



Journal Website:
<https://theamericanjournals.com/index.php/tajpslc>

Copyright: Original content from this work may be used under the terms of the creative commons attributes 4.0 licence.

Research Article

THE ASPECTS OF LEGAL REGIME OF ENTREPRENEURIAL ACTIVITY IN FREE ECONOMIC ZONES

Submission Date: November 19, 2023, Accepted Date: November 24, 2023,

Published Date: November 29, 2023 |

Crossref doi: <https://doi.org/10.37547/tajpslc/Volume05Issue11-06>

Sardor Bozarov

Acting Professor Of Cyber Law Department Of Tashkent State University Of Law, Doctor Of Sciences In Law Uzbekistan

ABSTRACT

In this article, the author analyzed the aspects of legal regime of free economic zones. In addition, tax and custom preferences, which are granted to the participants of free economic zones, have been reviewed. At the same time, the author analyzes the concepts about legal regime of free economic zones developed by many scientists and practitioners. In conclusion, analyzing the definition and concept on legal regime of well scholars and legal acts we put forward new concept and definition on legal regime.

KEYWORDS

Legal regime of entrepreneurial activity in free economic zones, Tax and custom preferences, Simplified administrative regimes and requirements, Tax regime of free economic zones, Custom regime of free economic zones.

INTRODUCTION

The notion of a legal regime has been frequently used in legal literature and being affirmed as one of the most important categories of jurisprudence. Such phrases as “preferential treatment”, “business regime”, “most favored nation treatment”, are often used without giving them a legal definition. In the legal acts of many countries, special rules on the legal regime of free economic zones are used. In the Act of the Republic of Uzbekistan “On special economic zones” as of

February 17, 2020 № 604 there is the chapter “Special legal regime of special economic zones” which includes the norms as “features of a special legal regime”, “Special customs regime”, “benefits on taxes and customs duties” and others.

The Law of the Republic of Kazakhstan “On Special economic zones in the Republic of Kazakhstan” as of June 21, 2011 №469-IV ZRK provides the chapter “Legal

regime and conditions for the operation of the special economic zone”. This chapter includes the norms of a “special legal regime of a special economic zone”, “taxation of participants in a special economic zone”, “customs regulation in special economic zones”, “guarantees of legal protection of participants in a special economic zone”, “public-private partnership in special economic zones”.

The Law of the Republic of Turkmenistan “On free economic zones” as of October 9, 2017 №.620-V. established the chapter “Special legal regime of the free economic zone” including the norms of “regime of land use of the free economic zone”, “regime of pricing of a free economic zone”, “special monetary regime of a free economic zone”, “tax regime of a free economic zone”, “peculiarities of the customs regime of a free economic zone”, “insurance regime of a free economic zone”, “peculiarities of staying in a free economic zone”.

The Law “On free economic zones” of the Republic of Tajikistan as of March 25, 2011 №700 established the chapter “Special legal regime in a free economic zone” including “aspects of customs regulation in a free economic zone”, “features of taxation in a free economic zone”, “financial and currency regulation in the free economic zone”, “activities of banks and non-bank credit organizations”, “insurance activities”.

These norms are used to establish the definition of a legal regime of a special economic zone, and determine the essence of activities carried out on its territory, including entrepreneurial activity.

In our research we considered as topical to study theoretical foundations of a legal regime as a whole in the works of many scholars, as well as the development of the concept of “legal regime of entrepreneurship” in order to identify the features of

entrepreneurship in the FEZ of the Republic of Uzbekistan.

The legal regime is a kind of a social regime, created and regulated by law. According to O.V. Florya “legal regime” is one of the most important and, at the same time ambiguously interpreted categories in the legal science. In the absence of a legal definition of the legal regime in the theory of law, it is conducting disputes its definition. In other words, there are a number of points of view concerning the analysis of the nature of the legal regime.

A glance at N.P.Azizov’s perspective, a legal order is a certain condition of social relations arising on the basis of exercising requirements of law. Legality and legal order differentiate from each other: The content of legality is expressed with strict and meticulous observing of legal norms, however, legal order is expressed with conformity of the behavior of participants of social relations and subjective rights and obligations.

From Q.T.Holmuminov’s opinion a legal order is a part of a public order, and only arises because of the exercising of legal norms, regulates different social relations among people by legal means. Social relationships in public are wider than legal relationships arising from a legal order and social relationships also include morals, customs and other social relationships arising as a the result of exercising life provisions.

Several scientific works of such authors as N.I. Matuzov, A.V. Malko, YU.S. Rodionov, E.F.Shamsunova, V.F. Popandopulo O.A. Belyaeva and S.S. Alekseev have been devoted to the study of the essence of the concept of “legal regime”.

Researching the essence of the legal regime, N.I. Matuzov and A.V. Malko points to a “functional characteristic of law” and argue that the legal regime is designed to ensure, “the desired social effect” .

A well-known researcher in this field, V.B. Isakov considers the legal regime as a regime of certain object, affirmed by legal norms and provided by a combination of legal means .

According to A.S.Trifonov, a “legal regime” is a legal characteristic of the phenomenon of objective reality, which unites all sets of rights, obligations, permissions and prohibitions, which are addressed or belong to the subjects .

O.V.Florya notes that in a broad sense, the concept “legal regime” covers the aggregate of all positive-legal prescriptions contained both in imperative and in dispositive norms based on subjective and legal claims existing from the point of view of law and defining rights, duties, permissions, prohibitions and orders of all persons concerning the object (phenomenon) in respect of which they are established .

Many specialists under the term “legal regime” understand “the specifics of legal regulations of a certain sphere of public relations through various legal means and methods” or “the order of regulations, expressed in a complex of legal means, characterizing a special combination of interrelated permissions, prohibitions, as well as positive obligations and creating a special direction of regulations” “a system of legal rules that determine the position of the phenomenon under investigation as objective reality as an object of civil laws of this or that system of legislation” a part of legal regulation aimed at “establishing a mechanism to ensure the factual implementation of the system of incentives, standards, guarantees, prohibitions, bindings, restrictions, as well

as their competent execution” , identify with the “method of legal regulation”, which refers to the totality of methods and methods of the legal impact on public relations constituting an object of branch of law, in order to achieve the required result .

The described variety of definitions of the concept “legal regime” in legal theory led to the emergence of various approaches to understand the object of legal regulation.

Since the description of legal regime of a particular object or phenomenon has an applied character in comparison with clarification of the ratio of the legal regime of a particular phenomenon, the objective reality with the very phenomenon in the framework of a civil legal relationship .

Famous scholars of the theory of state and law S.S. Alekseev carried out a comprehensive approach to deep study of the concept “legal regime”. He notes that the legal regime is a regulation order expressed in a complex of legal means that characterize a special combination of interrelated permissions, prohibitions, and positive trying and create a special orientation of regulation .

Analyzing this position, we would like to note that the legal regime, to a greater extent, characterizes not the direction of legal regulation, but the degree of its favorable or not favorable for the interests of various subjects of law. The value of the definition developed by S.S. Alekseev is that the essential feature of the legal regime emphasizes a peculiar and contradictory combination of types of legal regulation.

In addition, S.S. Alekseev put a sign of identity between the concepts of “legal regime” and “judicial regime of a legal regulation”, which are imagined an integral system of regulatory impact, based on application of

specific methods of legal regulation. And he proposed the following classification of legal regimes:

- Primary legal regimes based on general principles of regulation of legal relations
- Secondary ones which are modification of the primary regimes .

Combining in one concept the “legal regime” of several components means and principle of legal regulation, the methods of accomplishing law enforcement practice, in our opinion, does not objectively reflect the applied purpose of the “legal regime”, which consists of establishing the order of a legislative settlement of a certain sphere of social relations, specificity and legal regulations.

The description of relationship between the legal regime and legal regulation can be as follows: legal regulation affects all social relations subject to legal effect, and the legal regime affects certain groups of public relations that are part of the legal regulation.

All political, socio-economic, national, cultural, information and demographic processes taking place in society affect the legal sphere of society and are expressed in modifications of legal regimes, the introduction of which establishes a certain order of regulation of various spheres of social relations.

Considering the foregoing, we can distinguish the following main features of the legal regime:

- is strengthened by legal norms, is established in the legislation and is provided by the state;
- has its purpose in a specific way to regulate certain social relations, highlighting in the spatial boundaries of certain subjects and objects of law;

- is characterized by a combination of legal means of regulating individual legal relationships.

The legal regime ensures stable regulatory regulation of a group of social relations, a certain area of social life, promotes the optimal use of specific objects. This is especially important in the period of economic, political and cultural transformations in the Republic of Uzbekistan.

The concept “Legal regime” cannot be identified with the concept of “mechanism of legal regulation” The legal regime is implemented through the mechanism of legal regulation, which is a general procedure, the process of the operation of law. If the mechanism of legal regulation is a legal category that shows how legal regulation is carried out, the legal regime is, to a great extent a meaningful characteristic of specific regulatory means designed to organize a certain area of people’s activities.

According to V.F. Popandopulo, a certain type of social activity corresponds to its legal regulatory regime. Indeed, it is more correct to use the term “legal regime” in relation to the legal regulation of a particular type of social relations.

At the same time, it is necessary to take into account that there is a need for characteristics of legal regimes not only for certain types of social activity (legal regime of entrepreneurship), but also to individual entities (legal regime of entrepreneurship of non-profit organizations), objects (legal regime of real estate) or to the content of certain transactions (legal regime for the issue and circulation of securities).

These features and special characteristics of the legal regime in general are the basis for determining the legal regime of entrepreneurship. For the purposes of our research, the development of the definition of the

legal regime of entrepreneurship in the FEZ becomes particularly important.

In our opinion, the legal regime of entrepreneurship in the SEZ is a special procedure for the legal regulation of entrepreneurial activity in the territory of the SEZ, expressed in a certain combination of legal means and creating the desired social status and a specific degree of favorableness for the satisfaction of the interests of the subjects of law operating in the territory of the SEZ.

The legal regime of entrepreneurship is expressed primarily in the permissive nature (type) of legal regulation, where permissions are a key element of regulation. It is the generally permissive legal regime characteristic of entrepreneurship as a whole that prove itself in all its legal forms. This is explained by the fact that the legal regime expresses an inseparable link between the legal form and content of regulated relations and is at the joint of law and social life .

We emphasize that in the legal regime is embodied the basic requirements of the economy.

In particular, in order to attract foreign capital and enhance international trade in the SEZ, a special mechanism has been developed, based legislatively approved in practice, which is considered as the basis of the legal regime of entrepreneurship in the SEZ and is expressed in the provision to certain economic subjects of various preferences and corresponding guarantees:

- Customs (foreign trade);
- Tax;
- Financial (various forms of subsidies that can be provided in the form of a reduction of rent for the use of land plots and production facilities, preferential loans, etc.);

- Administrative (simplification of the procedure for registration of organizations, simplified regime of entry and exit of foreign citizens, etc.).

The above-described preferences, being, in fact, stimulating means of influencing public entrepreneurial relations in the SEZ, play a paramount role, while restrictions are designed to promote the most complete, fair implementation of the will of the legislator.

The legal regime of entrepreneurial activity was studied in the works of A.Ya. Kurbatova, A.P. Belova and others .

In the works of the mentioned researchers it was revealed that the legal regime of entrepreneurship is established by legal norms, allocated in legislation, is provided by the state and is characterized by a combination of various legal means of regulation of business relations.

The implementation of entrepreneurship is a sphere of a private interest, and the right to carry out entrepreneurial activity; is an element of the legal capacity of a private person. Therefore, this activity is regulated, first of all, by the norms of private law.

At the same time, private regulation is inevitably subject to public legal influence, which is connected with need to establish the limits of the private interests of entrepreneurs in order to protect the interests of society and the state .

Thus, the legal regime of entrepreneurial activity is expressed in the use of both allowable and permissive type of a legal regulation. The legal regime of entrepreneurship has several objectives, which include the establishment of a common order, assuming some uniformity, transportability, controllability and manageability and protection of the rights of third

parties inclusion of the entrepreneur in the market infrastructure, ensuring the effectiveness of entrepreneurial activity .

Comprehensively analyzing the legal regime of entrepreneurial activity the A.V.Gasumaynova divided it into several types: Normative-legal regime, Organizational-legal regime, Contractual-legal regime, Law enforcement regime.

Under the normative-legal regime of entrepreneurship in the SEZ should be understood as the aggregate of influence in this sphere, established in the normative-legal acts, which include regulatory legal acts of the federal level and regulatory legal acts of the subjects of the Russian Federation.

Organizational-legal (administrative-legal) regime in the special economic zone is a set of legal norms regulating the procedure for creation, termination and management of the SEZ, as well as the activities of the state control bodies in the territory of the SEZ. Specificity of the organizational and legal regime of entrepreneurial activity in special economic zones concerns the following aspects: facilitating state control in the sphere of investment activity; stimulation of foreign trade activity; establishment of a special order of currency regulation and currency control, special customs and tax regulation.

Contractual-legal regime in the SEZ is due to the fact that industrial-production, technical-innovative, tourist-recreational and port activities in accordance with the Federal Law on the SEZ (Part 4, Article 6) can only be carried under the agreements between the Government of the Russian Federation, the higher, executive body of the state power of a constituent entity of the Russian Federation and the executive and administrative organ of a municipal formation in the territories of which the SEZ is established.

Law enforcement regime is the guarantee of legal protection of business activities of the SEZ residents, based on general principles of international law and regulated in accordance with the norms of national legislation. The world practice, the question of the favorable investment climate in the country or in a particular region is determined by a number of parameters, such as transparency of national legislation, acceptable tax and customs rates, political stability, low crime rate, state guarantees of the legal regime of investment .

The legal regime of entrepreneurial activity, depending on its orientation, can be classified into a general legal regime and a special regime .

At the same time, the increasing role of special legal regimes is evident, meeting the needs of modern social practice, where there are an increasing number of objects (territories), subjects, activities, requiring the establishment of a certain regime in relation to themselves for their future functioning.

Under the “legal regime” in law theory is understood “the specificity of legal regulation of a certain sphere of social relations with the help of various legal means and methods” .

“The legal regime of entrepreneurial activities can be defined as the totality of the rights and obligations of the entrepreneur provided by law and constituent documents, accomplishment of which contributes to the achievement of a specific goal of legal regulation” .

Free economic zones are, primarily, formally delimited portions of the national territory and, secondarily, legal spaces provided with a set of investment, trade, and operating rules that are more liberal and administratively efficient than those prevailing in the

rest of the national territory. Zones are therefore defined by a specific regulatory regime. This regime may be contained in one or several dedicated laws or through a set of measures contained in a number of texts .

The provision of corporate and other tax incentives is a long-established practice in SEZs worldwide. Many SEZ regimes become overly reliant on granting general tax incentives rather than addressing other aspects of the investment environment, raising the risk of a race to the bottom with other zones. On the other hand, incentives have played an important role in catalyzing investment in some SEZ programs particularly in the early stages of their development .

Thomas Farole, Gokhan Akinci analyzed the legal regime in the free economic zones of Bangladesh. They indicated that a number of exogenous factors explain the rise of Bangladesh as an export location for the garment sector, but several aspects of the EPZ regime have played an important role – in particular, the availability of serviced land and supporting infrastructure, the transparent and relatively efficient administrative regime in the zones, and the incentive regime that is available to zone-based firms. On chapter we analyze each of these factors after an initial introduction to two critical exogenous factors that also are affected by the EPZ program: wages and market access. They considered regimes of free economic zones as tax and other incentives and fiscal privileges .

Michael Engman viewed regime as incentives and facilitation. Comprehensively analyzing free economic zones of Honduras, he indicated that the fiscal incentive structure that the government of Honduras offers companies with free zone status, including time unlimited exemption from taxation and duties, is generous from an international perspective. This incentive regime undoubtedly has played a role in

attracting investment into the free zones program both from FDI and local investors .

Proceeding from the abovementioned, broadly analyzing the definition and concept on legal regime of well scholars and legal acts we put forward new concept and definition on legal regime of entrepreneurial activity in the free economic zones. in line with out definition and concept “The legal regime of entrepreneurial activity of free economic zones is complex of rules including rights and obligations, preferences as well as authorities established in the legal acts an accomplishing the entrepreneurial activities in the free economic zones, the status of participants of FEZ and a certain status of properties”. The tax regime of free economic zones – is the tax preferences including special rules to accomplish effectively entrepreneurial activity in the territory of free economic zones. The custom regime of free economic zones – is the custom preferences including special rules for import and export of property to manufacture goods and accomplish entrepreneurial activity in the territory of free economic zones.

REFERENCES

1. Law of the Republic of Uzbekistan “On Special Economic Zones” as of February 17, 2020 № 604. National Legislation Database, 02/18/2020, No. 03/20/604/0175; 06/07/2022, No. 03/22/775/0477
2. Law of the Republic of Kazakhstan “On special economic zones in the Republic of Kazakhstan” as of 21.06. 2011№469-IV ZRK. Available at: <http://invest.mid.gov.kz/en/pages/law-republic-kazakhstan-special-economic-zones-republic-kazakhstan>
3. Law of the Republic of Turkmenistan “On free economic zones” as of October 9, 2017, № 620-

- V U P-6. Available at:
http://www.minjust.gov.tm/ru/mmerkezi/doc_view.php?doc_id=15171
4. Law of the Republic of Tajikistan "On free economic zones" as of March 25, 2011 № 700. Available at:
https://www.wto.org/english/thewto_e/acc_e/tjk_e/WTACCTJK23A1_LEG_2.pdf
5. Флоря Оксана Викторовна "Правовое регулирование предпринимательской деятельности в особых экономических зонах" Дис. ...канд. юрид. наук. – М.: 2011. – С.3
6. Давлат ва ҳуқуқ назарияси: Дарслик / Х.Т.Одилқориев, И.Т.Тулътеев ва бошқ.;проф. Х.Т.Одилқориев таҳрири остида. – Тошкент.: Ўзбекистон Республикаси ИИВ Академияси, 2009. – 490 б.
7. Давлат ва ҳуқуқ назарияси: Олий ўқув юртларининг ҳуқуқшунослик мутахассислиги бўйича таълим олаётган талабалари учун \Бобоев Ҳ.Б., Исломов З.М., Чориёров У.; //Масъул муҳаррирлар: Ҳ.Б.Бобоев, Ҳ.Т.Одилқориев \-Т.: "Иқтисодиёт ва ҳуқуқ дунёси" нашриёт уйи, 2000. - 342 б.
8. Матузов Н.И., Малько А.В. Правовые режимы: Вопросы теории и практики/ Правоведение. 1996. №1.
9. Флоря Оксана Викторовна. Правовое регулирование предпринимательской деятельности в особых экономических зонах. Дис. ...канд. юрид. наук. – М.: 2011. – С.123
10. Исаков В.Б. Механизм правового регулирования и правовые режимы /В.Б. Исаков // Проблемы теории государства и права. – М., 1987. –С. 33-42. А.В. Гасумянова Правовой режим предпринимательства
11. в особых экономических зонах российской федерации // Монография. Санкт Петербург,2010 – С.
12. А.С.Алексеев Имущественные отношения в РФ// М. 2006. № 1. О.В.Флоря "Правовое регулирование предпринимательской деятельности в особых экономических зонах" Дисс... канд.юр. наук. Москва ,2011 – С.122
13. О.В.Флоря "Правовое регулирование предпринимательской деятельности в особых экономических зонах" Дисс... канд.юр. наук. Москва ,2011 – С.122
14. Теория государства и права. / Под ред. Алексеева С.С.И М. 1997. С.265.1. №9. О.В.Флоря "Правовое регулирование предпринимательской деятельности в особых экономических зонах" Дисс... канд.юр. наук. Москва, 2011 – С.124
15. Теория государства и права: Учебник/ под ред. В.Д. Перевалова// М. 2004. С. 145.
16. О.В.Флоря "Правовое регулирование предпринимательской деятельности в особых экономических зонах" Дисс... канд.юр. наук. Москва ,2011 – С.124
17. Беляева О.А. Предпринимательское право: Учебное пособие/ М. Юридическая фирма "Контракт", "ИНФРА-М". 2006.С.8.
18. Алексеев С.С. Общие дозволения и общие запреты в советском праве /С.С. Алексеев. – М.: Юрид. лит, 1989. – 288 с. А.В. Гасумянова Правовой режим предпринимательства в особых экономических зонах российской федерации // Монография. Санкт Петербург,2010 – С.7
19. Claude Baissac. «Brief history of SEZs and overview of policy debates» // Tomas Farole. Special economic zones in Africa, Comparing Performance and Learning from Global

- Experience. P-24. Available at:
<https://openknowledge.worldbank.org/bitstream/handle/10986/2268/600590PUBoID181onomic09780821386385.pdf?sequence=1&>
20. Tomas Farole. Special economic zones in Africa, Comparing Performance and Learning from Global Experience. P-170. Available at:
<https://openknowledge.worldbank.org/bitstream/handle/10986/2268/600590PUBoID181onomic09780821386385.pdf?sequence=1&>
21. Thomas Farole, Gokhan Akinci. Special Economic Zones. Progress, Emerging Challenges and Future Directions. P-57. The World Bank. Available at:
<http://documents.worldbank.org/curated/en/752011468203980987/pdf/638440PUBoExt000Box0361527BoPUBLICo.pdf>
22. Michael Engman. Success and Stasis in Honduras Free Zones // Thomas Farole, Gokhan Akinci Special Economic Zones, Progress, Emerging Challenges and Future Directions. The World Bank. Available at:
<http://documents.worldbank.org/curated/en/752011468203980987/pdf/638440PUBoExt000Box0361527BoPUBLICo.pdf>

