

A Selective analysis of the Development Areas Law

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Introduction

This study has been made to determine whether the current Development Areas Law for the year 2007 is in a form that attracts investors to invest in the sustained development of the area of Ajlun. In this regard, there are three elements necessary to be present in laws that aim to attract certain investments to a particular area or region. Firstly, they should always eliminate the procedural burdens that investors face when willing to invest in a certain area. This approach is by no means immaterial, in fact one can look at the World Bank and other specialized financial bodies' reports and see how they regularly include statistics examining the period of time necessary to allow the investor to start his business in a certain country. This fact has been quickly identified by the Jordanian Legislator. Hence, specialized laws promoting investments in particular parts of Jordan such as the Aqaba Special Economic Zone Law for the year 2000 and the Development Areas Law for the year 2007 have all had the aim of establishing an entity (usually a special Commission) that acts as a one-stop-shop for the investor. Accordingly, an investor willing to establish a business in Aqaba Special Economic Zone has no longer to have to apply to the Ministry of Industry and Trade to register his company, the Ministry of Environment to acquire the environmental permits or the Municipality to acquire building permits or vocational licenses, rather he has to deal only with the Aqaba Special Economic Zone Authority to establish a business; it is the one-stop-shop entity which grants him all the necessary permits to establish his business, saving him time, effort and cost.

Secondly, these entities should also act as the regulatory body empowered over the areas they have been mandated to develop. This is necessary since any successful development has to be based on successful planning; this entails coordination between the different authorities that undertake this duty. Taken the inescapable fact that Ministries in the Kingdom focus on development of the Kingdom as a whole and without dedication to a particular part of Jordan, it was necessary to give the aforementioned regulatory bodies the powers to regulate and develop particular Areas of the Kingdom and those area only; assuring, thus, efficient planning, coordination and dedication. Accordingly and based on the above, both the Aqaba Special Economic Zone Law for the year 2000 and the Development Areas Law for the year 2007 have given great regulatory powers to the Commissions empowered with the development of the areas they were created to develop. These mainly include zoning, recommending or applying eminent domain, the power to negotiate, reach and sign concessions and powers over Historic Sites and Tourist Sites.

The final element in successful laws that aim to attract certain investments to a particular area or region is that they should include financial incentives which result in the investments being attracted to the targeted area rather than other parts of the country or even the region.

In the general context the Development Areas Law has already encompassed the above elements, thus in principle this law has tackled all the necessary requirements needed to be present in a law that successfully ensures the sustained development of Ajlun. However, the Law cannot be carefully assessed unless the peculiarities of the above elements are examined in detail

and on an Article by Article basis. Therefore, the below analysis aims to assess whether the Articles of the Development Areas Law have been drafted in such a manner that ensures that it achieves the policy underlining it.

1) Declaring Development Areas

There is nothing in the Constitution which requires that a certain governmental body or person should declare an Area that will enjoy a particular status under the law (i.e. a special economic zone, Tourist Site, Historic Site, Heritage Sites). The law can stipulate that any governmental authority or person can establish a given area with a special status. However, from a policy point of view the approach adopted by the Development Areas Law where the Council of Ministers declares such areas is most appropriate. However, the wording of Article (5) of the Law pertaining to this issue is not adequate. This is since it suggests that an application should be submitted by the Master Developer first prior to declaring a Development Area. We propose that the Article should be amended by adding the section (a) below:

"a) The perimeters of the Development Area shall be determined by a decision of the Council of Ministers upon the recommendation of the Commission. The Council of Ministers may amend these perimeters according to the business requirements of the Commission and the exigencies of public interest. The decision and any amendment thereto shall be published in the Official Gazette¹

b) An application for the establishment of a Development Area **may** be submitted by the Master Developer to the Commission that will examine the application and shall negotiate with the Master Developer the agreement which entails the terms and conditions that the latter must observe in implementing all tasks necessary for the management and development of the Development Area.

c) The Commission shall, after examination of the application, recommend to the Council of Ministers to make the proper decision pertaining to the establishment of the Development Area.

d) The Council of Ministers shall issue its decision to accept or reject the application submitted by the Master Developer, the Commission and the Master Developer shall be notified in writing of the decision of the Council of Ministers.

e) Where the application submitted pursuant paragraph (a) of this Article is accepted, and the Development Area comprises lands owned by the Treasury, the ownership of these lands shall be transferred free from any restrictions to either the Commission or the Master Developer as the case may be, in return for such consideration as is determined by the Council of Ministers".

¹ Identical to Article (4) of the ASEZ Law.

2) Regulatory powers that should be granted to the Commission

- **Buffer Zone Issue**

The approach of allowing the Commission to impose a buffer zone on the lands surrounding the Development Area whereby the right to use a land, dispose of it or even easement rights are restricted on it is by no means inappropriate. This is to ensure that no development of competitor nature is established within a certain distance from the Area. Furthermore, best practice has granted certain authorities this right where a Tourist Site is concerned; for any establishment may diminish a sight's value (by obstructing the view at such site). Considering the Tourist value of Ajlun, it may be recommended that the Commission should be granted a discretionary right to impose buffer zones surrounding the area of Ajlun. An Article to this effect can be added in the following text:

"a- No permit should be granted for any construction project, including buildings and fences, unless a distance of (1) Kilometre is left between then and any Development Area, according to a decision adopted by the Board, provided that fair compensation is paid for the owner of lands within this (1) Kilometre area.

c-The compensation described in Clause (a) shall be paid only once in relation to a particular land"

Payment of fair compensation is necessary since the imposition of a buffer zone on the lands whereby the right to use a land, dispose of it or even restrict easement rights on it will be construed as constituting Imminent Domain that requires (i) payment of fair compensation; and (ii) that it should be practiced for the purpose of public interest Article (2) of the Law of Imminent Domain No. (12) for the year 1987, Imminent Domain is defined as "confiscating the right of ownership from the owner or the right of disposal or the right of usage or any easement rights in accordance with the provisions of this Law". Accordingly, granting the Commission the right to impose a buffer zone on the lands surrounding the Development Area whereby the right to use a land, dispose of it or any confiscation of easement rights on these lands will be construed as constituting Imminent Domain that requires (i) payment of fair compensation; and (ii) that it should be practiced for the purpose of public interest.

It is important to note that Article (11) of the Constitution has clearly stated that:

"No ownership shall be expropriated unless such is for the public interest and fair compensation is paid in accordance with provisions that are defined in the Law".

It is trite law to learn that the provisions of the law cannot deviate from the provisions of the constitution. Accordingly, the requirement of payment of fair compensation as suggested above is necessary.

- **Contracting directly with the Master Developer without any requirement for procurement**

Article (5) is not clear on the procedures necessary to reach a contract between the Commission and a Master Developer for the Development of a Development Area. Reading the Article suggests that a Master Developer is the party initiating negotiations for the purpose of reaching a contract for management and development of the Development Area. Moreover, the Development Areas Law did not stipulate the different methods which could be adopted by the Commission to reach a management and development contract with a Master Developer.

An alternative to Article (5) can be introduced in the following language:

"a-The contract reached between the Commission and the Master Developer shall be in any of the following ways:

- i- Open tender;
- ii- Restricted tenders;
- iii- Request for Quotes/offers
- iv- Negotiations and direct contracting

b- The Council of Ministers shall issue the regulation for the implementation of the above provision".

The regulation stated in paragraph (b) above will be issued to regulate the requirements, criteria and justifications that should be available when adopting any of the above mechanisms to reach a development contract between the Master Developer and the Commission.²

Imminent Domain and Zoning of the Development Areas Law

Article (7) and (12) of the Development Areas Law has stated that the Commission shall have the powers granted to local and regional zoning committees stipulated in the Law Regulating Cities, Villages and Buildings for the year 1966, they have also granted the Commission the right to exercise eminent domain powers to acquire the lands and real estates required for the functions of the Commission or for the development of the Development Area in accordance with the provisions of the Eminent Domain Law in force. These provisions are adequate.

² Alternatively, the wording of Article (35) is broad enough to allow the issuance of such Regulation. The reason why Clause (b) is added is to emphasize that a special regulation for the purpose of this Article shall be issued.

Forster Lands

Forster Lands are regulated through the Agriculture Law No. 22 for the year 2002. This Law has granted the Ministry of Agriculture great powers over Forster Lands. To avoid any conflict between the Agriculture Law and the Development Areas Law, it should be clearly stipulated in the latter law that:

- i- The Commission shall upon transfer of the Treasury lands to the Commission or the Master Developer³, such entity as the case may be will be immediately the owner of the Forests on such lands. The Development Areas Law does in its current text state this fact clearly.
- ii- The Commission shall have the power to regulate all matters relating to Forster Lands. This process should be through a special regulation issued for this purpose. Accordingly, to effect this requirement, Article (7) of the Development Areas Law could be amended by adding the following provision: "11- regulating all issues pertaining to Forestry Lands and Forests". In addition, Article (35) should be amended to include a regulation pertaining to Forestry Lands.

An Article to effect the above can be added in the following wording:

"a- all Foresters and Forster Lands within the Development Area as defined in the Agriculture Law in force shall be regulated through the Commission.

b- All Public Foresters as defined in the Agriculture Law in force that fall in a Development Area shall be transferred to the Commission or the Master Developer as the case may be provided that the lands on which these Foresters exist is transferred to the Commission or the Master Developer as the case may be.

c- The provisions of the Agriculture Law in force shall not be applied on Foresters or Forster Lands in a Development Area.⁴

d- The Council of Ministers shall issue the regulation for the implementation of the above provisions of this Article".⁵

- **Granting the Master Developer the right to issue different licenses and to practice rights granted to the Commission**

Article (8) of the Development Areas Law: states that:

³ In accordance with Article (5)(d) of the Development Areas Law.

⁴ Although passing this Article will ignite fierce debate with the Legislation Bureau, this is since Article (28) of the Agriculture Law for the year 2002 states that "despite of what is stated in any other law: (a) no forestry land shall be delegate, exchanged...or sold to any person or entity whatever the reasons were".

⁵ See footnote 2.

- "a) The Commission may, upon the approval of the Council of Ministers, **delegate any of its authorities provided for in this Law and the Regulations and Instructions** issued there under to any entity that is competent of such authorities in accordance with its own legislations **or to the Master Developer**, provided that this should be in accordance with the policies and procedures adopted by the Commission or in accordance with the principles and conditions stated in the agreement concluded with the Master Developer.
- b) Notwithstanding any provision in any other legislation, the Commission may, within the boundaries of the Development Areas, establish free zones in accordance with the provisions of the Free Zones Corporation Law provided that the management of such zones shall be in accordance with the policies and procedures to be agreed on between the Commission and the Free Zones Corporation.
- c) The Commission may sign the Memoranda of Understanding with the concerned parties."

The above Article gave the Commission the power delegate (or contract out) any of its powers to the Master Developer provided that the procedures stipulated in the above Article are followed. Also Article (2) defined Economic Activities as follows:

"Economic Activity: Any commercial, industrial, agricultural, service or professional activity carried on by a Registered Enterprise in the Development Area."

Article (12) has stated clearly that "**The Board exercises all the powers conferred on the Commission** in accordance with the provision of this law including:

- "1) The registration of enterprises for the purpose of carrying out the Economic Activity in the Development area in accordance with the provisions of this Law;
- 2) Issuing all kinds of licenses, certificates, and any other approvals relating to the carrying out of the Economic Activities in the Development Area in accordance with the provisions of this Law and the Regulations and Instructions issued there under;
- 3) Approving the draft annual budget of the Commission and submitting the same to the Council of Ministers to sanction it;
- 4) Preparing draft legislations required for the functions of the Commission and submitting the same to the Council of Ministers to take the necessary measures for issuing them;
- 5) Recommending to the Council of Ministers to appoint a certified accountant for the Commission who undertakes to audit its accounts;

- 6) Approving the annual report of the performance of the Commission and submitting it to the Council of Ministers;
- 7) Approving the final financial statements of the Commission for the expiring fiscal year and submitting the same to the Council of Ministers to sanction them;
- 8) Exercising eminent domain powers to acquire the lands and real estates required for the functions of the Commission or for the development of the Development Area in accordance with the provisions of the Eminent Domain Law in force."

Reading the first part of Article (12) shows that the aforementioned powers are essentially the powers granted to the Commission: "the Board **exercises all the powers conferred on the Commission**". As stated above Article (8) stated that:

"The Commission may... **delegate any of its authorities provided for in this Law... to the Master Developer.**"

Accordingly, reading the above articles leads to the conclusion that the Commission can delegate the powers stated in Article (12) to the Master Developer, provided that the procedures stipulated in Article (8) are followed.

- **Free Zones**

Article (8)(b) states that:

"b) Notwithstanding any provision in any other legislation, the Commission may, within the boundaries of the Development Areas, establish free zones in accordance with the provisions of the Free Zones Corporation Law **provided that the management of such zones shall be in accordance with the policies and procedures to be agreed on between the Commission and the Free Zones Corporation.**"

The above provision gave the Commission the power to establish free zones in the Development Area. This shall be in accordance with Free Zones Corporation Law. Thus, any exemptions applied in these free zones shall be subject to the provisions stated in the Free Zones Corporation Law. The above provision, however, is likely to create confusion as to the powers of the Commission and the Free Zones Corporation in relation to these zones. This is since the Article has provided that "the management of such zones shall be in accordance with the policies and procedures to be agreed on between the Commission and the Free Zones Corporation". This provision allows the Free Zones Corporation to object, set-standards and interfere with the management of such zones. In addition, the Development Areas Law has not tackled the procedures to be followed to resolve any disagreement between the Commission and the

Corporation, thus obligating the Commission to submit to the Corporation's conditioned (even if such conditions are onerous). It would have been a better approach if the Law had stated clearly that in case of disagreement such disagreement should be presented to the Council of Ministers (for example) to resolve. A proposed amendment to the above Article may be adopted by adding the following section (d):

"d- In case no agreement is reached between the Commission and of the Free Zones Corporation when implementing Clause (b) above, the matter shall be referred to the Council of Ministers to resolve it".

- **Health and Education regulatory powers**

Since regulating services such as public Health and public Education has not been granted to the Commission by virtue of the Development Areas Law, then such services will continue to be regulated by the laws applicable in the Kingdom. The Commission will not have any power over them.

However, it should be noted that if a private school, university or hospital is to be established within a Development Area, then it shall be entitled to all tax and financial incentives granted by virtue of the Development Areas Law. Nonetheless, it should be reiterated that the Development Areas Law did not grant the Commission the power to regulate issues pertaining to these services. Accordingly, applying to establish such services in the Development Area shall be subject to the Laws and regulations governing these services that are in force in the Kingdom (e.g. the Law of Education for the year 1994 to establish the requirements, conditions and licenses necessary to establish schools). To avoid this drawback it could be stipulated clearly in the Development Areas Law the Commission shall have the power to regulate all matters pertaining to education and health services. A provision to this effect could be added to Article (7) of the Development Areas Law. A financial analysis whether this is appropriate should be conducting prior to deciding whether such provision is necessary.

Comparison with ASEZ Law and Proposed and other Recommendations/ Suggested Modifications on the Current Development Areas Law

- **Income Tax**

Article (22)(b) provides that the Registered Enterprise shall be subject to (5%) income tax. Article (25)(d) has stipulated clearly the procedures that need to be followed in order to exempt any Enterprise from this tax or any other tax.

Article (23)(d) states that "there shall be collected a tax of the rate of 7% *of the value of the sale* of such services as specified by a regulation issued for this purpose". This clearly shows that a sales tax of a 7% shall be applied on the sale of those services that will be defined in the regulation issued for that purpose. These Percents are lower than the ones applied in the Kingdom, but identical to the ones applied in ASEZ. An amendment to the above percentages can well be introduced through an amendment to the Development Areas Law.

Financial Incentives

The Development Areas Law can be said to be an improved version of the ASEZ Law. In fact, most of the incentives granted in this new Law are mostly the same. In terms of taxes, for example, the income tax for Registered Enterprises is 5% in both laws. Also, under both Laws the income accrued to the banks, financial companies, insurance and reinsurance companies, and land transport companies operating in the Areas shall be subject to the Income Tax Law as in force in the Kingdom. The Sales tax under both Laws is also at the rate of 7% of the value of the sale of such services as specified by a Regulation issued for this purpose provided these are sold in the Development Area. While a Regulation in Aqaba has been issued to identify which services shall be subject to the 7% tax, a regulation to this effect has not been issued pursuant to the Development Areas Law.

However, Article 23 of the Development Areas Law has imposed the following:

"The sales *of tobacco products, alcoholic beverages* and vehicles, when sold for consumption in the Development Area, shall be *subject to the sales tax and custom duties that are collected in the Kingdom*".

Article (37) of the ASEZ law on the contrary, has given the Council of Ministers the power to decide the amount of sales tax applicable on tobacco products and alcoholic beverages.

An amendment to the Development Areas Law whereby the above article 23 of the Development Areas Law is replaced with an Article identical to the ASEZ Law would be appropriate.

Another advantage in relation sales tax that ASEZ law has granted is that it exempted the following categories from paying this tax when purchasing goods and services:

- "1. Goods and services purchase in the Zone by embassies, commissions and non-honorary consular for its personal use.
2. Goods and services purchased in the Zone by members of the diplomatic and consular corps assigned in the Kingdom, provided that they are non-Jordanians and non-honorary.
3. Goods and services purchased in the Zone by international and regional organizations operating in the Kingdom and their non-Jordanian employees enjoying diplomatic status".

Provided that is required by international agreement and protocols and provided that reciprocity treatment is accorded. A clear provision to this effect is missing in the Development Areas Law.

Also the ASEZ Law has also by virtue of Article (37 Repeated) (d) granted the Council of Ministers the power to, in special cases and upon the justified reasons exempt wholly or partially from the tax imposed on any goods, service. An amendment to the Development Areas Law whereby articles similar to the above are added is recommended.

Nonetheless, the Development Areas Law provided for incentives not included in the ASEZ Law such as:

"The vehicles sold to the Registered Enterprise for the purpose of carrying employees from and to the work facilities of this Enterprise within the Development Area shall be exempted from the sales tax".

Also;

"The Registered Enterprises carrying out an Economic Activity in the Development Area shall enjoy an exemption of all materials, instruments, machines and appliances that are part of the construction, establishment, equipping and furnishing all kinds of projects established by these Enterprises in the Development Area, including spare parts necessary for their ongoing maintenance, from all customs duties and other fees and taxes".

Also;

"The Registered Enterprise carrying out an Economic Activity in the Development Area shall enjoy an exemption of all goods imported to the Development Area or exported therefrom to outside the Kingdom, as well as construction materials from import fees and customs duties and all other taxes and fees applicable thereto except for services fees and charges incurred upon these goods and materials according to the applicable legislations".

These incentives give advantage for the Development Areas Law over the ASEZ Law. In addition to the above, the Development Areas Law gave the Commission the power to directly to the Council of Ministers to exempt any Registered Enterprise from any fees and taxes incurred thereby, provided that the recommendation specifies the conditions and procedures required to execute this exemption. This peculiarity is missing in the ASEZ Law.

Finance

In relation to financing projects, the Development Areas law provides clearly for applying more flexible financing methods. Article 26 (d) provides clearly for the application

"The provisions which regulate Al-Musataha⁶ right in the legislations in force shall be applicable and in accordance with what is agreed upon between the Master Developer and the Registered Enterprise or the subleased tenants".

The application of this right in other parts of the Kingdom still proves problematic as the relevant Land and Surveys Departments in the Kingdom (including Aqaba) still refuse to register this right on the land deeds relating to it. The clear indication to this right in the Development Areas Law may well prove effective in persuading the Land and Survey Departments to apply it on land deeds. Article 26 (f) has also provided that:

"The Registered Enterprise may rely on the administration contract or the lease contract entered to in accordance with the provisions of this Law as a guarantee to attain loans and facilities necessary for conducting its Economic Activities".

This again will certainly assist Enterprises in raising finance through granting different types of securities to Lenders. These provisions give the Development Areas Law advantage over the ASEZ Law.

Powers and transition

Article (8) of the ASEZ Law has recognized the ASEZA as the legal and factual successor of the Municipality of Aqaba. Also, that all rights and obligations of the Municipality of Aqaba shall be transferred to the Authority. The Authority shall undertake to execute all contracts and agreements to which any of such entities was a party thereto at the date specified by the Council of Ministers as if such contracts and agreements were concluded with the Authority.

⁶ This right is basically: "the right to own a building on the land of another". Thus, even if a person does not own the land, he may pursuant to this right agree that he can own the buildings on that land of another (without owning the actual land). This right is usually essential in Project Finance, it assists the Lenders in acquiring security over the buildings where the land is not sold (for whatever reason) to the Investor.

The Development Areas Law has provided that the Commission shall practice "Municipal affairs including the exercise of all powers and mandates assigned to the municipalities in the Kingdom power". This approach could be understandable where the Development Area is small in size and does not include all Areas falling under a certain Municipality's jurisdiction. However, if the Development Area that will be announced in Ajlun is to cover all the Areas under the jurisdiction of the Ajlun Municipality, then the Development Law cannot provide answers as what would be the status of the Municipality, how the contracts reached between it and other parties will be handled, what will the position of the employees in it be. It would have been a better approach if the Development Areas Law included provisions to tackle this case.

Also the Development Areas Law has failed to clarify the position of enterprises already established in (e.g.) Ajlun. What will be the status of such enterprises where Ajlun is declared as a Development Area? Will they be considered de jure Registered Enterprises or not? If not, will they be required to apply for new licenses (i.e. environmental permits) in order to operate in the Area? The ASEZ Law has covered this peculiarity.

To cover the above concerns it is recommended that the Development Area Law is amended to include the following Article:

- "a) Where a Development Area is declared and its size covers the whole jurisdiction of a given Municipality, the Commission as of the date specified by the Council of Ministers decision, shall become the legal and factual successor of that Municipality. All rights and obligations of the Municipality shall be transferred to the Commission. The Commission shall undertake to execute all contracts and agreements to which any of such Municipality was a party thereto at the date specified by the Council of Ministers as if such contracts and agreements were concluded with the Commission.
- b) for the purpose of applying Clause (a) above, all employees and personnel of the Municipality shall be transferred to the Commission de jure".

The Financial Resources

Article (19) of the ASEZ Law has stated that the ASEZA shall be entitled to collect and keep the sums (revenues) generated through:

"Fines and civil compensations resulting from implementing penalties for violating any of the provisions **of this Law and the laws in force in the Zone**, including implementing the penalties stipulated in Article (39) of this Law".

A similar provision to the above has not been included in Article (27) of the Development Areas Law (financial resources of the Commission). This in effect gives more revenue advantages for the ASEZA over the Commission. Also, in the ASEZ Law, the ASEZA shall have "the annual funds allocated for the Authority in the General Budget" as a source of revenue, while the Commission under the

Development Areas Law does not. An amendment in the Development Areas Law to provide for an approach similar to ASEZ Law would be appropriate.

Conclusions

Although both of the above laws have their advantages and disadvantages, it is recommended that a special law to accommodate the Area of Ajlun should be issued, for the following reasons:

- 1- Laws are tailored to fit policies and the other way around. In the case of Ajlun we believe that first a financial (feasibility) study should be conducted as to which types of investment we want Ajlun to attract and the incentives necessary to attract such investments. Upon finishing this study we can draft a law to fit these needs.

Revising the Development Areas Law did not include, for example, incentives targeting Tourism; it is as if the law mainly took into consideration commercial and industrial projects in Mafraq and Irbid as its core objective. There are several international models for laws which can be tailored to attract Tourist Project to a certain part of the world. These could include for example, compelling the different governmental authorities, upon a recommendation made by the Commission, to promote, advertise and market the Tourist Projects in Ajlun at their websites or at the embassies abroad.

- 2- It is not clear yet under the Development Areas Law how the different Commissioners will practice their rights and which areas will they be representing. This could prove to be very problematic when the Commission adopts certain decisions in relation to signing contracts with Master Developers; different Commissioners representing the different Areas (Irbid, Ma'an, Ajlun) may will have different views as to which areas should be given priority in relation to development. Especially, if the Commission is willing to start allocating funds for the different Areas to establish basic infrastructure required to attract investors. The Commissioners representing different Areas may well disagree as to how allocation of money for the basic development of infrastructure is made; every commissioner will want such amount to be spent to its Area. To avoid any distraction of this sort which may hinder the speed of development of Ajlun a special law governing Ajlun should be issued with a Commission dedicated only to develop this Area.

Based on the above, we would recommend that you commence immediately in preparing the feasibility study which will include the incentives necessary to promote education, health, tourism, commercial and agriculture services in Ajlun. This will certainly be the basis for allowing us to draft a Law that successfully and carefully provide for all the incentives and requirements necessary to ensure the successful development of Ajlun.