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10 QUESTIONS AND ANSWERS ABOUT THE ORGANIC LAW ON SPECIAL ECONOMIC ZONES

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In the Official Gazette No. 6,710, extraordinary, of July 20, 2022 was published the *Organic Law on Special Economic Zones* (LOZEE). Previously, it had been declared constitutional through judgment No. 0250 of July 6, 2020 of the Constitutional Chamber, after having been sanctioned in the ordinary session of the National Assembly on June 30.

In sanctioning the Law, President Maduro announced the upcoming creation of the following Special Economic Zones: Paraguaná (northwest), Puerto Cabello-Morón (center-north), La Guaira (central coast), Margarita (insular northeast) and La Tortuga Island (north center island).

Below is a brief questionnaire about the new Law.

1. What was approved and what is its importance?

After more than a year of discussion in the National Assembly, the LOZEE has been published. The draft law was the subject of several versions, and was subjected to a process of public consultation, including regions of the country.

The LOZEE was included in the legislative agenda approved in March 2021, and is undoubtedly the most important law in economic matters issued since the installation of the National Assembly in January last year.

In a meeting on May 26, 2021 between President Nicolás Maduro and Representatives of the National Assembly, aspects of the Draft Law on Special Economic Zones were discussed. He pointed out that the Law of Special Economic Zones is a "daughter" of the Anti-Blockade Law, since its objective would be to reformulate the effort to develop zones throughout the country. For her part, Deputy Gladys Requena pointed out that in the National Assembly they considered it

necessary to dictate a set of Laws to ensure the applicability of the Anti-Blockade Law. The *Anti-Blockade Constitutional Law for National Development and the Guarantee of Human Rights* (LCA) was published in the Official Gazette No. 6,583, extraordinary, of October 12, 2020.

Special Economic Zones (ZEEs) are not a novelty in Venezuelan law. In 2014, the *Law of Integral Regionalization for the Socio-productive Development of the Homeland* was issued, according to which the Special Economic Zones of the Palavecino Municipality and the Iribarren Municipality of Lara state were created by Decree, for example.

Thus, in the context of the changes that would be taking place in the Venezuelan legal environment, the LCA issued by the National Constituent Assembly in October 2020, and now the LOZEE, constitute the two Laws on which the National Executive seeks to rely to increase national and foreign investment in Venezuela.

2. What are the objectives of LOZEE?

According to Article 1 of the Law, it has a twofold purpose: (i) it constitutes the regulatory framework for the creation, organization, operation, administration and development of ZEEs and (ii) it creates the economic, fiscal and other incentives that are applicable in these ZEEs.

The first object of the Law requires its concretion through Decrees to be issued by the President of the Republic. The second object of the Law will require (i) that the competent bodies on these incentives dictate the regulations that specify them and (ii) the rules contained in the "Economic Activity Agreement".

3. In what geographical area does the Law apply?

The essential feature of the Act is that it lays down the basis for special legal regimes for economic activity in some economic sectors in certain geographical areas. Therefore, although it is a law of national scope, it will only be applicable in those geographical spaces that are defined by the President of the Republic by Decree. A consequence of this is that it will only be applicable to persons, natural or legal, who carry out activities in the geographical space defined by each Presidential Decree.

This geographical application of the Law is defined on the basis of some concepts provided for the Law: the "Development Areas"; the "Motor Development Districts", and the "Productive Development Poles".

In this way, the Decree creating the ZEEs will establish particular conditions for the "Development Areas" and, within these, for the "Motor Development Districts" and the "Productive Development Poles", according to the particularities of the geographical area in which the ZEE is created.

4. What are ZEEs and how are they created?

Article 4 of the Law defines the ZEE as the geographical delimitation that has a special and extraordinary socioeconomic regime, in whose polygonal strategic economic activities provided for the Law are developed, in line with the objectives established in the Economic and Social Development Plan of the Nation.

The ZEE can only be created by Decree of the President of the Republic, after a report submitted by the Ministries of People's Power with competence in matters of planning, economy and finance, as well as those with competence in matters related to the activities planned for the ZEE (Article 7). Thus, Governors and Mayors will not be able to create ZEEs under the LOZEE regime.

It is up to National Superintendence of Special Economic Zones (SUNAZEE) to define conditions that justify the creation of the zone, the nature of the public, private, mixed or communal economic activity, national or foreign, the sectoral specialty of both national and regional production potentialities, as well as the corresponding prioritized items, through the "Development Plan of the Special Economic Zone" (Article 11).

The creation of the ZEE is subject to several conditions provided for in Article 8 of the Law.

The content of the Decree establishing the ZEE is provided for in Article 9 of the Law.

The Decree establishing the ZEE must be submitted to the National Assembly for approval (Article 10).

5. In which sectors and activities can ZEEs be organized?

Article 12 of the Law sets out the sectors and activities in which the EEZ may be organized: (i) industrial; (ii) technology; (iii) financial services; (iv) non-financial services, and (v) agri-food production. Therefore, according to this standard, the type of ZEE will be defined from the items or activities established here and from

any other sector and activity, which are considered necessary for the development of the country.

In any case, the same article 12 states that the ZEE can be established on any other sector and activity, which are considered necessary for the development of the country.

6. What is the Economic Activity Agreement?

The "Economic Activity Agreement" is the contract concluded between the investor and SUNAZEE, which contemplates the economic, fiscal, financial and other incentives provided for the Law, as well as the performance requirements, goals, committed investments and other obligations that must be fulfilled (article 4.2).

7. So, what are the conditions for the application of the LOZEE-derived regime?

From the above, it follows then the application of the regime derived from the LOZEE is required: (i) that the President has issued a Decree creating an ZEE; (ii) the investor operates in any of the sectors and activities in which the ZEE may be organized: (a) industrial; (b) technology; (c) financial services; (d) non-financial services; (e) agri-food production, (f) or other services deemed necessary for the development of the country, and (iii) that the investor has concluded with SUNAZEE an Economic Activity Agreement.

8. What are the incentives envisaged for activity in the ZEEs?

The Law provides for a set of incentives (i) fiscal, (ii) customs, (iii) administrative, (iv) educational, (v) tourist, (vi) financial and (vii) exchange, whose scope and limits will be determined by Decrees, Resolutions and Orders, and which can be used by those who (i) execute participation projects in the ZEEs and (ii) have signed the respective Economic Activity Agreement (Article 27).

A. Tax incentives

Article 28 of the Law provides for (i) the Import Tax Refund (DRAW BACK) and (ii) the Tax Refund in the matter of other national taxes.

B. Customs incentives

For its part, article 30 of the Law provides for temporary admission for inward processing.

Article 32 of the Act provides for the possibility of installing a system of multimodal transport infrastructure corridors.

C. Single Window for Special Economic Zones

Article 29 of the Law establishes that the Ministry of People's Power with competence in matters of economy, finance and foreign trade, must incorporate, within the system of the Single Window of Foreign Trade, an exclusive technological platform for ZEEs.

D. Educational incentives

The Law provides that the ZEEs create training and research centers that promote the development of a comprehensive training model for human talent that participates in the different productive activities and prioritized areas developed (article 33).

E. Inclusion in the Catalogue of Tourism Investment Options

According to article 34 of the Law, the Minister with competence in the field of tourism must include the ZEEs of tourist vocation within his investment promotion plans.

F. Banks and financial system in the Area

In accordance with article 35 of the Law, the organization and operation of banking entities and the financial system, whose installation is authorized to develop the financial services sector in the ZEEs, shall be subject to an exceptional and preferential tax regime, in accordance with the rules issued by the Ministry.

For its part, Article 36 states that the economic activity carried out in the ZEEs shall be governed by a system of financing plans offered by specialized banking institutions for the development of the real and productive economy, in accordance with the rules issued by the Central Bank of Venezuela and the Ministry of People's Power with competence in matters of economy, finance and foreign trade.

G. Free convertibility

Article 36 states that the economic activity carried out in the ZEEs shall be governed by a system of free convertibility, in accordance with the rules issued by the Central Bank of Venezuela and the Ministry of People's Power with competence in matters of economy, finance and foreign trade.

9. How are ZEEs organized administratively?

The Law creates SUNAZEE as an autonomous institute, attached to the Vice-Presidency of the Republic (article 16), whose competences are indicated in article 17. The powers of the National Superintendent of Special Economic Zones are defined in article 22.

Each ZEE will have a single authority, in charge of executing the guidelines of the policies, plans and projects indicated in the Decree creating the respective ZEE (articles 23 to 25).

Article 26 of the Law gives various powers to the International Centre for Productive Investment, in short, aimed at promoting investment in ZEEs.

10. What about ZEEs created previously?

According to the Single Transitory Provision, ZEEs created prior to the entry into force of the Law must be evaluated by the National Executive in order to determine their viability.

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