



Benchmarking the Draft Iraqi Investment Zones Regulation

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Key elements of an enabling framework for private investment zone development

- The structure, powers and functions of the Investment Zone regulatory authorities
 - The role of these authorities has been changing as private zone development has gained momentum
 - Some countries, such as Costa Rica and the Philippines, have abandoned further public sector zones altogether and rely solely on the private sector for new zone development
 - They have transformed their zone authorities into purely regulatory, planning and promotional bodies
- Investment Zone designation criteria and procedures

Key elements of an enabling framework for private investment zone development

- Contractual arrangements between Government and the Investment Zone developer
- Obligations of zone operators and enterprises
- Private-public partnership development approaches
- Onsite/offsite infrastructure development/financing
- Zone users eligibility criteria, application procedure and evaluation requirements
- Management of zones and provision of special support facilities and services
- Incentives, privileges and benefits for Investment Zone developers and users

Zone Institutional Structures

- A variety of approaches have been used, including :
 - Units within Ministries of industry and trade (Taiwan, Jordan)
 - Autonomous Investment Zone regulatory authorities (Thailand, Philippines)
 - State/provincial Governments (China, Vietnam, India)
 - Inter-Ministerial committees (Turkey)

Analysis of Proposed practice for Iraq

- The proposed institutional and regulatory framework for investment zones in Iraq establishes a unit within the National Investment Commission to:
 - Determine strategy for investment zones in Iraq, including the identification of locations in coordination with other governmental agencies via an advisory committee
 - Recommend the issuing of investment licenses to the Head of the National Investment Commission
 - Monitor and report on the work of the investment zones
 - Prohibit any activities that violate general law, including health and moral regulations and environmental standards

Analysis of Proposed practice for Iraq

- These duties seem broad given that the NIC does not control other national/local agencies involved
- Hence a need for reinforced coordination among governmental agencies and between national and provincial organizations
- The proposed interministerial investment zones coordinating committee chaired by the NIC, and the individual zone management boards, could play a key role in conferring upon the NIC Investment Zones Department a *de facto* legitimacy that it may not enjoy in purely legal terms

Zone Governance Regime

- The most successful zone programmes in developing and transition countries are those that maximize private sector participation in investment zones

Analysis of Proposed Practice for Iraq

- The draft law establishes a board of directors for a term of 3 years including :
 - The chairman of the provincial investment commission as the chairman of the board
 - Representative of the National Investment Commission
 - Representative of the Zone developer – non-voting member
 - 3 representatives of investors of the Zone to be selected at general meeting every three years or in case of vacancy
 - 2 representatives of local or foreign private sector to be appointed by the Union of Iraqi Industries

Analysis of Proposed Practice for Iraq

- The duties of the board are limited to:
 - Management oversight of the zone
 - The evaluation of activity inside the investment zone and reporting on it to the Chairman of the National Investment Commission
 - Making non-binding recommendations on investment licence applications (which can only be issued by the NIC or the relevant PIC)
- What is the impact of such limited powers on the capacity of the board to react to the needs of zone developers and users?

Land Apportionment and Pricing

- International practices on allowing land sales within free zones varies across countries, especially as foreign ownership is often a sensitive issue
- Zones in Turkey, Costa Rica, Thailand and the Philippines allow tenants to own land, though some nationality restrictions apply in specific cases
- In countries where land ownership is more sensitive, long-term leases can provide a second-best option, provided that leases can be used as collateral by tenant companies

Analysis of Proposed Practice for Iraq

- Foreign ownership of land is a sensitive issue in Iraq
- The Investment Law does not allow foreign investors to own land except for housing projects and under the condition that the ownership must be transferred to Iraqi citizens when construction ends
- Long term leases are permitted, but until now this has involved lengthy bureaucratic procedures
- If Iraq is not in a position to allow foreign ownership in a wider range of sectors, then attention could be given to streamlining and reinforcing lease opportunities for non-Iraqis

Infrastructure Provision

- A key success factor of zones in bringing in investment in productive sectors (versus trading) is the provision of high-quality infrastructure and services
- This requires integrated planning and coordination in terms of external infrastructure provision and its connection to on-site facilities
- In many developing economies, where infrastructure and services are often provided by public entities, such infrastructure is either in short-supply, of poor quality, or priced well above market rates

Analysis of Proposed Practice for Iraq

- The proposed draft investment zone regulation only mentions the contractual agreement between the developer and the user on the provision of on-site infrastructure and services to the user
- It does not deal with provision of off-site infrastructure and services to the developers by governmental agencies
- Many zone programmes permit private sector participation in the provision - this can improve the quality and cost of provision and reduce costs overall

Zone Development and Management

- Most countries are engaged in efforts to increase private sector participation in zone management
- This ranges from increased reliance on private providers of support services to totally privately developed and managed zones
- The Philippines has attempted to outsource a wide range of support services
- Other governments promoted the formation of industrial zone associations comprised of zone users, giving them an increased management role

Zone Development and Management

- In some cases, Investment Zone tenant associations have formed subsidiary companies that have been contracted by the government to operate the zone and provide basic services like any commercial enterprise
- In other cases, Investment Zone associations have set up management boards under new regulations enacted for this purpose

Analysis of Proposed Practice for Iraq

- The system proposed in the Iraqi draft regulation seems relatively centralized and state-oriented, because although five out of seven voting members of the investment zone management boards represent the private sector, the purely advisory role of the boards limits the power of the private sector.
- The decision maker is still the National Investment Commission (on matters of strategy) and the National Investment Commission or the relevant PIC (on licensing).

Analysis of Proposed Practice for Iraq

- It may be judicious to reconsider the interministerial Investment Zones Consultative Committee proposed in earlier drafts of the investment zone regulation, including strong private sector representation.
- Even with a consultative role, such a committee could attain substantial influence given its membership and hierarchical positioning, thereby providing the business world and zone users with greater influence.

Business Licensing, Permits, Monitoring, Inspection

- International experience suggests that the most successful Investment zone programs have powerful regulatory bodies with the authority to provide all necessary approvals – a “true one-stop shop”
- While in practice few zones provide for the full range of mandates, many zones provide at least some of approvals internally
- Second-best approach is a standard one-stop shop within zones that coordinates and facilitates the provision of licenses and permits that must still be processed by many government entities

Analysis of Proposed Practice for Iraq

- The proposed Iraqi system gives the NIC and PICs full authority over licensing and permits
- The one-stop shop proposed for Iraqi zones does not seem to be a “true” one-stop shop but an office staffed by seconded officials with delegated authority
- Such systems are often vulnerable to delays, because of potential disagreement among the institutions involved, and because seconded staff may still feel the need to obtain approval at higher levels, especially if they have been stationed outside their unit for a long period and are not up to date with changing policies

Incentives and Protections for Zone Developers and Users

- The incentive policies applied to investment zones vary widely
- Investment protection provisions in national legislation are very important considerations for potential zone developers and users
- They include the availability of dispute settlement mechanisms and procedures allowing for international arbitration
- A multi-tiered approach that includes arbitration as an option is often useful

Analysis of Proposed Practice for Iraq

- The Iraqi draft investment zones regulation and the investment law offer broad fiscal incentives
- The draft regulation does not protect the investor/ developer against eminent domain, nor does it specify the conditions under which eminent domain may be invoked or provisions for the determination of fair market value in case of expropriation.
- It provides no indemnity for changes in legislation that may negatively impact the integrity of the zones regime, and it is silent on investor-state dispute settlement and arbitration