Malawi's 2023 Special Economic Zones Law: Transforming Secondary Cities into SEZs

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KEY MESSAGES

Malawi's 2023 special economic zone regulations allow secondary cities and urban centre to be designated as special economic zones.

This new special economic zone policy is a substantial step towards a new generation of zones organised as comprehensive urban developments, not just industrial parks.

The ability to declare secondary cities and urban centres as special economic zones will greatly help with the realisation of the Malawi Secondary Cities Plan.

Executive Summary

In December 2023, the Parliament of Malawi unanimously passed legislation[1] creating new Special Economic Zone (SEZ) regulations.[2] Most notably, these new regulations allow areas designated as an SEZ to include secondary cities and urban centers. The legislation also includes language identifying SEZs as tools with which to leverage Malawi's rapid urbanisation as hubs for economic growth and orderly urban expansion, in line with Malawi's ambitious Secondary Cities Plan[3] to establish eight secondary urban hubs throughout the country. The law also makes substantial 'good housekeeping' changes to rectify the failures of Malawi's first Export Processing Zones Act, adopted in 1995. Traditionally, most SEZs and other types of zones found in sub-Saharan Africa are organised in a similar way to industrial parks, with very little, if any, of their land, investment, and policy dedicated to residential, commercial, and other non-industrial activities. Malawi's new SEZ law represents a dramatic step towards the creation of a new generation of SEZs, organised not as industrial parks, but as comprehensive projects designed to support economic transformation *and* help address rapid urban expansion.

Urbanisation and the Economy of Malawi

At present, Malawi is one of the least urbanised countries in the world, with just 18% of the population living in urban areas in 2022.[4] At the same time, Malawi's annual urbanisation rate is among the highest in the world, with 4.2% of the population moving to cities annually.[5] With a population of approximately 20.4 million,[6] this means that Malawi's cities are growing by over 850,000 people annually. With a GDP per capita of only US$645,[7] Malawi is set to urbanise at a substantially lower level of economic development, and therefore state capability, than was the case for most of today's high-income countries. For instance, the United States became majority urban in 1920[8] at approximately US$5,000 GDP per capita,[9] while South Korea become majority urban in 1977[10] at approximately US$3,500 GDP per capita.[11]

The economy of Malawi is also highly dependent on agriculture, with tobacco (36.6%), tea (7.1%), ground nuts (6.85%), dried legumes (4.84%), raw sugar (2.57%), and other unprocessed agricultural products comprising a clear majority[i] of Malawi's US$1.19 billion exports in 2022.[12] Non-agricultural exports are minimal, as are exports with any value-added content or processing. Over 80% of the population is employed in agriculture.[13]

Framework of the SEZ Law

The new SEZ law, which replaces the failed 1995 Export Processing Zones Act,[14] is grounded in the Malawi 2063[15] long-term national vision plan, which aims for Malawi to become an "inclusively wealthy and self-reliant industrialised upper-middle income country by 2063". *Malawi 2063* is anchored by three pillars: agricultural productivity and commercialisation, industrialisation, and urbanisation.

The government of Malawi has identified SEZs as a critical tool to meet these objectives, as well as for intermediate plans such as the National Export Strategy.[16] The Law sets provisions to: declare, designate, promote, operate, and regulate SEZs in Malawi; promote foreign and local investment in SEZs; designate an SEZ Authority with an SEZ Committee to govern the Authority and establish its duties and powers; and establish a fund to support SEZ development.

Sections 4 and 5 of the Law establish the Malawi Investment and Trade Centre, an independent one-stop shop for investors created in 2012, as the Special Economic Zones Authority, and endow it with the appropriate powers and responsibilities. The Authority is responsible for making recommendations to the Minister of Trade and Industry regarding the establishment, operation, and regulation of SEZs, and serves as the principal management and overseeing body for all zones. This includes maintaining registries of businesses and residents within zones, facilitating master and building plans for zones, maintaining zone data performance, and other typical functions of zone authorities.

i The dominance of agricultural exports was even more pronounced prior to 2022, when gold exports rose from 7.5% to 19% of all exports.

Secondary Cities Provisions

The Law contains multiple provisions regarding secondary cities, urban areas, and related topics. Section 9 identifies the 10 principal objectives of SEZs, which in addition to traditional objectives such as attracting foreign and domestic investment, developing infrastructure, and facilitating industrialisation, also includes objectives regarding secondary cities.

Section 9(g) states that SEZs shall, "leverage urbanisation and population growth to promote dynamic and creative hubs of growth and orderly urban expansion"; Section 9(h) states that SEZs shall, "promote and facilitate the creation of smart, well-planned and serviced secondary cities that are anchored on sustainable agricultural, tourism, mining and industrial economic activities"; and Section 9(j) states that SEZs shall "promote regional development". Section 10 outlines the types of areas or facilities that may be declared an SEZ, which, in addition to agriculture and food zones, business services parks, dry ports, export promotion zones, ICT parks, industrial parks, science and technology parks, and tourism and recreation zones, includes secondary cities and urban centres that may be declared by the Minister as an SEZ. Section 46 makes initial provisions for the establishment of a "special economic zone resident", in addition to the typical "zone enterprise" designation.

Taken together, these objectives make clear that Malawi intends to develop SEZs not just as policy tools for investment attraction and industrialisation, but as an integral component of the country's strategy to address rapid urbanisation.

Importantly, Section 67 gives the Minister the authority to exempt a secondary city SEZ from any or all of the provisions of the Law. This will allow secondary city SEZs to enjoy the benefits of the SEZ regime, while discarding or replacing elements of the law that are ill-suited to the economy and governance of a populated urban area, such as requiring customs clearance before selling to the domestic market. Subsequent regulations made by the Authority and/or the Minister will be necessary to operationalise this law in secondary cities and urban areas, which this provision makes possible.

The government has already indicated that it intends to develop new zones in several locations throughout the country, including Mzuzu (72 hectares), Lilongwe (417 hectares), Blantyre (130 hectares), and Chigumula (22.7 hectares), with the Lilongwe (in partnership with ARISE IIP[17]) and Blantyre sites to be developed as public-private partnerships.[18] Charter Cities Institute's partner, Small Farm Cities, has developed one agro-business residential community west of Lilongwe, has broken ground on a second project adjacent to Malawi's massive new rutile-graphite mine,[19] and intends to pursue secondary city SEZ status for its communities.[20]

Other Notable Provisions

In addition to the inclusion of secondary cities and urban areas into the SEZ framework, the 2023 SEZ law includes several other positive elements and good practices that rectify some failures of the 1995 zone law.[21] However, some limitations remain.

First, the 2023 law follows good practice by including senior government officials on the SEZ Committee that governs the SEZ Authority, including a member of the Authority itself, the Treasury Secretary, Trade Secretary, Agriculture Secretary, Solicitor General, Director General of the National Planning Commission, and a member of a business association. That being said, this Committee could be more inclusive in terms of relevant members from leading ministries and include greater private sector representation to ensure that the Authority is responsive to the needs of current and prospective investors, which had been a shortcoming of the 1995 law.

Additionally, to best facilitate intergovernmental cooperation, it would have been ideal to house the Authority in the Office of the President, rather than under the Authority of the Minister for Trade and Industry, also a shortcoming of the 1995 legislation. Likewise, endowing the Authority with the ability for independent action, as opposed to making recommendations to the Minister, would have been preferable. However, it is worthy of note that the Minister now does enjoy clear powers to make decisions, regulations, and take other actions as is necessary to establish, promote, and operate SEZs.

A welcome change is the elimination of single-factory SEZs. The previous law focused heavily on the promotion of single-factory SEZs, which are highly susceptible to rent-seeking and corruption, while failing to generate any concentrated investments in infrastructure, which could benefit many firms.[22] This is a particularly important selling point for investors in African SEZs, who have identified good quality infrastructure as one of their most important investment location considerations.[23]

Another beneficial provision of the law is that it includes a clear mandate for the one-stop centre to be equipped to handle all possible needs of zone developers, operators, enterprises, and residents when interfacing with the government. This includes a requirement that personnel from ministries and agencies, which issue licenses, permits, or otherwise transact with firms and individuals in SEZs, are stationed within the one-stop centre. Although it is not explicitly stated, because these individuals are to be considered employees of their respective ministry or agency, they will hopefully be endowed by their parent institution to act on their own authority to issue licenses, permits, and otherwise conduct business. Without this authority from the parent institution to act independently, this arrangement risks creating a regulatory bottleneck for zone developers, operators, enterprises, and residents.

A final provision of note, which goes beyond commonplace tax and customs incentives, is that zone developers, operators, and enterprises can, with approval, operate and transact using a foreign currency account. Given the export-oriented nature of many of the firms likely to do business in an SEZ, this is a positive provision that will reduce currency risk for investors.

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