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A Brief Insight on Turkish Legal Practice of Organized Industrial Zones

Introduction

Irrefutably, during the last five decades, the Turkish economy has witnessed the emergence of a blooming market with an unmatched access to major commercial hubs of the world. During which time, Organized Industrial Zones (“OIZs”) in Turkey have effectively undertaken major roles to boost economic parameters of the nation.

The notion of establishing OIZs dates back to 1960s. Indeed, the industrial sector was identified as the pioneering sector at that time and the devised economic policies concentrated on realizing long-term goals within a stable economy. This climate led to establishment of the first OIZ in Bursa province in 1962 with the World Bank’s loan.

Principally engineered to eradicate unplanned urbanization in the industrial zones and ongoing environmental problems; with rapid development in the global markets, OIZs have become investor-friendly venues for foreign investors and local actors whereby they can benefit from a pre-installed infrastructure and public structures, i.e. water source, power plants, IT network and natural gas.

Imperative is to shed a light on the legal foundations that accommodates OIZs, which embodies many sectorial advantages such as industrializing appropriate regions, collectively benefiting from information technologies, increasing efficiency with regards to utilization

of fuel, energy and water resources as well as combating with the unemployment.

Legislation on OIZs

After the establishment of the Bursa OIZ, OIZs have operated without any specific legislation for twenty years. In 1982, the legislature implemented the 'Regulation on Ministry Funds for Industry and Trade' in which significant topics were regulated for OIZs, e.g. usage of funds for OIZs, credit assignment and acquisition of land.

Currently, below legislation governs the operation of OIZs:

- Law on Organized Industrial Zones,
- Law on Industrial Zones,
- Regulation on Implementation of Organized Industrial Zones,
- Regulation on Allocating Plots Located in Organized Industrial Zones Partially or Entirely Free of Charge to Natural or Legal Persons,
- Regulation on Site Selection for Organized Industrial Zones.

Having said that, this article will focus on the following legal matters in relation with OIZs: legal definition, types of OIZs, establishment procedure, legal status of OIZs and governance mechanisms.

What is an OIZ?

Article 3(b) of the Law on Organized Industrial Zones (Law No:4562), provides a multifaceted definition:

-The good and service production zones, which are formed by allocating the land parcels,

-The borders of which are approved, for the industry in a planned manner and within the framework of certain systems by equipping such parcels with the necessary administrative, social and technical infrastructure areas as well as reparation, trade, education and health areas

-Along with technology development regions within the ratios specified in the zoning plans and which are operated in compliance with

the provisions of this Law in order to ensure that the industry gets structured in the approved areas,

-To prevent unplanned industrialization and environmental problems, to guide urbanization, to utilize resources rationally, to benefit from information and informatics technologies, and to ensure that the types of industries are placed and developed within the framework of a certain plan.

Types of OIZs

After evaluating the relevant legislation and practice, it is possible to state that there exist seven types of OIZs:

- OIZs that are established with lending support from the Ministry of Science, Industry and Technology, (the Ministry),
- OIZs that are established without lending support from the Ministry of Science, Industry and Technology, (the Ministry),
- Private OIZs, established on an immovable of natural or private legal persons,
- Mixed OIZs, comprised of corporations from numerous areas of business,
- Specialized OIZs, comprised of corporations that operate in the same sector or in its sub-sector,
- Reclamation OIZs, established in areas where the industrial facilities are unmethodically located in a specific place for a long time,
- Agriculture OIZs, operated by the Ministry of Food, Agriculture and Livestock.

How are OIZs are established?

Pursuant to Article 4 of the Law No: 4562, the Ministry holds the sole authority to establish OIZs on places which are qualified as suitable pursuant to the Regulation on Site Selection for Organized Industrial Zones. Indeed, the site selection process is completed under the patronage of the Ministry and the unanimous decision of the Site Selection Committee after its on-site evaluation along with 1/25.000 scaled environmental plan. Once a decision is adopted, it is announced. However, the areas which are protected by the applicable law and on where construction of industrial structures is prohibited are excluded from the initial evaluation.

Once the procedure for the site selection is finalized, the authorized municipality must prepare plans for the areas surrounding the OIZ. Vitally, a wide authority is conferred on OIZs which enables them to take decisions for the sake of practicality. This liberal fashion is reflected by Article 4;

“Local improvement and parceling plans and amendments on the boundaries of the OIZ are prepared by the OIZ as per the regulation and enacted upon resolution of the Provincial Administration Board after being presented to approval of the Ministry. The approved OIZ improvement plans are sent to the respective institutions for their information.

The OIZ grants and audits the licenses for the use of land; planning, construction and utilization of the buildings and facilities as well as business licenses and work permits as per the enacted improvement plan”

Legal Status of OIZs

An OIZ is a legal entity under private law. The legal entity is acquired after the Ministry’s final approval on the Incorporation Protocol which is signed by the chamber of industry and commerce in the given area and pre-approved by the Governor.

OIZs can expropriate within the defined legal powers vested by the Ministry and in accordance with the decision on public interest given by the latter upon application of the enterprising committee of the OIZ. The expenditures incurred for acquiring the possession of the land and the obligation to pay the price rests with the OIZ legal entity.

Governing Actors

There are four organs stipulated by Law No:4562. Namely, Enterprising Committee, Board of Directors, Board of Auditors and Regional Directorate.

Firstly, Enterprising Committee (the Committee), being the supreme executive body, is liable and authorized to take the necessary resolutions and measures for realizing the establishment purpose of the OIZ. While accomplishing such, the Committee must fulfill its duties granted by the law, regulation, incorporation protocol and similar

arrangements, realize the conditions stated in the place selection report, clear the accounts of the boards of directors and audit and utilize the financial and other resources of the OIZ in compliance with their purpose.

Then, Board of Directors is entrusted to manage and administer the OIZ in accordance with the laws, regulations, incorporation protocol and similar regulations, as well as resolutions of the Enterprising Committee. Following that, Board of Auditors, is responsible for auditing the expenditures and executing the budget, preparing a general auditing report once a year and an interim report at least once in every three months and to present it to the Enterprising Committee. Lastly, Regional Directorate carries the responsibility of managing the OIZ and undertaking other specified duties as per the resolutions and instructions of the Board of Directors.

Governance Methods

Two of the main governance methods are:

- *Co-governance of the Enterprising Committee and Tenants in the OIZ;*

If the number of tenants, who are able to prove their commencement of operation by official channels, reaches 1/3 of the total capacity of the OIZ, tenants can appoint an authorized representative who would then be a member of Enterprising Committee.

- *General Assembly of Tenants*

If the number of tenants, who are able to prove their commencement of operation by official channels, reaches 2/3 of the total capacity of the OIZ, or, if OIZ used Ministry loan and paid the latter fully, the governance of the General Assembly of Tenants can be initiated under the following two options;

- a) *The Enterprising Committee resumes its duties where a resolution on the maintenance of latter's duties is adopted with absolute majority in the first meeting of the General Assembly. Consequently, number of tenants taking part in Enterprising Committee reaches the absolute majority of the Enterprising Committee. This procedure is repeated in every annual General Assembly meeting.*

b) If a resolution on the cessation of the Enterprising Committee is reached, latter is terminated. At this General Assembly meeting, organs of the OIZ are formed in analogy with Turkish Commercial Code's provisions on the Joint Stock Companies.

Main Advantages for Investors to Participate to an OIZ

For an investor, it is a natural goal to commence its operation in the local market once the infrastructural projects are completed. However, as one could easily anticipate, these projects could take more time than expected so that realization of the whole mission could be put in jeopardy. At this point, benefiting from the pre-installed infrastructure of roads, natural gas, IT or waste water treatment belonging to the OIZ, would definitely serve as an impetus for the foreign investor.

In addition to the aforesaid, tenants of OIZs who are liable for paying income and corporate tax could benefit from certain incentives under different schemes. Firstly, Law on Incentives Regarding Investment and Employment, (Law No:5804), states that incentives such as Income Tax Withholding, Employer's Contribution, Free Investment Site Place Assignment and Energy Support are available for tenants of the OIZs which are located in specified provinces. Then; pursuant to Real Estate Tax Law, buildings in the OIZs are exempt from real estate tax for the following 5 years after the completion of their construction. Moreover, parcels and deliveries of work-place of economic entities formed for the establishment OIZs are exempt from VAT pursuant to Value Added Tax Law.

Conclusion

In conclusion, with its core legal concepts aimed to achieve a well-functioning mechanism as well as many advantages when entering the Turkish industry, OIZs assumes a crucial role for sustainable development of Turkish business and offers an appealing setting for the investors in order to commence their business efficiently. Should you need further advice on legal framework of Organized Industrial Zones and Turkish Commercial Code along with foreign investment regime, contact us at abdulkadir@guzeloglu.legal