogatives of various ministries. It does not seem likely to be the strongest body to play such a role. SEZAR, the RDB, and the Prime Minister’s Office all appear better suited, on the surface, to perform this task.

B. Best Practices for Zone Regulatory Frameworks

In light of the existing governance and institutional context in Rwanda and international experience with zones regulators, there are three principal potential options for how the SEZ regulator could be organized. Under Option 1 (considered to be the overall best practice), the SEZ Regulator would be an independent entity implementing all, or most, regulatory functions in the SEZs on behalf of the rest of the government. Under Option 2, the regulator would be an inter-agency committee consisting of representatives from many government agencies and headed by a secretariat. Option 3 represents a “progressive approach” that provides a framework for transitioning to a fully independent regulator.

Under all options, the regulator would perform substantially similar functions --i.e., core “regalian” (Sovereign prerogative) regulatory functions protecting the public interest, like licensing of developers, operators, enterprises, and workers, and monitoring their compliance with legislation. The differences are largely organizational: Option 1 offers greater simplicity of management, whereas Option 2 relies heavily on a complex network of bilateral, and sometimes multilateral, MoUs. Option 3 accommodates weaker capacity/institutional contexts at the outset and provides a path toward greater regulatory autonomy over time.

Governments should, as a rule, resist mandating the national investment promotion agency (IPA) to be the SEZ regulator. IPAs should focus their resources on nation-wide promotion leaving specialized SEZ regulation functions to another agency. Indeed, IPAs should generally refrain from regulating at all, as the roles of regulator and promoter/facilitator of investment are not fundamentally compatible, and create conflicts of interest. Furthermore, IPAs tend to administer business licensing for their clients based on existing national requirements. Independent SEZ regulators have an opportunity to significantly simplify and streamline licensing within SEZs, based on the specific enabling provisions of the SEZ Law.

(1) Option 1: SEZAR as an Autonomous Entity with Independent Regulatory Authority over Core Aspects of the SEZs

As a standalone entity, the SEZ regulator would be formed as an independent Authority (the SEZAR) ideally positioned directly under the Prime Minister, so as to give it the necessary institutional and “political” clout to deal with the inevitable institutional tussles created by an SEZ regime affecting various bodies’ ordinary prerogatives (e.g., business licensing, land regulation, labor regulation, tax administration, etc.) so as to bring about a “special” and better regime in these areas. As such, its board of directors would consist, at least partially, of individuals with relevant private sector experience. This model tends

to minimize bureaucratic delays and political interference, allowing the agency to regulate, outsource, and monitor efficiently.

Under this option, SEZAR would have authority over most other government agencies as regards matters within the zones and/or would coordinate the regulatory functions and services that those entities normally perform either by performing them itself or on the basis of understandings contained in inter-agency MoUs as necessary. Given security considerations, Customs, immigration, and security functions might however be performed by the Directorate General of Customs, Directorate General of Immigration and Emigration, Ministry of Justice, under MoUs with SEZAR, rather than under SEZAR's direct authority.

The distinguishing feature of this option is that rather than having a wide collection of government agencies all regulating the zones in various areas, most regulatory responsibilities would be vested in a single individual, a General Manager or CEO, who would head a multi-department SEZAR through which most of the responsibilities of government in the zones would be carried out. The SEZAR Board of Directors would oversee and supervise the CEO and departments.

(2) Option 2: An Inter-Agency Committee Composed of Various Government Agencies, Run by a Secretariat

If organized as an inter-agency committee, the SEZ Regulator would integrate the key stakeholders at provincial and national levels, and consist of representatives from various government entities, private sector companies, and key civil society organizations, as appropriate.

As an example, the inter-agency commission could include:

- A Secretary General, appointed by the Prime Minister, who would chair board meetings. The secretariat could be called SEZAR and could include sub-entities such as a strategic planning and regulatory policy unit, a legal affairs unit, and an internal audit unit;
- The CEO of the Rwanda Development Board;
- The Minister of Trade and Industry (MINICOM);
- The Minister of Finance and Economic Planning;
- The Minister of Public Service and Labor;
- The Minister of East African Community;
- The Minister of Internal Security;
- The Minister of Infrastructure;
- The Minister of Justice;
- The CEO of Prime Economic Zones Ltd. (PEZ); and
- Representatives of major investors/anchor tenants in the SEZs, as well as national chambers of commerce and/or trade associations.

The strength of MoUs allocating responsibilities under an inter-agency framework is critical. MoUs would, absent an autonomous SEZAR, govern most, if not all, of the regulatory roles performed in the SEZs. Given the high level of collaboration this will involve, multilateral MoUs may be preferred, under which all relevant agencies sign onto

the same document, rather than bilateral MoUs, under which pairs of agencies make agreements.

Examples of such an inter-agency framework may be found in South Korea's Free Economic Zones Committee or in the Ethiopian Investment Board.

(3) Option 3: Transitional Framework from Inter-Agency Committee to Autonomous Entity

Option 3 combines options 1 and 2 by establishing an inter-agency committee with private sector representation first, with the goal of transitioning to an independent regulator. This option is best when an independent regulator is identified as a goal, but is not feasible early on because the regulator would not have the capacity to carry out all of the functions expected of it.

Under this option, the government would create a SEZ regulator that serves as a secretariat to an inter-agency committee. The secretariat would draw upon and coordinate the resources of the committee to regulate and provide services to the zones. Even if the existing public agencies have a reputation for poor service, the SEZ regulator can work with them to improve performance standards. It may be necessary for the regulator to contract a private firm to undertake a regulatory function while training the regulator staff to take over this role. There is no alternative to the regulator taking over functions from an agency if poor or corrupt practices prove to be entrenched.

As the SEZ regulator acquires greater capacity, enabling SEZ legislation should be amended so as to transform the SEZ regulator into an autonomous entity with authority to bypass existing legislative and institutional impediments, so as to provide the best possible investment climate within the SEZs. In particular, the SEZ regulator needs to be able to license industrial and commercial tenants under its own rules to operate within an SEZ, as well as regulate land development in SEZs, with minimal recourse to outside agencies. Even with strong regulatory authority, the agency will however have to work with existing government departments to deliver key services, given the need to align and integrate the SEZ framework to the greatest extent possible with existing systems and technical requirements.

(4) Best Placement for Rwanda's Zones Regulator

As described in "SEZ Policy Issue 6" in the 2010 SEZ Policy, SEZAR was meant to be organized along entirely different lines than those suggested in the above Option 1, as an entity vested with the administrative powers to regulate zone designation, licensing, service provision, marketing, and developer performance –to the extent that other Ministries were willing to cooperate. Further splitting its manageable interest, the zone program would moreover deliver its services to SEZ End-Users through the RDB's separate One-Stop Centre, outside of MINICOM's control.

A policy decision to establish SEZAR as an entity under MINICOM was made initially after evaluating the option against three alternatives: SEZAR as an entity under (1) the RDB (an option which was rejected in the policy); (2) MINECOFIN; and (3) An autonomous entity in the manner of the Rwanda Utilities Regulatory Authority (RURA) (which is directly supervised by the Prime Minister's office¹⁰⁴). Some of the strengths and

¹⁰⁴ Law No 09/2013 of 01/03/2013 Establishing Rwanda Utilities Regulatory Authority (RURA) and Determining Its Mission, Powers, Organization, and Functioning, Art. 11.

weaknesses of these various options can be seen in the table below, reproduced from the 2010 SEZ Policy:

Options for the SEZAR under the 2010 Rwanda SEZ Policy

Options	Agency/unit in RDB	Agency/unit in MINECOFIN	Agency/unit in MINICOM	Autonomous agency e.g., a RURA
Overall Assessment	Rejected	Rejected	Proposed	Rejected
Suitability	Low: At the moment the developer sit in RDB so this would not help with the conflict of interest	Medium: Aligns with the economic development function	High: Aligns with the trade and industry development function of the ministry very well.	High: Best option to ensure independence and autonomy
Feasibility	Medium: This would cost less than setting up an autonomous agency. However the authority will have to be staffed and training/technical assistance given at the beginning to ensure that it runs smoothly			Low: Significant costs to set up. Unclear whether justified by the volume of work
Acceptability	Medium: The private sector would not like the potential conflict of interest	Medium: Could be conflict with the public investment function	Medium: The authority will still be part of a ministry	High: Reassures the private sector that there is a level playing field

As suggested above, the SEZ Policy rejected establishing SEZAR as an autonomous entity because it determined it to be unsuitable (due to concerns with possible costs rather than with institutional effectiveness). The SEZ Policy also did not consider the inter-ministerial committee framework discussed under Option 2, above, nor did it consider a transitional framework under Option 3, above as a means of overcoming this low feasibility.

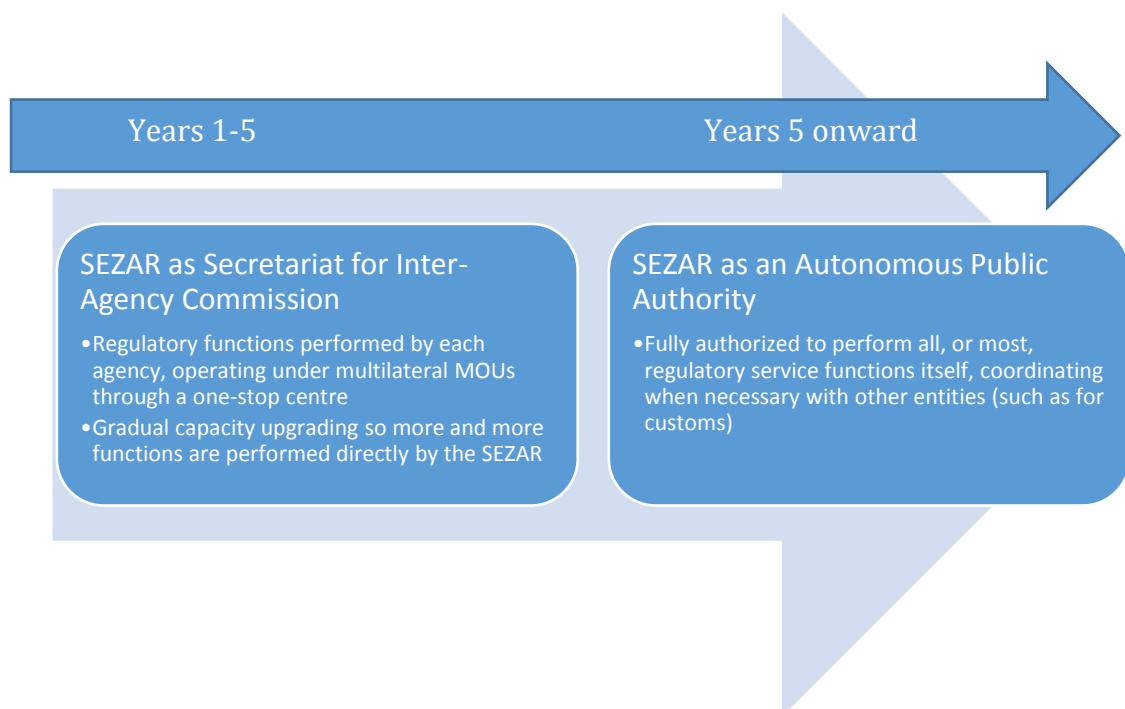
While the model recommended (itself rejecting the model of the RDB subsidiary!) no doubt appeared well-reasoned given political and budgetary pressures, it now appears clear that an inter-agency committee model might have done better, at least in a transitional role toward the “best practice” solution of an autonomous body, while SEZAR built its capacity. Smaller countries with smaller governments, such as Rwanda, have the advantage of not having to coordinate between numerous large and bureaucratic government ministries, agencies and departments, and thus certain of the theoretical disadvantages of the inter-agency model recede in relevance. Moreover, given required institutional reorganization, new staffing requirements to oversee SEZ matters, staff training and capacity-development in new “SEZ skills”, and new equipment required by a new department, the argument of any actual cost-savings may actually be something of a red herring. Lack of specialization, lack of a focused mandate, inter-ministerial positioning and competition, and other drawbacks of such a model do not appear to have been properly considered either.

Thus, it may be best, in the near term, as Rwanda asks itself “what in the end of the day is special about our SEZs?,” for SEZAR to be reorganized as the Secretariat for an inter-agency committee that coordinates and streamlines regulatory functions for SEZs through MoUs. Given that a critical mass of SEZ investment has now been reached in the KSEZ, these MoUs could also provide that each agency with the responsibility for carrying out regulatory functions within SEZs should do so through fully-empowered

representatives assigned to a separate one-stop center from the RDB's.¹⁰⁵ This would be amply justified by the fact that these regulatory functions would be provided in a different and "special" manner in SEZs. SEZAR, under this arrangement, would play the crucial role in ensuring all functions are performed by the one-stop center and that unnecessary and duplicative compliance requirements are consolidated, removed, or replaced for SEZ End-Users.

Over time, the inter-agency commission should however commit to upgrading the capacity of SEZAR so that more and more of government regulatory functions and services are performed directly by the latter through its one-stop center. SEZAR should then be transformed into an independent authority, similar to RURA, directly under the Prime Minister. SEZAR's board might consist of some of the same ministers currently proposed for the inter-agency committee.

Possible Evolution for Regulatory Organizational Structure



C. Analysis of the Current SEZ Management Model under PEZ and Recommendations for Future Industrial Parks

The final question under consideration by this memorandum is what the management model for the new provincial industrial parks should be. This section analyzes current and proposed management models in the SEZs and industrial parks and provides recommendations. Further detail on UNIDO's best-practice principles for SEZ Development and Operation are included as Annex C.

(1) Current Operational / Management Issues at KSEZ

With no other planning on revenue undertaken in the context of its Business Plan, PEZ has sold full title to land¹⁰⁶ within Phase 1 of KSEZ and, as a result, generally lacks

¹⁰⁵ As of now, SEZAR has only one MoU, which is with the SEZ developer PEZ.

¹⁰⁶ Under a 30-year (renewable) leasehold arrangements –which can, under the SEZ Act, be converted into freehold title with the approval of SEZAR and the City or District Government –after construction has

ongoing revenue streams¹⁰⁷ and is facing issues with respect to maintenance and operations of the zone's infrastructure. Indeed, the cost of ongoing future site maintenance, according to SEZAR, was never even computed within the Phase 1 plots' sale prices.

Moreover, as PEZ built the water and power distribution infrastructure itself, it is considered to be its owner by the utilities, and the latter are unwilling to take on any resulting infrastructure maintenance obligations in the zone or enter into any contractual service arrangements with zone occupants. They consider PEZ to be their client and responsible for the payment of all utility tariffs for power and water usage, as well as responsible for maintaining its distribution systems. This leaves PEZ in a financially disadvantageous situation, and KSEZ investors in a precarious one from a service perspective. As a result, where problems such as load-shedding have arisen, they cannot under current practices be properly managed by PEZ.

In this overall context, PEZ still remains heavily reliant, in the context of KSEZ, on its plot sales (rather than rental) model, leaving it with the prospect of continued "going business/cash-flow" challenges. Indeed, even going forward, it has sold 80 ha of the 178 ha available for Phase 2 development and has, for other CAPEX and OPEX needs, begun discussions with creditors.¹⁰⁸

In an effort to resolve these challenges, MINICOM has proposed that infrastructure be handed over by PEZ, and that responsibilities for the following operational matters and infrastructure maintenance issues within KSEZ (and other SEZs and Industrial Parks in the country) be formally conferred or transferred (as appropriate) to the following bodies:

- Security and fire-fighting: Police
- Solid Waste Collection: City of Kigali (or the relevant body outside Kigali)
- Internal Roads: City of Kigali (in Kigali), and Road Transport Development Agency ("RTDA") and Road Maintenance Fund¹⁰⁹ (outside of Kigali)
- Power: Rwanda Energy Group ("REG")
- Water and Sewage: WASAC
- Street lighting: Relevant City Government

MINICOM has furthermore proposed that SEZAR enforce the respect of all parties' obligations under this revised infrastructure operations system –all of which would require amendments to the SEZ Act.

occurred, under the terms of Art. 6 of the Land Law No. 43/2013. Some of this land was sold directly to investors and 14 other plots to MINICOM, for on-letting to relocated companies from Gikondo Industrial Park (7 of which were relocated in 2008-2009, with up to 7 further relocations pending).

¹⁰⁷ There is an exception to this in the form of the rent derived from the 14 MINICOM plot on-lets. Although the rental income is legally due to MINICOM, under a MoU between MINICOM and PEZ, the rent is deposited into a joint PEZ-MINICOM account, from which PEZ draws a fee for plot management, security, etc.

¹⁰⁸ Including Zigama CSS, the Rwandan military's savings society. See: <http://www.zigamacss.org/>.

¹⁰⁹ The Ministry of Infrastructure (MININFRA) indicated to UNIDO that there should, in no case, be any problems with maintaining internal roads, which should already be the responsibility of these specialized MININFRA agencies.

However, MINICOM conceded to UNIDO that it is not clear that such entities as REG actually have the funds to undertake the proposed maintenance responsibilities.¹¹⁰ MINICOM has thus proposed that the exact level of the infrastructure operations costs first be assessed.

Furthermore, it is not clear that PEZ is in agreement with MINICOM's proposals. SEZAR, for its part, is not, as it feels that migrating toward such an approach would obviate the ability of the SEZs' to guarantee and control adequate infrastructure for investors, and thus detract from the SEZ's basic rationale and value proposition. SEZAR is thus instead studying (and discussing with PEZ) manners through which to introduce PEZ maintenance fees as well as KSEZ park entry fees. PEZ has made sure to include maintenance fee provisions in its plot sales agreements for KSEZ Phase 2.

While PEZ has reported encountering difficulties in a previous attempt to impose KSEZ Operations & Maintenance fees on Phase 1 users of the site, the PSF for its part conveyed its sense that such charges should be acceptable in principle to the private sector, provided the prices are properly set. Examples of revenue sources for SEZs are provided in Annex E.

SEZ Developers and Operators, like PEZ, are authorized to collect fees for rentals and other transfers of land, for utilities and other services fees, utility under the Regulation on the Development and Operation of Special Economic Zones.¹¹¹ SEZAR's one-stop shop is also authorized to collect administrative fees for its services as well as to collect charges, fees, taxes, and levies imposed by other government bodies under Article 5 of the Regulation on One-Stop Shops.¹¹² SEZAR may also collect application fees for licenses under the Regulation Governing Special Economic Zone Users,¹¹³ a power that may be delegated to the SEZ operator.¹¹⁴ UNIDO recommends these legislative powers be exercised.

It is UNIDO's view that offering a revised package of incentives package to SEZ investors seems likely to make the introduction of common site and infrastructure maintenance and operations charges more palatable.

A downward renegotiating of the utility tariffs paid by PEZ for KSEZ might usefully, in UNIDO's opinion, also be considered –given the utilities' impractical stance on KSEZ operations and maintenance.

An alternative approach to raising funds for maintenance and operations of KSEZ, proposed by PEZ for Phase 2 of KSEZ, is through the rental of prefabricated suprastructure, including industrial hangars and 4-5 warehouse go-downs, and retail and

¹¹⁰ The Kigali power grid is, in general, overloaded, unstable, and subject to load-shedding –and it is estimated, by MINICOM, that Phase 1 of KSEZ requires 30 MW of constant power.

¹¹¹ Regulation No 01/2012/SEZAR on the Development and Operation of Special Economic Zones, Arts. 12 & 14.

¹¹² Regulation No 02/2012/SEZAR Regulating One-Stop Shops in Special Economic Zones, Art. 5(5).

¹¹³ Regulation No. 03/2012/SEZAR Governing Special Economic Zone Users, Art. 3.

¹¹⁴ Ibid, art. 12.

office space, to tenants.¹¹⁵ A Phase 2 Business Plan including potential revenue from such sources is expected to be completed by February 2016.

(2) Proposed Governance Structures for Industrial Parks by the Rwandan Government

Although MINICOM was, early during the course of this study, considering cooperative models for the operation of the new proposed industrial parks, it ultimately conveyed to UNIDO in late November 2015 that it had moved away from this approach. As mentioned earlier in the report, MINICOM now rather proposes that Districts be given ownership and management of the new industrial parks –at least on an interim basis.

As also mentioned, SEZAR, MININFRA and the PSF alike have expressed considerable reservations regarding this approach to the development and operation of the new proposed industrial parks, including for reasons relating to local technical capacity and bureaucracy, economic impact, and financial sustainability.

The districts do not have sufficient funding for land acquisition, expropriation, or basic infrastructure development for anything beyond unpaved roads,¹¹⁶ nor for operational expenditures relating to site or utilities maintenance. Nor do they have the expertise, capacity or experience required to professionally operate modern industrial parks.

The PSF has suggested that, while District Councils do have a PSF member on them, it would be preferable to have the industrial parks run through Special Purpose Vehicles on a PPP basis, with private sector majority equity, rather than by the District Councils. It also felt, given the need for specialized personnel to operate the parks, that if professional investors were interested, they would perhaps be a preferable solution to local zone users (who could at best contract in the required expertise). Finally, the PSF was clear that neither the Districts nor some sort of user cooperatives should in any way be involved in land acquisition, development.

An international alternative to the District-level management proposed by MINICOM that would still ensure District-level input is the notion of a private-driven or PPP-driven operator being counselled by an “Advisory Board” on which the District is represented. Indeed, the current District Boards themselves could simply serve in an advisory capacity to specific industrial parks, through a subsidiary “SEZ Committee” (perhaps also including MINICOM, RDB, MININFRA and the utilities companies).

Another approach would be to assume that the industrial parks will not, at the onset and without private operators, be classified as SEZs (and may never qualify for such status), nor even perhaps even qualify to be defined as truly modern and professionally operated industrial parks, but rather simply as “good industrially zoned areas” administered or regulated by local government (ideally under a Management or Services Contract to a private operator). Indeed, these types of industrial zones exist all over the world. The MINICOM Guidelines would thus need to be tailored to this vision.

¹¹⁵ It may be noted that this (along with the rental of cold stores) was also envisaged as a revenue stream (along with rental income and user charges) in the original 2006 Free Zone study by JAFZA/TSG.

¹¹⁶ Unpaved roads may, according to MINICOM, be financed through the District Infrastructure Fund.

Case Study: United States Federal Zones vs. State and Municipal Zones

The United States has a variety of SEZ programs administered by both the federal government and individual states. The economic performance of these programs has been monitored extensively, with the following observations:

- Federal-run empowerment zones are located in distressed areas and offer generous tax incentives. However, empowerment zones are managed at the federal level and offer more comprehensive programs in terms of job training and social services. The economic results of these zones has generally been positive.¹¹⁷ Similarly, Federal-run Foreign Trade Zones rely upon duty deferral and an inverted tariff structure to attract manufacturing and distribution companies near major ports of entry. These zones have attracted significant investment and are a major contribution to the US import/export market.¹¹⁸
- State-level “enterprise zones” are also located in distressed areas and attempt to induce businesses into the area through varied tax incentives. These zones have typically not met expectations. The few successful zones have been located in areas with significant development potential and are managed by people with good entrepreneurial skills. For the most part, these zones have drained public revenues in return for little job growth or sustained investment. Businesses that do come typically leave once tax incentives expire or are undercut by a competing location.¹¹⁹
- Municipal industrial areas, which offer less extensive incentives and rely primarily on quality infrastructure and access to markets and labor pools, typically perform better than the State-level EZs.

These results lend support to the principle that SEZs tend to perform better when administered at the national level, whereas subnational governments (i.e., state and local/municipal governments) seem to be better positioned to administer more generic industrial zones.

(3) Draft EAC SEZ Policy

The draft EAC SEZ Policy provides minimal guidance on the subject of zone management, which perhaps is an implicit acknowledgment of the diversity of models countries have adopted for development and management of their zones. The policy states that EAC partner states may develop their SEZs through “private, public, or public-private partnerships (PPPs) frameworks.”¹²⁰

The policy however arguably prefers private-sector involvement in SEZ program implementation. One of the core principles for implementing the EAC SEZ program is that “partner states... promote participation of the private sector within SEZs.”¹²¹ Also, the EAC Secretariat and the partner states are tasked with implementing the program, “in

¹¹⁷ Matias Busso & Patrick Kline, *Do Local Economic Development Programs Work? Evidence from the Federal Empowerment Zone Program*, (Nov. 28, 2007), available at [http://eml.berkeley.edu/~pkline/papers/Busso-Kline%20EZ%20\(web\).pdf](http://eml.berkeley.edu/~pkline/papers/Busso-Kline%20EZ%20(web).pdf).

¹¹⁸ Annual Report of the Foreign-Trade Zones Board to the US Congress, 2014, available at <http://enforcement.trade.gov/ftzpage/annual-report.html>.

¹¹⁹ Good Jobs First, “Enterprise Zones”, available at <http://www.goodjobsfirst.org/accountable-development/enterprise-zones>.

¹²⁰ East African Community, *Draft EAC Special Economic Zones Policy*, (Apr. 2014), p. 24.

¹²¹ *Ibid*, p. 22

partnership with the private sector.”¹²² Furthermore, EAC partner states are required to provide “well-developed infrastructure suited to economic activities to take place [in the SEZs].”¹²³ International experience has shown that private companies have proven more reliable at delivering high-quality infrastructure than government.

Thus, an SEZ program aligned well with the draft EAC policy in this regard, and indeed with international best practices, would assign responsibility for development and operation to the private sector to the greatest degree possible. Given that complete private ownership may not be a politically or financially feasible prospect in Rwanda at this time, the public sector may need to be involved in some fashion. Where this is the case, it is preferable, as affirmed above by the draft EAC policy, for the government to carry out its owner/developer/operator functions through a separate “SEZ business entity” (otherwise known as a “special purpose vehicle” (SPV)), with an independent legal existence (like PEZ).

(4) Industrial Park Guidelines

MINICOM’s *Industrial Park Policy Guidelines* provide specific guidance on the subject of park management and review several potential management models for the industrial parks. Of these, the PPP and Co-op models warrant particular attention and are the focus of this section.

The other models provided in the policy guidelines are suboptimal relative to good SEZ practice, principally because they are owned and operated in whole or in part by various parts of the government, such as SEZAR, MINICOM, RDB, and the Districts. All of these models either present conflicts of interest, create an un-level playing field for potential private sector developer/operators, crowd out the private sector, and fail to leverage the private sector’s funds, know-how and experience, client base, and profit motive. They are moreover contrary to the principles established in the 2010 SEZ Policy.

Additionally, the guidelines appear to confuse the issue of “services provided” with that of the management model. The present report does not consider the issue of the nature of the SEZs’ products and services offerings, including various “value added” services beyond basic infrastructure and a one-stop shop, as all of these services can in theory be provided under almost any management model. However, it should be recognized that the private sector has greater experience in the provision of these various value-added services than does the public sector.

(5) PPP Model

A standard model for SEZ and industrial park development and operation

Sample SEZ Value Added Services (and Operator Revenue Streams)

- Childcare facilities
- Medical clinics
- Product exhibition centers
- Commercial centers
- Training facilities
- Tax shelter plans
- Repair and maintenance centers
- Common warehousing facilities
- On-site banking facilities
- On-site housing
- On-site customs clearance and trade logistic facilities
- High-speed telecommunications and internet services
- Networked buildings

(Source: World Bank/FIAS, 2008)

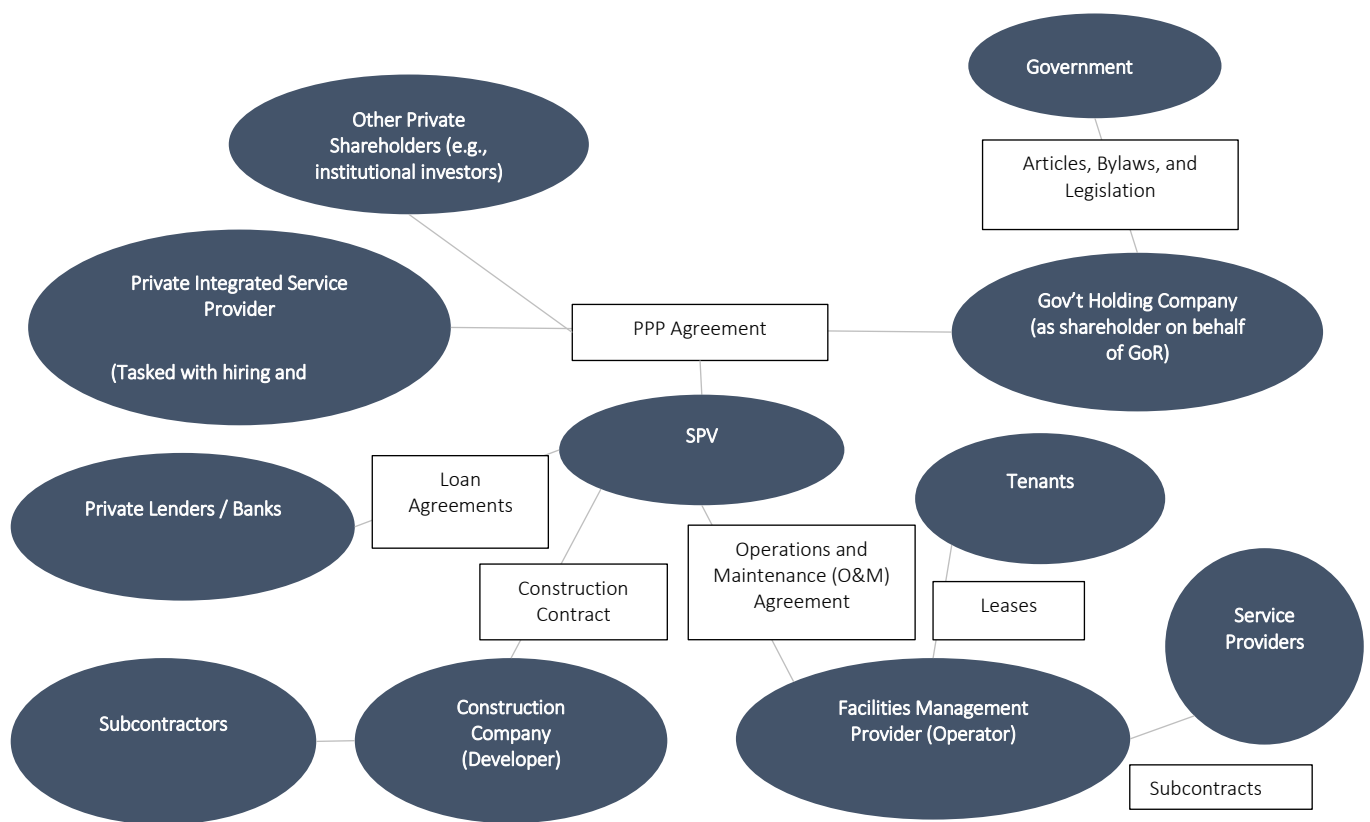
¹²² Ibid, 24

¹²³ Ibid.

worldwide is the PPP model, as for instance currently adopted by KSEZ. There, zone development and management is carried out by PEZ, a public-private partnership between the government and private-sector institutional shareholders. This model has been deployed successfully in numerous countries and situations, in both zone settings and other development megaproject settings.

Under the PPP model, the government and private shareholders become co-owners of a company, or “special purpose vehicle” (SPV), responsible for performing, or contracting for, development and operation of one or more zone(s). The government may sell or lease the zone land to the SPV, and establish a concession agreement or management contract with it detailing its responsibilities with regard to the zone. For example, one common concession arrangement is the BOT, or “Build-Operate-Transfer,” under which the government has the SPV construct and operate the zone for a time, then transfer the zone back to the government. Alternatively, the government could enter into a BOO, or “Build-Operate-Own” arrangement with the SPV, under which the government would not purchase back the zone.

Possible Institutional structure of a PPP Joint Venture for Provincial Zones



(6) Co-op Model

An alternative to this PPP-SPV model is the co-operative (co-op) model, which has been proposed by the World Bank in certain circumstances.¹²⁴ Under this model, park residents would own and control management of the zone as shareholders through an elected board of directors.

¹²⁴ Yannick Saleman and Luke Jordan, *The Implementation of Industrial Parks: Some Lessons Learned in India*, 6 J. OF INT’L COMMERCE, ECONOMICS, AND POLICY (2015).

Under this model, residents could have more control over how the co-op responds to residents' needs and may have access to cheaper services if the co-op is a non-profit. This model also avoids the risk of a developer charging inflated rates based on its monopoly status.

On the other hand, the co-op model poses challenges in the early stages of new park operation. The management firm would not be able to negotiate contracts at the outset with residents, because none will be present and, when residents do join, financial contribution to and oversight of the management firm may be viewed as a burden for new enterprises. Additionally, the co-op model does not provide the government with the revenue that a PPP would through dividends.

It has been argued that some of these start-up challenges could be overcome by having district authorities and SEZAR contribute start-up capital to the co-op as "special shareholders." It is similarly argued that they could also negotiate contracts with the management firms, since residents will not be present yet. As residents join, they could become "normal shareholders," gradually buying them out through financial contributions. This memorandum takes issue with these ideas, as will be further detailed below.

One concern worth considering is whether, if the co-op is a non-profit entity, the contracted management firm will have adequate incentive to perform its functions at the highest possible caliber. This might be overcome in two ways:

- Making the co-op a for-profit entity and having the management firm be a partial shareholder, with residents holding the other shares.
- Giving the management firm certain performance incentives, such as a bonus based on levels of investment in the zone or, based on profits if the co-op is for-profit and entirely owned by residents.

However, favorable assessments of the co-op model¹²⁵ in fact tend to fail to recognize that these co-ops would initially be new creations, with no credit history or experience in this field, and thus essentially un-bankable as regards their O&M/Cash-flow requirements, without a management track-record or global experience in this area, without "a feel for" the competition in the space, etc. Such a model furthermore fails to leverage the private sector's funds, know-how/experience and client-base in this field, as well as its profit motive in service delivery. With possible district government and SEZAR/RDB participation, such a model would moreover create potential regulator-operator conflicts of interest, an un-level playing field for potential private sector developer/operators, and crowd out the private sector.

With regard to the specific recommendations of the *Industrial Park Guidelines* relevant to the co-op model for management and operation of the industrial parks, the following specific observations are made:¹²⁶

- Item 5.8 Negotiation with users (p. 6): "*Recommendation VI: Negotiation with users should be handled by districts.*"

¹²⁵ MINICOM, *Industrial Park Policy Guidelines*, op. cit.

¹²⁶ Ibid.

The report disagrees with this recommendation and cannot find a compelling argument for such an approach. Negotiations should be handled by the Zone Operators.

- Item 5.9 Site management and maintenance (pp. 7-9): *“Recommendation VII: Site management should be conducted by a co-operative firm”*

These Coops would be new creations, with no credit history or experience in this field, and thus essentially un-bankable as regards their O&M/Cash-flow requirements, etc.

- Item 6.3 Ownership (pp. 12-13): *“Recommendation XIV: All industrial parks should be wholly owned by government”*

Private-sector involvement in large-scale SEZs and industrial zone projects has proven highly effective historically. In particular, private-sector parties have tended to perform better than state-driven zones projects in the following areas¹²⁷:

- The accuracy of infrastructure needs testing;
- Financial sustainability in operations due to increased payment capacity;
- Cost-effectiveness and profitability, due to business acumen and a concern for the bottom line;
- Quality of facilities and amenities;
- Access to more sophisticated technology;
- Arms-length delegation of responsibility and risk;
- Achieving higher rental prices; and
- Social and environmental performance.

MINICOM has concluded that (initial) public ownership of industrial parks is necessary based on its calculation of the Financial Net Present Value (FNPV) –which indicates financial viability from an investor’s perspective- and the Economic Net Present Value (ENPV) –which indicates whether benefits to society exceed costs- of its industrial parks. MINICOM’s policy is to only pursue private-sector or PPP approaches when FNPV is positive but to rely solely upon government funding and ownership when FNPV is negative and ENPV is positive. Evidently, MINICOM has concluded that the FNPV of its industrial parks would be negative for the near future.

An economic critique of MINICOM’s approach is not within the scope of this report. However, we acknowledge that at times, a PPP joint venture approach will typically be unwise if the asset under consideration is not sufficiently financially viable to attract private-sector involvement from highly qualified firms on reasonable terms. Consideration should be given, however, to the role subsidies, which are considered in a different context, might play in changing this calculus. In any case, financial viability should be one of the main goals for any industrial park or SEZ, including those in Rwanda.

¹²⁷ See World Bank/FIAS, *Special Economic Zones: Performance, Lessons Learned, and Implications for Zone Development* (2008).

To achieve financial viability the government could pursue more modest PPP approaches, such as outsourcing development and operations to the most experienced private company available. It should offer this company performance incentives and perhaps a purchase option so that profitability is achieved as soon as possible. As the parks achieve financial viability, more robust PPPs should be considered.

Item 6.6 Pricing options (pp. 14-15): *“Recommendation XIX: Ensuring enough firms establish in or relocate to industrial parks... may require pricing to adapt to demand... appropriate adaptivity could be achieved through an annual inter-agency price review mechanism.”*

UNIDO disagrees with this proposition. An inter-agency annual price review mechanism is an unnecessarily complex approach and too quickly assumes that market forces cannot function in Rwanda or lead to efficient investment outcomes. Rather than relying upon a top-down, centralized pricing-planning scheme that attempts to overly control regional growth patterns, private-sector operators should be free to set prices on their own in accordance with market rates. Despite the limited functioning of land markets in Rwanda, market rates should be ascertainable through a thorough study of prices of serviced land paid and through discussions with private industrialists. These exercises will almost invariably reveal some data on a price-range in which supply and demand are like to meet, approximately.

Concerns over “balanced” growth, de-concentration of investment from Kigali, and the promotion of second cities should only be addressed in tandem with market-based spatial strategies. Properly-framed SEZ and industrial park policies, relying on objective ERR/EVA/IRR analysis and private sector participation, can help introduce these forces and thereby catalyze the development of functioning land markets in Rwanda.

Institutions that establish centralized price controls lack sufficient knowledge to perform their responsibilities well, even in high capacity contexts, because of the immense complexity of the forces they must take into account. Attempting to avoid underinvestment through a “coordinated” pricing strategy, therefore, will tend to lead to inefficient and distorted development patterns that fail to produce sustainable economic growth.

Risks of underinvestment can best be mitigated in advance through quantitative demand-based market feasibility studies conducted prior to designation of industrial parks.

(7) Conclusions Regarding the Co-op Model

If applied anywhere, the co-op model might be best suited for zones with higher levels of local investment because its main benefits involve providing residents with active control over the services delivered to them. The scheme has been particularly successful in India’s Integrated Textile Parks by creating cohesion between entrepreneurs, which has helped align informal incentives and capabilities with formal ones.

Zones with foreign investors and multinationals operating through branches or subsidiaries, as may be the case with the KSEZ and some of the proposed Provincial parks such as Bugesera Park, may be less inclined to engage with the management company and actively oversee its performance. They may moreover have expectations of management experience and professionalism, as well as in terms of value-added service standards, that a new, non-profit cooperative structure cannot be expected to meet.

Thus, it would be essential to first determine, through in-depth sector, demand, and economic feasibility studies, the type of investors each individual zone is expected to attract. Parks expected to have larger numbers of local investors and small- to medium-sized operations may be best suited for the co-op model. Utilizing a co-op model in a few parks and the traditional PPP or a fully private Developer/Operator model in other parks would also allow the government to test each model and learn from the outcomes.

Where a co-op model is desired, it is crucial that it be structured carefully. Providing responsible recommendations for designing the co-op structure requires a more detailed study than is within the scope of this preliminary memorandum.

Two additional points are worth mentioning on the co-op model as described in the World Bank literature, which may not have received sufficient attention in the Rwandan debate thus far:

Site selection should rest with the private sector (whether through a private sector management consultant, a key trade association interested in the project, the private sector partner in a PPP, or a PPP with significant private equity), to select sites presenting the best prospects for investment, properly frame their vision and value proposition, as well as to avoid both over-scoping and under-scoping. Private-sector site selection can be achieved by following similar procedures as are provided in the SEZ Designation Regulation.¹²⁸ Under this regulation, parties submit applications for designation of a certain area as an SEZ to SEZAR, which then evaluates the application under certain defined criteria. If successful, SEZAR then commences with acquisition of the land, such as through voluntary transactions or expropriation if necessary. Similarly, parties proposing to have an area designated as an industrial park could submit an application to the government entity responsible for the industrial parks, which would then evaluate the application and, if approved, acquire the land. Industrial park approval policies can require procedures for robust market demand assessment and demonstrations of the appetite for prospective sites of real-world private sector stakeholders.

Moreover, private sector “cluster” associations’ involvement in park operations and management in some fashion (even if only on a consultative or “advocacy” basis), if possible led by “cluster leaders,” is of value in informing zone site selection, infrastructure development, and management decisions.

III. **WHERE TO GO FROM HERE: ROAD MAP FOR RWANDA’S SEZs AND INDUSTRIAL PARKS**

If Rwanda’s SEZs are to realize their maximum development potential, crucial improvements are needed to the current SEZ program. Rwanda suffers from specific economic constraints that could be overcome by reforms to the overall business operating environment. A well-designed SEZ policy can pilot such reforms, particularly by streamlining business regulatory procedures, designing ‘smart’ incentives, developing a robust regulatory framework that is feasible for its political and institutional context, and establishing a management model that aligns incentives for private and public entities in an efficient manner.

All of the preliminary recommendations in this report should be given thorough consideration in reinvigorating the SEZ program. A phased SEZ regulatory and

¹²⁸ Regulation N° 04/2012/SEZAR of 10/12/2012 of the Rwanda Special Economic Zones Regulatory Authority (SEZAR) on the Designation of Special Economic Zones in Rwanda, arts. 3-7.

institutional development framework should likely then be implemented. Such a phased approach would help Rwanda upgrade its regulatory capacity and prudently transition to an optimal institutional framework.

A. Legal and Regulatory Development

The first step toward building better SEZ institutions would typically be for the Prime Minister, as the head of Government, to appoint a steering committee consisting of public and private-sector representatives. This committee would be tasked with championing and guiding the development of a new SEZ policy, as well as amendments to the SEZ legislation and regulations.

Any new policy should ensure that the new SEZ policy addresses the key identified weaknesses of the business operating environment in Rwanda through the SEZ Law and regulations. Amendments to the current legal and regulatory framework should empower and allow an independent SEZ regulator to issue its own permits, and formulate and enforce its own standards and procedures, modifying, as necessary, the generally applicable investment, land, labor, and immigration laws for SEZ users. Additionally, the amendments should establish a simplified flat tax rate applicable to all SEZ users, as well as specialized customs treatment compliant with Rwanda's regional trade commitments but more fully capitalizing on the flexibility they may offer.

The Steering Committee should also develop a transitional framework for the SEZ Regulator. This framework could begin by making SEZAR a secretariat for an inter-agency committee that coordinates all zones regulatory functions through its own one-stop shop.

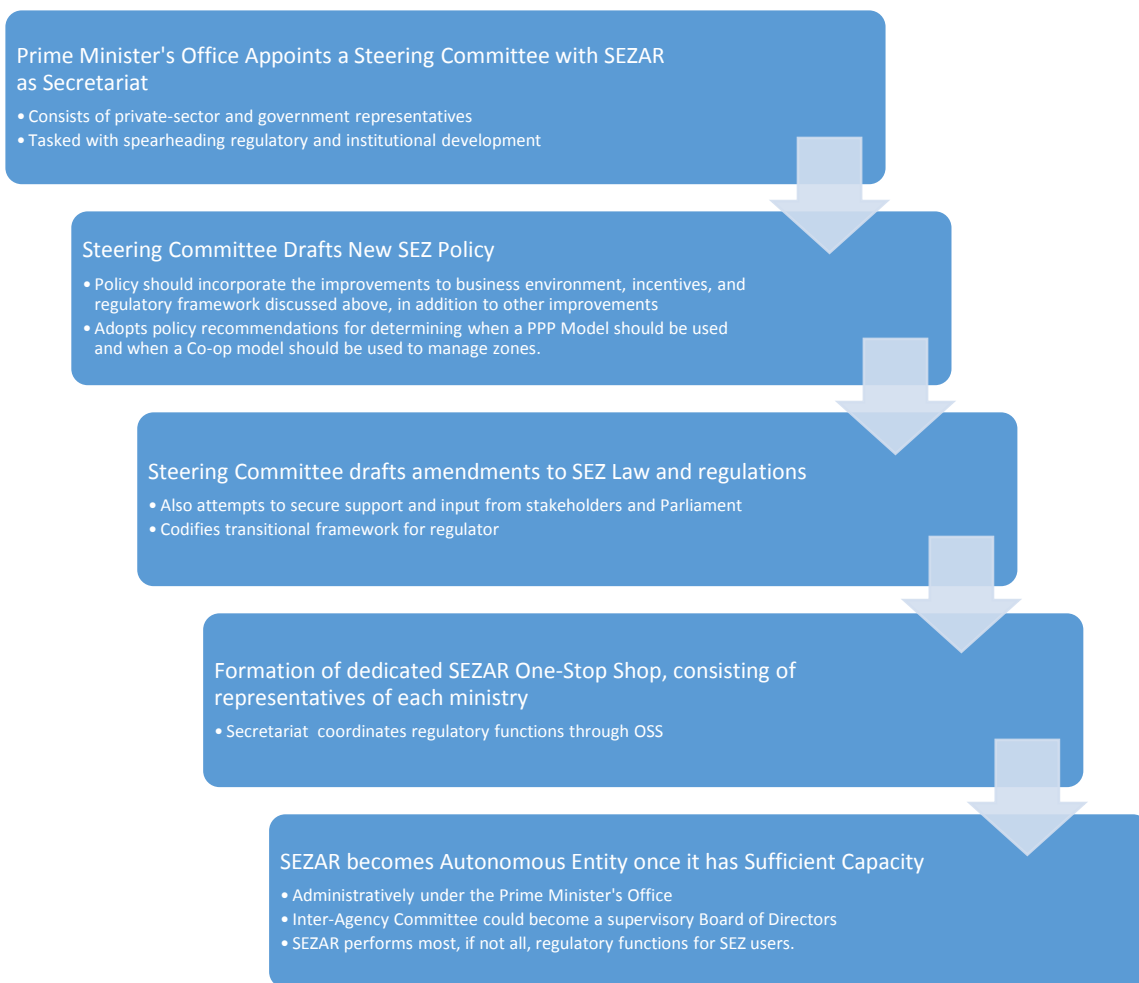
Eventually, SEZAR should become an autonomous entity fully empowered to perform most regulatory and government-service functions independently.

Finally, the Steering Committee should conduct further research into management models for future zones, based on an in-depth understanding of their likely market.

Generally, a PPP zone management model should be the favored approach, especially when a zone anticipates attracting international investors. A co-op model could perhaps be used when local investors are anticipated, but it should in no case be a government-led or government-dominated coop, as proposed under the MINICOM Industrial Park Guidelines.

The following diagram summarizes and creates a timeline for implementation of this memorandum's recommendations:

Potential Roadmap for Regulatory and Institutional Framework Development



B. Securing private-sector PPP partners for Industrial Park Development and Operation

As stated above, the private-sector should be involved in the development and operation of the planned industrial parks. Forming a public-private partnership must emerge out of a well-planned, deliberative process that finds the most capable company possible. The general steps to engaging a private-sector partner are as follows:

- 1) **Informal market testing** through a specialist advisor that reaches out to potential private partners through a structured questionnaire and follow up interviews
- 2) **Production of the Full Business Case (FBC)** presenting the rationale for the proposed PPP arrangement, including information on:
 - Alignment with national strategic priorities
 - Economic benefits
 - Commercial strategy
 - Financial requirements; and
 - Management structure
- 3) **Assembly of the delivery team**, which will include government officials and specialist external advisors. Key activities of this team will include:
 - Early Conceptualization and Packaging of the project, and of the proposed nature of private participation

- Procurement of the project’s private sector partner(s);
 - Tracking the progress of the implementation plan and monitoring identified project risks
- 4) Development of **draft terms of engagement** with private sector, including a decision on the type of bidding approach to be used (e.g., competitive bidding without negotiation vs. with negotiation)
 - 5) **Market engagement**, including an announcement to the public of the procurement timescale
 - 6) **Conducting the formal procurement process**, typically involving:
 - Issuance of a Request for Expression of Interest (EOIs)
 - Pre-qualification of interested parties based on review of submitted EOIs based on financial stability, relevant experience, and technical capacity.
 - Issuance of Request for Proposals from pre-qualified parties and receipt of proposals.
 - Selection of a private-sector partner based on such factors as price, technical skill and experience, financial criteria, alignment with government’s objectives and the FBC, and quality of approach to service delivery.

As can be implied from the above steps, zone/park marketing strategies play an important role in attracting private sector support throughout this process. The following are the key components of a good marketing strategy, which will convince private sector developers and operators to participate in the program:

- **Competitive Analysis**
 - How do Rwanda’s Industrial Parks compare with those in the region and in other comparable destinations?
 - What is Rwanda’s parks’ competitive advantage and how sustainable is it?
- **Positioning**
 - Perception of the parks in the minds of investors.
 - Clear and strong position makes parks ‘top of mind’ for investors and is based on a competitive analysis and product offering. Examples:
 - “Easier to do business”
 - “Better market access”
- **Branding**
 - “Promise” to industrial park investors consisting of a brand name, brand identity (logo), and brand personality.
- **Marketing Mix**
 - Methods of communicating park offerings to the public
 - Typically through trade and road shows, targeted industry advertising, and direct one-on-one meetings through industry associations.
 - Could include TV and select print media as an “umbrella” approach to raise general awareness of the country and park offerings
- **Pricing & Budgeting**
 - Decisive factor if the brand is not strong
 - Creative strategies, such as bundled pricing, has been effective at attracting investors to other zones/parks

ANNEX A: DESIGNATION OF SEZs/INDUSTRIAL PARKS & DEMAND FORECASTING

Location is a crucial factor for the success of zones and industrial parks. In making a designation decision consideration should be given to the following principles:

- 1) Competition for investment activity means it has choices as to where to go
- 2) SEZ/IP promoters must listen to “what the market is saying” when determining where zones should be located, through proper public-private dialogue with chambers of commerce, potential anchor tenants, and local businesses potentially supplying them. The private sector itself must perceive a “business case” for, and champion, investment in a particular location
- 3) Investment follows critical masses in consumption and labor markets, and in existing distribution patterns, not the reverse (unless it follows raw material resources)
- 4) Transport economics has “rigidities”, and investment location decisions are not fully elastic, being dependent on critical distances from markets, key distribution nodes (such as ports, dry-ports and airports) and third-party collaborators in one’s cluster
- 5) A site can only be evaluated relative to other sites, as opposed to in a vacuum
- 6) A corporate location/SEZ/IP site must have a clearly defined vision and Unique Selling Proposition (USP), in order to compete effectively for investment
- 7) Scope and scale of projects are contingent on robust demand modelling and quantification, and sites cannot be chosen without such data
- 8) A mega-project should never go forward unless it is quantitatively demonstrated to be economically value-additive
- 9) While Government undoubtedly has a role to play in such mega-projects, they must nevertheless be predicated upon financially sustainable models, and a realistic appreciation of initiative timing and sequencing
- 10) Design and financing come at a later stage of enquiry, after investment logic and economic rationale have first been proven *prima facie*

Development of SEZs/IPs should be structured around a methodology that prioritizes the following studies:

- **Quantitative-based demand/market assessments** using:
 - Cluster analyses;
 - Regional and domestic trade data;
 - Regional and domestic FDI/Gross Fixed Capital Formation (GFCF)/enterprise registration data;
 - Real estate market options analysis;
 - Regional SEZ/IP factor-costs benchmarking
- **Economic strategy and sectors study** (including Economic Rate of Return (ERR) / Economic Value Addition (EVA) analysis based on industry-sector jobs/m², salary, sales and export norms);
- **Investment climate / regional investment climate benchmarking studies;**
- Quantitative-based **land absorption/take-down projections**, based on comparable industry Gross Floor Area (GFA)/ Floor Area Ratio (F

These studies must precede the planning of any SEZ or IP. Investment should not be taken as a foregone conclusion without applying appropriate investment discount multipliers, as well as sensitivity analyses. Spatial plans must be designed around market forces, as indicated by robust quantifiable demand projections, and adaptable as market processes evolve

Demand projections provide the basis for estimating a number of critical inputs to the strategic planning process. Depending on the quality of data available, outputs of an effective demand forecast include estimates of:

- Gross and net land uptake, providing a basis for early phasing in the conceptual master plan
- Utility usage, providing a basis for estimated load requirements over the life of the project;
- Enterprises investing, which will provide insight into fees, demand for value-added services, and other revenue estimates for financial modelling;
- Company income and profits, also providing useful inputs to economic benefit analysis; and
- Employment, providing important inputs into services required and tax revenue for economic benefits analysis.

The following diagrams elaborate on the process for developing robust demand studies.¹²⁹

The Basics of SEZ Demand Analytics



¹²⁹ Source: World Bank.

The Crucial Data for Demand Analytics



Demand Analytics: Target Sectors

A number of approaches are available to identify target sectors or industries:

Economic Activity Analysis	Export Analysis	Import Market Analysis	Investment Trends
<ul style="list-style-type: none"> A leading source of insight into what sectors are likely to be the source of investment is an understanding of current economic activity, capturing the market forces already at work. 	<ul style="list-style-type: none"> Most obviously an indicator of what a country is making in sufficient quantity and quality to meet the needs of external markets, a country's exports can also reveal something about the competitiveness of a country's industries. 	<ul style="list-style-type: none"> An examination of regional and international markets can provide a great deal of insight into potential market opportunities. 	<ul style="list-style-type: none"> Examines investment trends and factors shaping the site selection decisions of local, foreign and regional investors to understand which industries are more likely to produce new investment—and which ones are not.

The most reliable indicator of activities likely to be attracted to an SEZ is the **market itself**. Therefore many of the tools used to identify target sectors are aimed at gathering information about how the market is moving.

Demand Analytics: Target Markets

Analysis also seeks to identify likely **markets** from which investment will originate. This provides insight to investment trends, and it can later guide marketing.

Current and Historical Trade Patterns

- Major trade partners of a given country are often sources of investment. In the context of a **conflict-affected** state, the ties that bind may be weakened, but historical trade patterns will still provide a strong indicator of which countries will be “restarting” rather than beginning afresh

Cultural and Ethnic Affinities

- When Ireland first began seeking investment, it recognized the power of the Irish diaspora in the US; expatriate Indians rising to the top of Silicon Valley are sources of business and investment back into India. With the inevitable disbursement of a **conflict-affected** countries’ entrepreneurial class, often to more developed markets, this is particularly relevant

Investment Trends

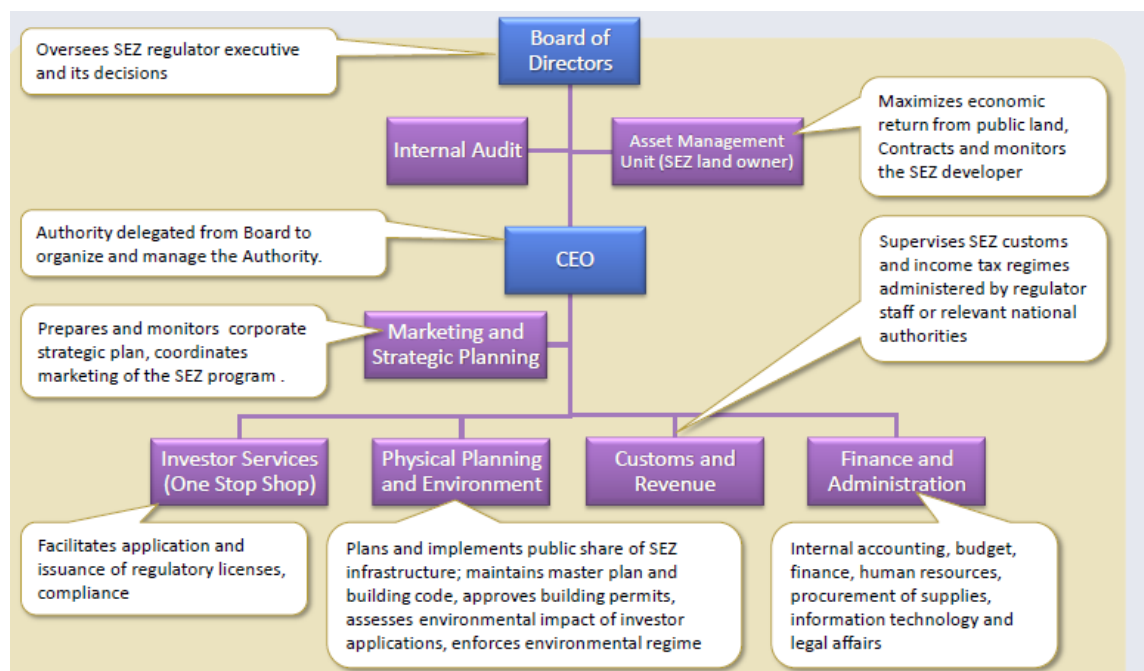
- Like investment analysis under the search for target industries, this layer of analysis examines investment trends and market forecasts on a regional and international basis. Instead of examining site selection criteria and decision processes, the analyst uses the data to gain an understanding of where investment is originating

ANNEX B: BEST PRACTICES FOR SEZ GOVERNANCE ROLES AND RESPONSIBILITIES

Under best practice scenarios the responsibilities in an SEZ program are clearly articulated and divided between a number of entities. The following is a description of the types of responsibilities that must be assigned in an SEZ program:

SEZ Developer	SEZ Operator	SEZ Regulator	Investment Promotion Agency	End Users / Tenants
<ul style="list-style-type: none"> • Private-sector firm or a PPP Joint Venture • Could own SEZ, co-own it with gov't, or be contracted by gov't • Finances, designs, plans, and manages development of infrastructure and facilities • Subcontracts for discrete construction and other tasks 	<ul style="list-style-type: none"> • Private-sector firm or a PPP Joint Venture • Can be same as developer or subcontractor of developer • Manages day-to-day service provision • Markets and leases or subleases land and/or buildings • Provides or contracts for waste removal and treatment, maintenance, security, etc. 	<ul style="list-style-type: none"> • Dedicated gov't agency ensuring regulatory environment is more streamlined and efficient than national one • Often consolidates gov't functions and administers them through a one-stop shop • Designates land as SEZs, • Licenses developers, operators, and enterprises • Coordinates all public agency inputs; • Monitors and enforces compliance 	<ul style="list-style-type: none"> • Gov't agency or gov't owned company dedicated to marketing the SEZ to developers and investors • Can also act as a public "SEZ Development Corp" to 'kickstart' development if necessary with public funds when projects are not bankable • May be responsible for providing/ connecting infrastructure outside the gate of the SEZ to the infrastructure inside the SEZ 	<ul style="list-style-type: none"> • Private business owners • Buy or lease plots • May form users association or have equity (in co-op model) • Responsible for complying with terms of their agreements with the developer/operator and abiding by all regulations and procedures of the regulator, including anti-speculation provisions, mandatory inspections, and bookkeeping requirements

For the SEZ Regulator, the following organization would be typical:



Regional Examples of SEZ Entities:

Ethiopia



- Under new Industrial Parks (IP) Proclamation, Ethiopia Investment Commission (EIC) acts as regulator, and is overseen by Ethiopia Investment Board
- EIC selects developers and operators (with strong preference for private sector) and regulates them and operates one-stop shop
- Gov't-owned Ethiopia IP Development Corporation to act as 'SEZ Development Corp.' as catalyst of SEZs and leases land to private-sector developers/ operators
- IP End Users sublease land from developers and operators and can form an IP Association to represent their interests before the developers, operators, and gov't

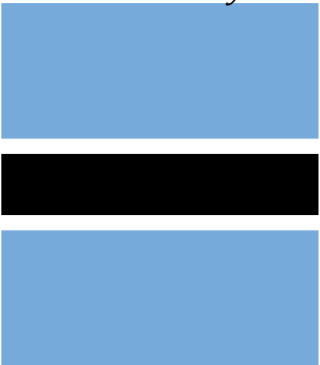
Kenya



- Under new SEZ Act, an SEZ Authority regulates the zones as an autonomous entity authorized to perform or facilitate nearly all government functions in the SEZs
- SEZ Authority Board oversees authority and consists of ministers from various government entities; day-to-day responsibilities vested in a CEO
- SEZ Authority selects developers and operators, regulates them, and operates one-stop shop
- SEZ developers and operators can own or lease land, can sell, lease or sublease them to SEZ end users, and can provide utilities inside and outside the SEZs

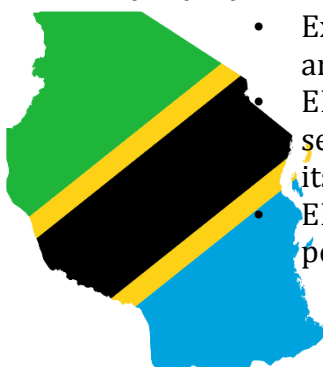
Botswana

NB: Botswana's 2010 SEZ Policy was never fully implemented and its current SEZ bill has not yet been enacted into law. Nevertheless, the following framework is intended:



- An SEZ Authority regulates the SEZs and promotes them to investors, acting as an autonomous agency authorized to perform or facilitate nearly all government functions in the SEZs
- SEZ Authority Board oversees authority and consists of ministers from various government entities
- SEZ Investment Unit assist SEZ End Users with regulatory requirements
- SEZ Authority selects and negotiates agreements with SEZ developers, which develop all infrastructure/ facilities
- Developer may also operate the SEZ or may select an operator, which can collect fees for services

Tanzania



- Export Processing Zones Authority (EPZA) regulates both EPZs and SEZs and is headed by a council consisting of officials from various gov't entities
- EPZA develops some infrastructure itself but also contracts with private-sector – some zones are fully private and others are PPP JVs with the EPZA itself as a partner
- EPZA issues licenses and operates a one-stop shop to facilitate work permits, customs documents, etc.

- SEZ developer can sell, lease or sublease factory space or serviced land to end users
- EPZA also acts as an investment promotion authority
- *NB: Tanzania's zones have not attracted significant investment. Merging the roles of regulator, developer, and investment promoter may have contributed to this result.*

Zone Association and Advisory Committees

Two other institutions in some SEZ/IPs are a national SEZ/IP Association and individual SEZ/IP Committees for each zone. These entities provide SEZ End Users with influence in SEZ management and regulatory activities. Sample provisions establishing these entities are provided below:

SEZ/IP Association: Model Regulation

An Industrial Parks Association shall be established as a non-profit organization consisting of Industrial Park Developers, Operators, sub-developers and sub-operators, specialized service providers, Industrial Park Enterprises, and any established Industrial Park Residents associations, as members.

- The Industrial Parks Association shall be directed by a General Assembly of Members and managed by a fifteen member board of directors, elected for two-year terms, including a President, Executive Vice-president, Secretary, Treasurer, and Directors representing specific investment sectors.
- The mission of the Industrial Parks Association shall be to promote its members' development and competitiveness in the international marketplace.
- The goals of the Industrial Parks Association shall be to:
 - Represent and defend the interests of the Industrial Parks sector and to promote an enabling climate for its development;
 - Position Ethiopia's Industrial Parks to become the country's principal economic engine and to contribute to making the country an ideal destination for foreign investment, as well as the production of world class goods and services.
- To accomplish these goals, the Industrial Parks Association shall:
 - Participate in various business, trade, investment, industry, management, economic, and vocational training organizations and bodies; and
 - Conclude institutional agreements with these bodies that:
 - Enhance Industrial Parks' vocational training, labor relations climate, social responsibility, and government policy;
 - Raise knowledge about and promote investment in its member Industrial Parks; and
 - Secure benefits for its members from various parties.

SEZ/IP Advisory Committees: Model Regulation

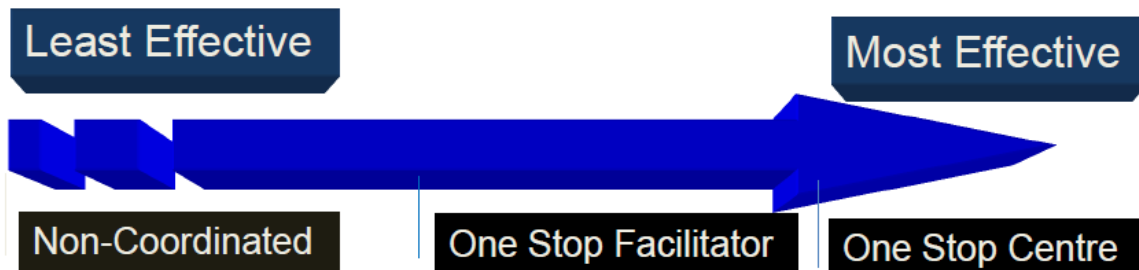
- The Advisory Committees shall consist of standing and non-standing members from:
 - The relevant state and local authorities;
 - The Industrial Park Developer, Operator, and any sub-developer(s) and operator(s), and Industrial Park Enterprises; and
 - Representatives from any established Industrial Park Resident Associations and community associations from adjacent communities.
- Each advisory committee shall meet at least once per quarter and shall coordinate all of its activities with the Commission.
- The advisory committees shall have the following roles and responsibilities:
 - Advising on the development of the Industrial Park;
 - Locating sources of assistance for development of the Industrial Park;
 - Coordinating the connection of the Industrial Park to infrastructure networks in the adjacent areas;
 - Disseminating information to the public regarding the Industrial Park program in general, as well as regarding the specific Industrial Park in their locality;
 - Promoting investment in the Industrial Park;
 - Contributing to proper security and policing in the Industrial Park under Applicable Law;
 - Devising and promoting activities linked to the Industrial Park for the benefit of the local population, including as regards the production and supply of raw materials, miscellaneous products and services, and foodstuffs for Industrial Park End-Users;
 - Assessing and reporting on any difficulties in the operation of the Industrial Park in their locality; and
 - Advising on the resolution of implementation problems pertaining to the Industrial Park in their locality.

Best Practices for One-Stop Shops

Countries around the world have established various one-stop shop (OSS) schemes to centralize the execution of a number of regulatory, compliance, and value-added services through a single physical or virtual location. The following are some of the fundamental principles underlying well-performing OSS:



OSS Best Practice 1: Centralized Service Delivery



The most effective approach is to centralise decision-making authority within one body

OSS Best Practice 2: Multi-channel Service Delivery

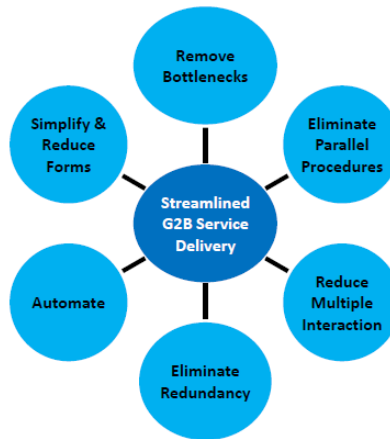
Ideally, a OSS should ensure that no visits to other government or service provider offices are necessary, by pushing as much service delivery as possible to other channels:

- **Physical counters**
- **IT Kiosks**
- **Phone**
- **Fax**
- **E-mail**
- **Internet**
- **Mail**



OSS Best Practice 3: Process Reengineering

- Establishing a truly useful one-stop shop entails many linkages between business processes and underlying data needs, as well as between cross-process services that may be duplicative
- All of these must be mapped and integrated in order to:
 - Reduce red-tape
 - Facilitate collaboration between stakeholders
 - Effectively serve end-users



OSS Best Practice 4: Private Participation

In SEZs, OSS are generally run by the public sector, but an effective division of roles and outsourcing strategy could transfer *many* functions to a private service provider.

GOVERNMENT 	Private Service Provider 
<ul style="list-style-type: none">• Issuing most licenses, permits, and visas• Ensuring compliance with standards relating to the protection of “public purposes” (health, safety, environment, security, taxes, etc.)	<ul style="list-style-type: none">• Registries (IPR, Businesses, Land Titles, etc.)• Municipal services (power, water, sewage, water treatment, telecom, waster disposal)• Port/Airport cargo handling• Trade certification• Customs inventory control & clearance• Value added services (business support, legal support, finance, e-hosting, etc.)

Other OSS Best Practices:

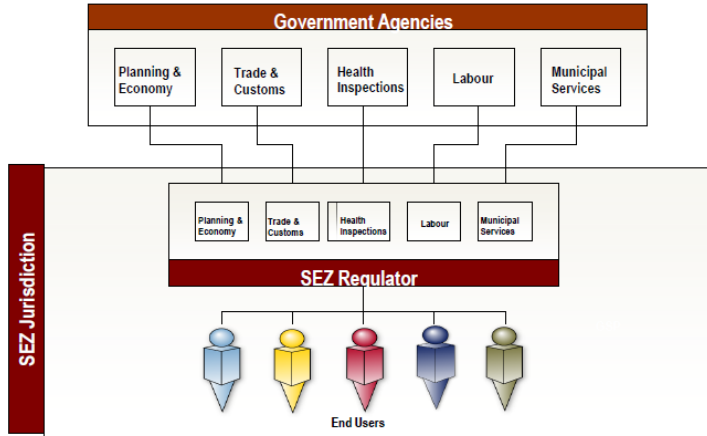
- High-level political support
- Improve procedures within each relevant agency, at all levels (e.g., legal, regulatory, administrative, technical technological, HRM...)
- Establish a facilitation network in other Government bodies, as well as inter-agency MoUs
- Staff with appropriate authority, capacity, and training to execute functions
- Staff management & disciplinary powers for the coordinating agency
- Designate Account Executives for each client/user
- Institute on-going performance measurement and process re-engineerir
- Wide and Deep Information dissemination
- Use of Information Technology

OSS Models

Model 1: "One-Door Shop"

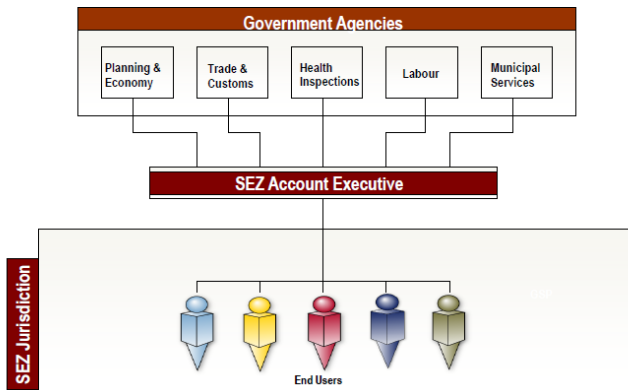
National Authority Representative Offices Model

Co-locate the key national government agencies within a zone and facilitate approvals



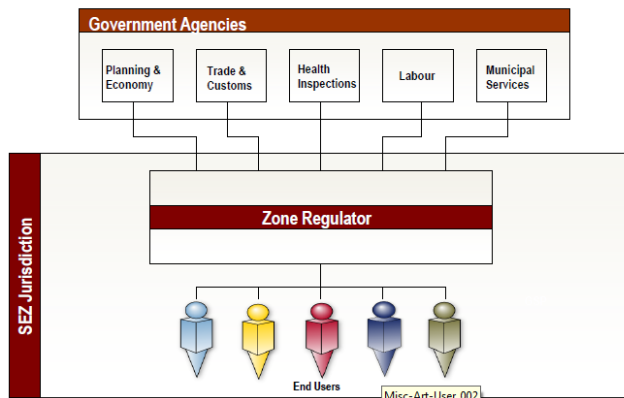
Model 2: Account Executive Model

Represent the key national government agencies through a zone(s) executive, and facilitate approvals



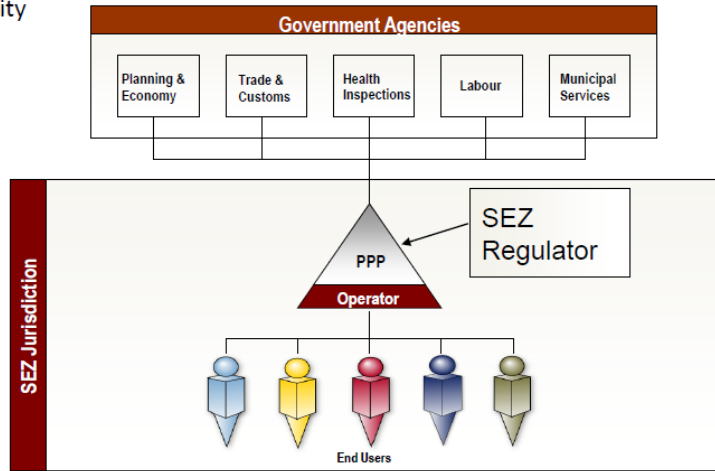
Model 3: Single Regulatory Model

Establish a one-stop regulatory authority under a special law, authorised to provide services to tenants:



Model 4: Private Participation

Under this PPP model, a private SEZ Operator would assume a maximum amount of responsibility



ANNEX C: BEST PRACTICES IN PUBLIC AND PRIVATE MANAGEMENT AND OPERATIONS

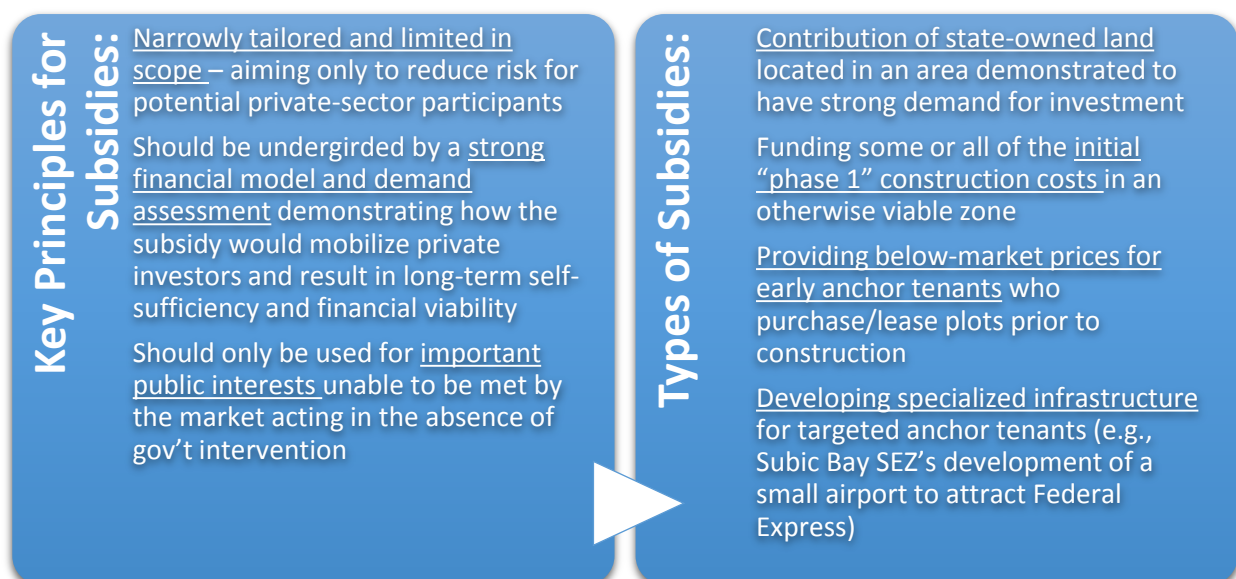
The overarching goal of a public-private management model for SEZs and Industrial Parks is for the public sector to support SEZ development only as much as necessary. This should involve:

- Incentivizing the private sector to efficiently manage the financial and operational risk of developing SEZs
- Placing the public sector in the role of facilitating investment through the regulation and provision of public goods, such as regulation, national image building, education, and health services
- If development risk leaves expected financial return too low for private interest, the public sector may need to catalyse development to realize economic returns.

If the project is not bankable or sufficiently financially viable to attract experienced private partners or investors on favorable terms, the gov't can do one or more of the following:

- 1) Reduce the level of private-sector equity it seeks and compensate through management fees;
- 2) Create an SPV initially 100% owned by the government and form a contract with the private developer/operator, offering a purchase option. As the park becomes more financially viable, the developer/operator may become interested in buying equity. Private debt finance may become more feasible at that time as well;
- 3) Build "Phase-1" infrastructure and facilities itself and then seek private participation once uncertainty and risk are lower.

Role of Subsidies in PPP-based SEZs and Industrial Parks:



Ten Recommendations when forming a PPP agreement with a private-sector party:

- 1) SPVs for Joint Ventures (JV) are typically set up as Limited Liability Companies – although they can also be set up as partnerships or contractual (non-equity) arrangements.
- 2) The first key decision is on the respective capital contributions of each participating party. In this context, the gov't would typically bring common areas and infrastructure within the park (free and clear of hindrances), while private companies or residents (in the co-op model) would contribute (through a capital call-up) liquidity for Opex, most likely with lines of credit with commercial banking institutions.
- 3) Gov't would also undertake to obtain any permissions from the competent authorities, ideally, be obtained in advance of the effective date of the agreement. Gov't would thereafter also be required to warrant full cooperation and assistance to the project.
- 4) The management of the business would typically be vested in its Board of Directors, who would be elected by gov't and the private partner, under the company by-laws. Often, executive management is vested in the private party, subject to the Board's quarterly oversight and ratification. Selection of senior officers and determination of their compensation is typically made by gov't and the private partner after consultation.
- 5) Issues surrounding accounting, audits, good governance, insurance, sale of shares or change of business, transactions outside the ordinary course of business, financing, and establishment of subsidiaries, should be carefully worked out and, in some instances, subject to a veto right for each party
- 6) "Non-compete" clause would be required –so that the other party does not undercut the JV's profitability through the pricing of other industrial estate projects, independent of it.
- 7) The treatment of intellectual property and technologies, as regards systems and processes used in the park, should be clearly established. Licensing rather than outright transfer of certain systems may be preferable to deal with some of these matters.
- 8) The policy around dividends must be clearly set forth, to ensure the venture is profitable to both parties.
- 9) Breach, termination, dissolution rights, and wind-up measures, should all be clearly set forth, to protect the interests and investments of the parties.
- 10) Arbitration clauses should be included in the event that the parties cannot agree on certain matters.

ANNEX D: SEZ FISCAL INCENTIVES

Key principles for SEZ fiscal incentives include:

- Incentives should primarily be aimed at **not losing investment to its country of origin or to neighboring SEZ competitors** with otherwise comparable characteristics -for instance through the introduction of a **competitive, flat corporate income tax rate**
- The ordinarily complex suite of **indirect taxes should be eliminated**, to simplify tax administration and compliance
- Income tax and VAT should be **administered transparently and efficiently**, through automatic granting of any incentives, streamlined submission and approval of all reporting, clear rules for calculating assessable income, and limited post-assessment audits
- Because of SEZ fiscal incentives, enterprises should be required to keep **separate income tax accounts** for income subject to any preferential SEZ tax rates

Some Competitor and Investor Corporate Income Tax Rates for Rwanda to take into account include the following:

Country	Rate
Rwanda	30% (15% for: 50% exporters, transport, energy, specialized ICT, specialized financial services –BUT NOT for MANUFACTURING, tourism, agro-processing, S&T, Corporate HQs, Education)
Global ave.	23%
Europe ave.	20%
Bangladesh	15% (Textiles)
Belgium	24%
Botswana	15%
Canada	26.5%
China	25% (10-15% in SEZs)
Ethiopia	25%
Lesotho	15%
Mauritius	15% (0% for Freeport)
Myanmar	25%
Namibia	0% (EPZs)
South Africa	28%
Turkey	0% (Manufacturing)
UK	20% (0% in Channel Islands)
USA	20% (AMT; 0% in Delaware)
Vietnam	22% (10% in Developing Areas; Priority Sectors)

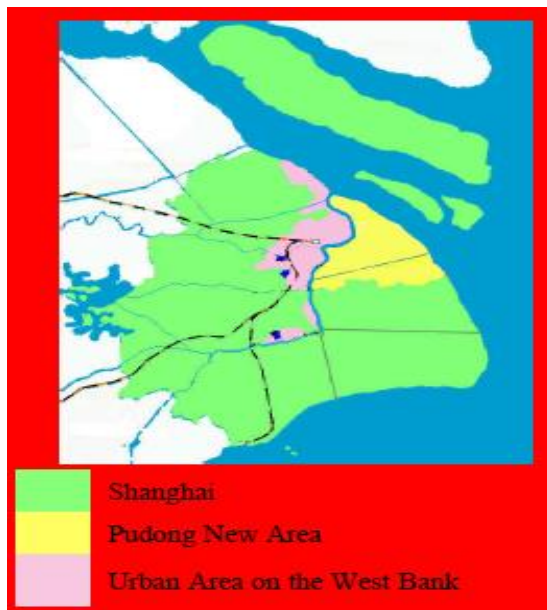
Zoning and Incentives to “SEZ-Licensed” and Non-Licensed Companies in an SEZ

“Combined, adjacent” zones (including a “logistics free-zone” as well as other types of zones, within a larger “umbrella zone”) are not unheard of around the world.

A well-known example is for instance the Pudong SEZ in Shanghai, China, with:

- Waigaoqiao Free Trade Zone;
- Lujiazui Financial Trade Zone;
- Kangqiao Industrial Zone; and
- Zhangjiang HTZ

Tax incentives are different in the different areas of this SEZ



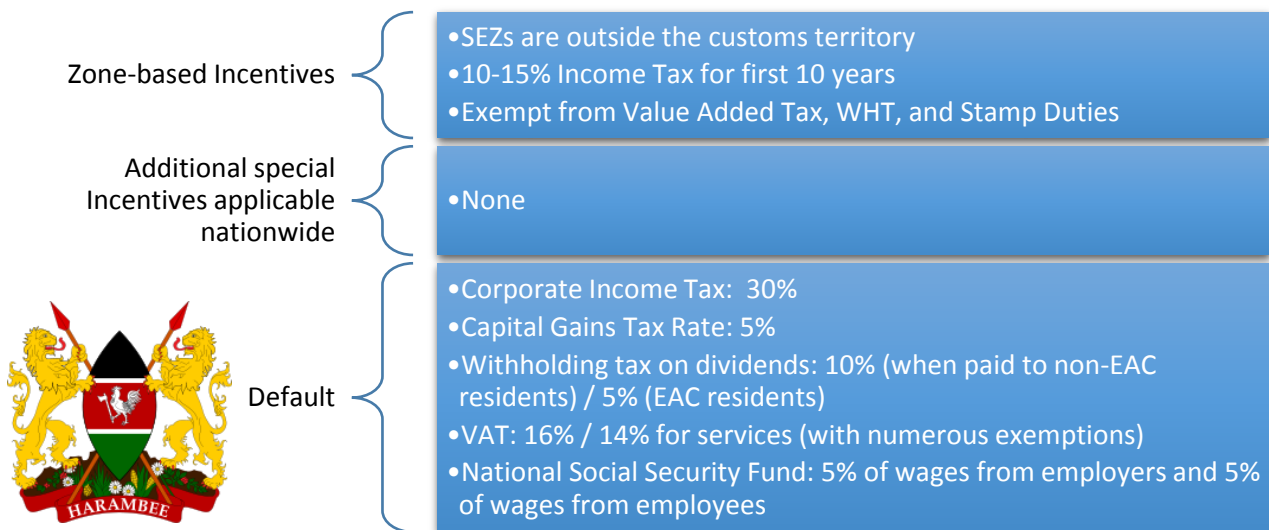
Master Plan Map of the Pudong New Area
Source: <http://pudong.shanghaichina.org>

Key Regional Tax/Customs Incentives

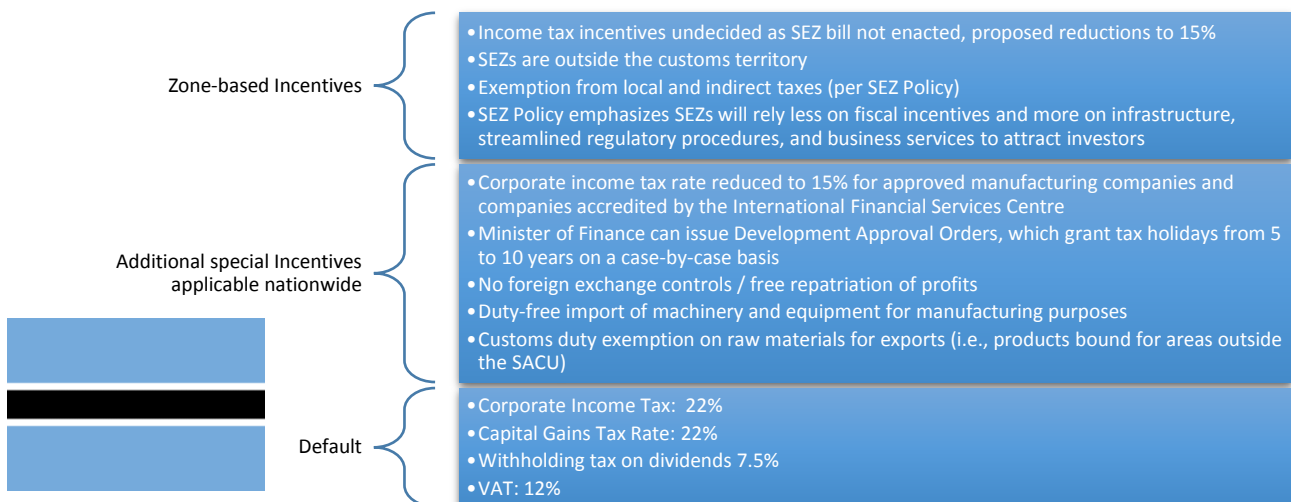
Ethiopia



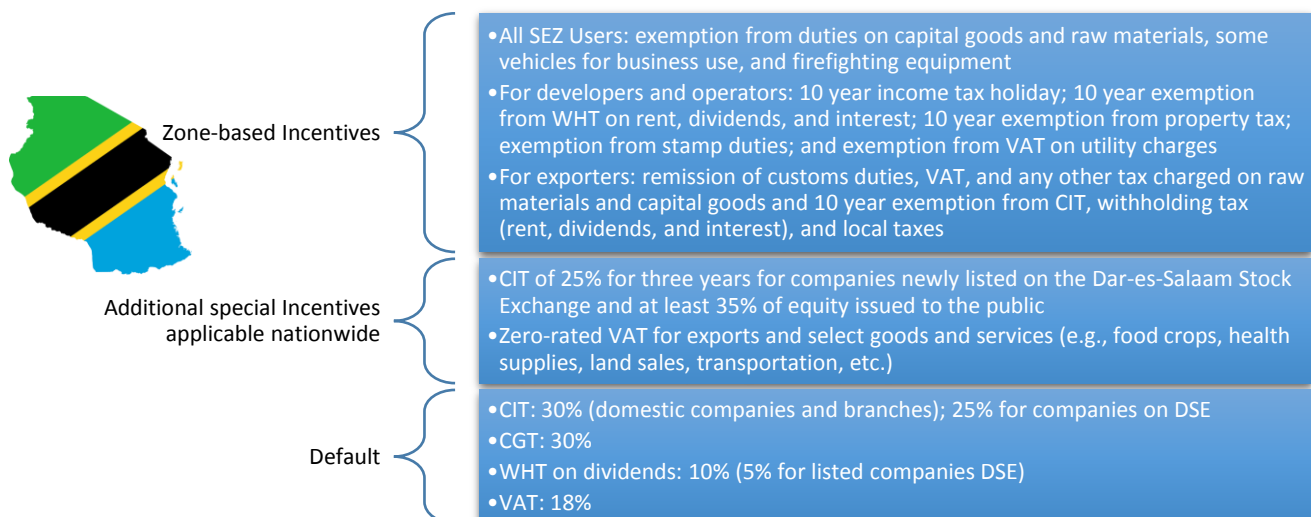
Kenya



Botswana



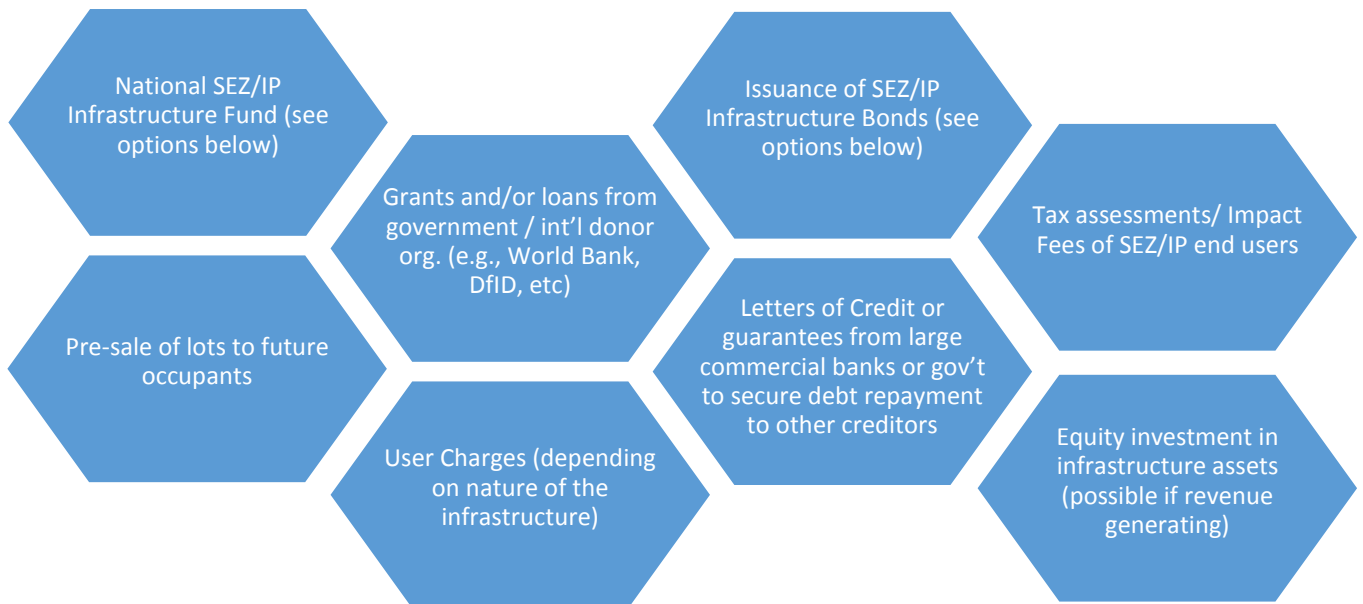
Tanzania



ANNEX E: BEST PRACTICES IN FINANCING SEZ/INDUSTRIAL PARK INFRASTRUCTURE

When plots are sold, rather than leased, careful financial planning is needed to ensure sufficient capital will exist to develop and maintain infrastructure. Since a large portion of infrastructure costs must be paid before the site is even occupied, some form of debt financing will likely be needed. This will supplement any up-front capital made available by government or pre-sales.

Tools for funding infrastructure include the following:



SEZ Operational Revenue Streams

It must also be kept in mind that SEZ operations should be revenue generating, which should be sufficient to cover operational costs. Examples of typical revenue streams for an SEZ include:

Real Estate Revenue Streams:

- Serviced land 25-35%
- Commercial facilities: 12-18%
- Labour Accommodations: 12-18%
- Office rentals: 15-20%
- Pre-built Sheds: 15-20%
- Other “value added” services: 20-25%

Non Real Estate Revenue Streams:

- Administrative fees: 30-35%
- Registration and Licenses: 40-50%
- Misc. fees: 20-25% (e.g., penalties/fines, inspection fees, interest, visa fees, etc.)
- Utilities: Re-sale of bulk utilities to site tenants