Mission Permanente du
Royaume du Maroc auprès
des Nations Unies
New York

Permanent Mission of the
Kingdom of Morocco to the
United Nations
New York

INTERNATIONAL RESEARCH SEMINAR

ENSURING SUCCESS OF REGIMES OF TERRITORIAL AUTONOMY

PROMOTION OF FOREIGN DIRECT INVESTMENT

NEW YORK, JULY 1st, 2024

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FOREWARD

In a rapidly changing global context, marked by complex security, climate and health challenges, but also by new opportunities for international cooperation, the global economy finds itself at a crossroads.

The effects of the COVID-19 pandemic, coupled with the effects of climate change and geopolitical conflicts, have weighed significantly on international trade and investment flows and have brought to the surface several shortcomings of the international financial system, which has been weak, unstable and in some cases, sterile in the face of the economic and social repercussions of recent multidimensional crises. The investment world has experienced first-hand the impact of this uncertain environment.

However, this uncertainty has given rise to a new dynamic of competition for the attraction of foreign direct investment (FDI) and capital that contribute not only to economic growth but also to social inclusion, job creation, the promotion of women's economic autonomy and the promotion of green projects that contribute to climate action. Autonomous regions, because of their particular status and territorial specificities, are often in a unique position to attract international investors.

This publication aims to analyse the strategies implemented to attract investment, particularly FDI, in five autonomous territorial regions: the Portuguese island of Madeira, the British Crown Dependencies (Jersey, Guernsey and the Isle of Man), the Indonesian island of Aceh, the Danish Faroe Islands and the Tanzanian archipelago of Zanzibar.

By providing a detailed analysis of the practices of these regions, this book describes how these territories have been able to take advantage of their autonomy to implement legal, fiscal and economic policies aimed at attracting FDI bringing foreign capital, new technologies and technical training opportunities, thus stimulating the diversification and modernization of their economic sectors and the creation of decent work. And this, by highlighting the advantages and challenges that these territories face.

At the same time, a comparison will be made with the proposals put forward by Morocco in its Sahara Region Autonomy Initiative, a strategic region full of opportunities that is working tirelessly to strengthen its economic attractiveness and establish itself as a regional hub for foreign direct investment. As part of the Moroccan plan for regional development of the southern provinces, creating an investment climate conducive to FDI is among the priorities in the medium and long term.

This publication is part of a desire to provide new insight into the mechanisms and policies adopted by autonomous regions to capture international investment flows, while taking into account local specificities.

I hope that it will contribute to a better understanding of the economic and legal issues related to regional autonomy in the context of attracting foreign direct investment and that it will be a reference highlighting concrete and tangible case studies for the establishment of a model of solutions and best practices to attract FDI, adapted to the legal framework of autonomous territories.

Omar HILALE
Ambassador, Permanent Representative of the Kingdom of Morocco
to the United Nations in New York

INTRODUCTION

Dr Marc Finaud[1]

I am pleased to open this on-line international research seminar on the topic "Ensuring Success of Regimes of Territorial Autonomy: Promotion of Foreign Direct Investment" organised by the Permanent Mission of the Kingdom of Morocco to the United Nations in New York.

As you know, on 11 April 2007, the Kingdom of Morocco presented to the UN Secretary-General its "Initiative for Negotiating an Autonomy Statute for the Sahara Region" in order to break the stalemate in negotiations on the regional dispute about Sahara.[2] The UN Security Council in successive fifteen resolutions welcomed the "*serious and credible Moroccan efforts to move the process forward towards resolution".* It also encouraged *"the parties to demonstrate further political will towards a solution including by expanding upon their discussion of each other's proposals and recommitting to UN efforts in a spirit of realism and compromise",* and encouraged *"neighbouring countries to make contributions to the political process; and stressing the importance of all concerned expanding on their positions in order to advance a solution*."[3]

In this sprit and with the aim of promoting discussion on aspects of the Moroccan Initiative, Morocco initiated since 2009 a series of international academic comparative seminars in Dakhla, Geneva, New York or on line on a whole range of topics such as self-determination, human rights, institutions, natural resources, negotiations, regionalization, development models, civil society, external relations, settlement of political disputes, legislative, judicial, and executive powers, etc. The comparative studies included the cases of: Aceh, Andalusia, Azores and Madeira, Bangsamoro, Caribbean Island states, Catalonia, Greenland, Indian Northeast, Iraqi Kurdistan, Italian autonomous regions, Mexican states, New Caledonia, Newfoundland, Nicaragua's Atlantic Coast, Northern Ireland, Nunavut, Puerto Rico, Quebec, Spanish Provinces, South Tyrol, Vojvodina, Wallonia, Zanzibar, etc. The proceedings of those seminars have been published by Morocco and are available on a dedicated website (www.academicautonomynetwork.com).

Today's seminar will focus on attraction of foreign direct investment by autonomous regions. It will be an opportunity to compare the regulations or practices in five autonomous regions (the Portuguese island of Madeira; the British Crown Dependencies, i.e. Jersey, Guernsey and the Isle of Man; the Indonesian island of Aceh; the Danish Faroe Islands; and the Tanzanian archipelago of Zanzibar). The systems put into place in these autonomous regions to attract investment and more specifically foreign direct investment will be compared with the provisions proposed by Morocco for an autonomous Sahara Region.

Indeed, regarding promotion of foreign direct investment to support the development of the Sahara Autonomous region, it is worth recalling that the Initiative provides in its Article 13 that the Autonomous Region "*will have the financial resources required for its development in all areas*". In addition to its own resources (taxes, duties and regional levies enacted by the Region; proceeds from the exploitation of natural resources allocated to the Region; the share of proceeds collected by the State from the exploitation of natural resources located in the Region; proceeds from the Region's assets), it will benefit from "*the necessary funds allocated [by the State] in keeping with the principle*

[1] Senior Advisor and Associate Fellow, Geneva Centre for Security Policy (GCSP).
[2] United Nations Security Council, Document S/2007/206, 13 April 2007.
[3] United Nations Security Council, Resolution 2703 (2023) of 30 October 2023.

of national solidarity". Moreover, the central government is mobilizing all efforts to attract foreign direct investment into the autonomous region.

The new developments worth looking into are the recognition by the United States of Morocco's sovereignty on the Sahara Region of 10 December 2020 and its reaffirmation of "*its support for Morocco's serious, credible, and realistic autonomy proposal as the only basis for a just and lasting solution to the dispute over the Western Sahara territory*".[4] As a result, the United States decided to open a consulate in Dakhla "*to promote economic and business opportunities for the region*", although this plan has still not materialised. In December 2020, the US International Development Financial Corporation announced a plan of investment of $5 billion in Morocco and across the region.

Today, there are 15 consulates opened in Dakhla by countries such as Burkina Faso, Cape Verde, Congo, Djibouti, Dominica (also representing Antigua and Barbuda, Grenada, Saint-Kitts and Nevis, Saint-Lucia, Saint-Vincent, and the Grenadines), Equatorial Guinea, Gambia, Guatemala, Guinea, Guinea-Bissau, Haiti, Liberia, Senegal, Suriname, and Togo. Some 12 countries opened consulates in Laayoune, also in the Sahara Region: Bahrain, Burundi, Central African Republic, Comoros, Eswatini, Gabon, Ivory Coast, Jordan, Malawi, São Tomé and Príncipe, United Arab Emirates, and Zambia. Thus, a total of more than 30 countries from Africa, the Arab World, and Latin America and the Caribbean. This is not only an expression of support to the recognition of Morocco's sovereignty over the Sahara Region, but also a demonstration of interest in the current and potential economic development of this region through foreign investment.

This approach is also followed by larger countries such as France, whose Deputy Minister for Trade confirmed last April that Paris is willing to "*accompany Morocco in its development*" of the Sahara Region. And the French Minister of the Economy added that France is ready to participate in funding a 3-gigawatt power cable linking Casablanca to Dakhla.

Last year, a Chinese company announced that it was considering a $20bn investment in Laayoune over 7 years, to build a factory for electric batteries that would cover 30% of the needs of the Chinese, European and American markets in the electric battery industry, which means more than 6 million car batteries by 2030. Such a major project would create some 13,000 permanent jobs in the region. The Chinese company explained that the Sahara region was meeting all the conditions for the success of its plans.

The UAE is reported to be keen to invest in the 1,650 hectares Dakhla Atlantic Port megaproject — which will employ more than 1,400 workers — with the first terminals due to be operational by 2029. Abu Dhabi's national energy company is also planning to invest via its Moroccan subsidiary $10bn on a 6-GW green hydrogen project in Dakhla.

These are only a few examples of foreign direct investment that was made attractive by specific incentives in the Sahara Region. Tax incentives could include corporate income tax reductions, investment incentives, and support for export-oriented businesses, although these depend on factors like the type of industry and investment size.

In any case, it is now time to look at the experience of other autonomous regions that may be quite different from the situation in the Sahara Region but may also provide useful models that could inspire the future authorities of the autonomous Sahara Region.

[4] The White House, "Proclamation on Recognizing The Sovereignty Of The Kingdom Of Morocco Over The Western Sahara", 10 December 2020 (https://bit.ly/35nkmMf).

We will look at some questions such as the following ones:

1. Does the statute of the autonomous region include provisions on mechanisms for the autonomous region and/or or the central government to attract foreign direct investment into the autonomous region?
2. If foreign direct investment is possible or encouraged by the central government into the autonomous region, what impact does such investment have on the region's economy?
3. When public or private foreign investors wish to invest into the autonomous region, can they deal directly with the region or do they have to get permission from the central government? Is there joint control on the return on investment and proceeds?
4. Does the autonomous region retain all profits from foreign direct investment or does it return a share through taxation or revenue sharing arrangements?
5. Is promotion of foreign direct investment into the autonomous region part of a national legislation with guarantees for investors?
6. Can the autonomous region express to the central government its views on priority sectors where it needs foreign direct investment?

THE AUTONOMY OF MADEIRA (PORTUGAL) AND THE MOROCCAN INITIATIVE FOR THE SAHARA REGION

Dr Rui Carita[5]

I. Introduction

The islands of the Madeira archipelago had been known since the middle of the 14th century, if not before, but it was only with the development of navigation techniques and geographical referencing, from 1420 to 1425, that it was possible to proceed with their occupation. The settlement of the archipelago arose in a completely new context of a first experience of occupying a land that had never been inhabited before. Having tested crops that yielded considerable profits in a short space of time, such as wheat at first and sugar cane later on, this model was exported to the new lands of Portuguese expansion, such as the Azores, Cape Verde and Brazil, where administrative models and governing bodies were sent. Madeira supported the consolidation of the Portuguese sites in North Africa, the settlement of Brazil and the explorations and conquests of the Orient, and ended up acting as the real spearhead of the Portuguese discoveries.

As part of the consolidation of the sites in southern Morocco in 1508, Madeira's customs authorities were responsible for paying for and supplying part of the materials for the construction of Safi's Sea Castle, as well as the new cathedral of Santa Catarina, work that lasted until 1512. Along with the carpentry and nails, they must also have had the stonework already prepared and, of course, masters for the construction. In 1541, however, with the conquest of Agadir, where several soldiers from the Azores and Madeira were taken prisoner and later rescued, almost all of these squares were abandoned, but the ancestral commercial contacts remained, especially on the fishing shores of the former Spanish Sahara, as well as in Mauritania, where Madeira maintained a fortified trading post on the island of Arguim until 1638, including a chapel under the responsibility of the diocese of Funchal.

The privileged location of the Madeira archipelago in the North Atlantic, almost in the centre of the arc defined by the south coast of Portugal and the Moroccan Atlantic territory, plus the wind and current regime, which forced navigation in an arc in this area of the Atlantic, meant that practically all the great armadas that left Europe for the New World between the end of the 16th century and the middle of the 19th century passed close to the island. These conditions contributed to the establishment of the port of Funchal and the island of Madeira as an important strategic asset and, as such, the archipelago was occupied twice by British forces during the Napoleonic Wars. In the following years and in the vast conflict of interests between the British and Germans, which led to World Wars I and II, Madeira's situation once again posed problems, not least because since the late 19th century it had been one of the moorings for British submarine cables, which led to the city of Funchal being bombed twice by German submarines.

In the middle of the 19th century, the island of Madeira became a destination of excellence for international therapeutic tourism, leading to some of Europe's leading aristocratic figures staying for several months in Funchal's hillside estates. A railway was built up the hillside and, at the turn of the 20th century, a company with German capital was set up to build sanatoriums. However, this was scuppered by British interests based on the island and the Portuguese government had to pay heavy compensation for not complying with the agreed facilities.

[5] Dr Rui Carita, Professor Emeritus, University of Madeira (Portugal)

At the end of the 19th century, the first hotels were also built from scratch, already evolving towards leisure tourism and, over the course of the 20th century, new hotels were progressively built, as well as a new pier for ferries to dock, then an airport, with Madeira firmly establishing itself in the area of major international tourism. With the end of the dictatorship, the installation of democratic regional institutions, membership of the EEC and then the constitution of the European Union, the Autonomous Region of Madeira expanded its road transport network, building highways and expressways to combat the island's geological obstacles through tunnels, bridges and viaducts, as well as expanding its airport facilities.

II. Forms of administration and governance

The settlement began with the expansion to North Africa, still within the medieval ideas of the religious Crusade, and the administration was handed over to a military order: the Order of Christ, the result of the reformulation in Portugal, a century and a half earlier, of the old Order of the Knights Templar. Once the administration of this Order had been handed over to one of the infantes, the islands of the Madeira archipelago were divided into captaincies and handed over to squires of the same Infante, who began to govern the captaincies in the name of the same Infante.

With the modernisation of the administration of the Portuguese crown at the end of the 15th century, the administrations of the military orders were integrated into the Crown, although the old system of captaincies was maintained. Even in the following years, the administration through the system of captaincies, in a way already outside the modern systems of governance, was still maintained, as was the initial system created for Brazil, which soon had to be reformulated with the creation of a captaincy-general. Towards the end of the 15th century, the old medieval town of Funchal was remodelled and given a town hall and a large church. In 1508 it was elevated to the status of a city and in 1514 it became the seat of a bishopric. From then on, Funchal's town hall became the capital of the archipelago.

At the end of the 16th century, with the death of King Sebastião in Morocco, in the battle of Alcácer Quibir, on 4 August 1578, in the so-called Battle of the Three Kings, which led to the unification of the Moroccan kingdoms, King Filipe II of Castile took over the Portuguese crown, leading to the establishment of a dual monarchy on the Iberian Peninsula. With the dispute over the vast overseas domains of the Philippine Empire by the other European powers, it was necessary to unify the military administration of the Madeira archipelago, progressively configured in a governor and captain-general for both captaincies, chosen from among the nobility of the Lisbon court, who took office at the hands of the monarch and, in Madeira, at the town hall of Funchal. He would use the palace of São Lourenço as his residence, and would then hold the post for periods of three years, almost always accompanied by a corregidor for justice matters, who would come with the governor and also return with him.

The office of Provedor da Fazenda, responsible for the entire organisation of the archipelago's economic life, which corresponded directly with the structures of the court in Lisbon, was always maintained with a certain degree of independence, even from the governor and captain-general himself. This organisation was born out of the initial customs posts created in 1477 in the captaincies of Machico and Funchal, but from around 1514 onwards, this service was reinstalled and centralised in an important building on the city's seafront, known as the Alfândega Nova. With the separation of the Iberian crowns, the Funchal Customs House was expanded and, in 1644, it was even equipped with a fortified and armed structure, with the positions of artillerymen being filled by former customs guards.

Throughout the 16th to 18th centuries, Portuguese overseas governors were chosen from a very narrow group of families, almost always with close family ties. There was even a quasi-rotation of

these governors, who began by occupying the post of governor in Mazagão, a Moroccan square that was only abandoned in 1769, then moved on to the island of Madeira and often to similar places in Brazil, almost always being exempt from travelling to Lisbon to take up their post and then from Funchal to their new post.

With the Enlightenment centralisation of the second half of the 18th century, the so-called Enlightened Despotism, the progressive restructuring of the archipelago's system of governance began. The first step was the subordination of the various courts to the governor and the corregedor, given that the old captaincies, apparently only honorary, maintained intermediate justice structures: the ouvidorias, as well as the appointment of a series of offices in this area, the same happening with the Diocese, through the old Provedoria do Juízo de Resíduos e Capelas, which had control over wills. With the creation, in 1766, of a centralised government for the Azores, a captaincy-general and the consequent extinction of the captaincies-donataries on those islands, the royal cabinet drew up the legislation to incorporate the island captaincies into the Crown and the extinction of the ouvidorias, a determination that was soon extended to the Madeira archipelago.

The changes that took place in Europe as a result of the so-called Napoleonic Storm, which led Portugal to transfer its court to Brazil, postponed government reforms in the Atlantic islands.

III. The first steps in the construction of autonomy

With the establishment of a constitutional government, Portuguese territory was divided into provinces and, shortly afterwards, into districts. In 1832, the Juntas Gerais were created in the seats of each province and then each district. Over the course of the century, they were established as the centres of local government and were soon introduced into the Administrative Code of 1836. According to the founding decree, the Juntas Gerais de Distrito, made up of 13 attorneys, were "elected by the people", i.e. in the same way as the "deputies of the Nation" were elected. Summoned annually by the governor, they met for 15 working days, electing their president from among the procurators by secret ballot.

The deliberative powers of the Junta included: distributing direct contributions among the district's municipalities; imposing, within the limits of the law, spills and fines for the district's general utility expenses; taking out loans, with the authorisation of parliament, in Lisbon; and examining and approving the accounts that the governor presented to it on a mandatory and annual basis. As part of its consultative duties, the Junta Geral prepared an annual report on its deliberations and a general consultation on the material and economic needs of the district, proposing solutions, whenever possible, for their resolution. These consultations were sent to the government to be published annually in the Diário do Governo, and were even compiled into various publications

Effectively representing the living forces of the island, this structure was the first regional government, albeit with a representation far removed from what we know today. We can then point to this structure's advances and setbacks, such as the Liberal State's attempts at centralisation, with the bill presented to the Chamber of Deputies in 1839 to bring the adjacent islands under the general law regulating cereal imports, since the islands had a special regime in this area, mainly due to their production deficits and privileged relations with foreign countries. The political discussion of this bill was difficult, but the commercial association and the Funchal city council, as well as the District General Council, defended Madeira's interests and the situation was maintained.

It should be noted, however, that during these years the Junta held very occasional meetings and only began to function more effectively from 1842 onwards. On the other hand, in the early years of the Liberal government, from 1834 onwards, the trade associations in Lisbon and Oporto began to function, and requests came to Funchal for the installation of an association of this kind, which the governor promptly set in motion, first by appointing a Momentary Commission in July 1835, which

was then installed in January of the following year. The first president was an English merchant, from whom the same people almost always sat on the various boards until the time of the autonomous government, in other words, the last quarter of the 20th century.

With the Administrative Code of 1878, which was clearly decentralising, the Junta Geral de Distrito was now made up of attorneys directly elected by the municipalities, i.e. by the citizens entitled to vote, who in turn elected its president, bringing the number of attorneys to 21. This body was responsible for administering and promoting the interests of the district, overseeing the municipal administration and assisting in the execution of services in the general interest of the state. In addition to the administration of the district's assets and establishments, its competences included the administration and creation of district establishments for charity, instruction and education, public works, the appointment and dismissal of teachers paid by the district bodies, the contracting of loans for district improvements, the production of police regulations and the appointment of the district commission in charge of executing its deliberations, which thus functioned as a delegated executive commission of the General Council.

The main innovative feature of the new measures relating to the Junta Geral was the creation of a permanent committee responsible for executing the decisions of that body, the District Committee, made up of three members, which also appointed its chairman. Functioning permanently, it was responsible for executing all the resolutions and agreements made by the General Council, representing the district, proposing the district budget, managing its income and exercising its powers in all matters whose resolution could not be postponed without jeopardising the general administration of the district.

Its attributions became broader, absorbing part of the powers of the civil governor and the execution of its deliberations no longer belonged to it, and even, in those that concerned the district's interests, it did not need confirmation from any court or authority, with the exception of the acquisition and disposal of real estate, transactions over lawsuits, the raising of large loans and the dismissal of employees, which in these cases required confirmation from the central government. In this way, the administrative code of 1878 removed the power of the civil governor, an agent of the central government, to execute the deliberations of the Junta Geral and delegated it to a group of citizens drawn from its own ranks, although that magistrate could attend the Junta's sessions, but did not have the right to vote.

In short, the District General Council began to direct and govern its affairs in accordance with the general laws and regulations. Even the district accounts provided by the civil governor and approved by the Court of Auditors were now approved by the General Council, on a proposal from the District Commission, and went directly to the Court of Auditors. The Commission's correspondence with all corporations and administrative authorities was also made direct and independent of anyone's interference, a right that initially aroused the opposition of some civil governors, who felt that the correspondence of the junta and its commission should continue to be sent and received by the civil

The representativeness of the Juntas Gerais was very important and, towards the end of the century, with the difficulties experienced by the Lisbon government in its relations with the emerging Republican Party, in a need for government centralisation, the juntas were extinguished by decrees in 1892, 1895 and 1896. However, those in the island districts resisted and, in 1895, those in the Azores were officially granted an exception to the extinction, which was extended to Madeira in 1901. This decree re-established the Junta Geral, with 15 popularly elected attorneys representing the various municipalities of Madeira, which met twice a year, in April and November, electing an executive committee made up of three members to present reports and any resolutions.

The decrees that regulated the new situation referred for the first time to the island districts as administratively autonomous. The autonomy instituted for the island districts, however, fell far short of what was expected and what the representatives of the same districts had asked for in the central bodies.

IV. The Autonomous District of Funchal

The establishment of the Republic in 1910 gave rise to a series of promises of decentralisation and autonomy for the general councils of the island districts, which unfortunately were not fulfilled. Madeira's situation was defended by the new local republican cadres, as well as others, with the creation of a political party that was regional and autonomist, with a programme for the economic development of Madeira, seeking to obtain the necessary improvements from the central government in the area of irrigation levadas, district roads, drinking water supply, the construction of social housing and public charities.

The situation of instability and the outbreak of the First World War, however, did not authorise any major advances in this field, and it did not go beyond theoretical discussion. The post-war situation, 10 years after the establishment of the Republic, gave rise to open political opposition to the Lisbon government in Madeira and the Azores, which was reflected in the rekindling of autonomous ideals. In 1921, an Azorean project was born out of the discussion that took up some of the previous ideas, frankly expanding the powers of the general councils and giving them new financial autonomy. The revenues of these juntas were to come from taxes and income collected in the district, and it was even envisaged that the post of civil governor would be eliminated, replaced by a delegate from the central government, or high commissioner, but with limited functions.

The situation in Madeira was denounced during the visit of the President of the Republic, who, returning from a trip to Brazil, had taken advantage of his stopover in Funchal on 9 October 1922 to visit the island. To the amazement of the president and his entire entourage, the welcoming speech given by the president of the district's general council focussed specifically on the extension of autonomy and greater fairness in the distribution of revenue collected in Madeira. This led to the idea of linking this debate to the commemorations of the Fifth Centenary of the Discovery of Madeira, which were being prepared, and including the bases for the extension of autonomy in the publication commemorating the Centenary.

The text was based precisely on Madeira's 500-year history and, therefore, on the age of majority for fuller autonomy. This was justified by the specific geographical situation, international relations, the customs and habits of the people, as well as their level of moral, intellectual and economic development. The archipelago thus had a set of characteristics that individualised it as a region, entitling it to constitute an autonomous political and administrative unit. The 8 bases for the constitution of autonomy involved: representative, governing, administrative, educational, judicial, public order, social and moral administrative bases and religion.

It's understandable, then, that the central government didn't send anyone to the celebrations in Madeira, while there was a delegation from Tenerife, from the neighbouring Canary archipelago, as well as from the districts of Angra do Heroísmo and Ponta Delgada, from the Azores. During these commemorations, the commission for a monument to João Gonçalves Zarco, the first captain of Funchal, was reactivated. The foundation stone was laid in December 1922, although it was not erected until 1934. A Madeiran Elucidary was also commissioned, in a way, a small dictionary of Madeira's history, the first volume of which came out in 1921, although the second was only published in 1925, and was later reissued in 1940 in three volumes.

In the 1920s, Madeira and Portugal went through a period of social upheaval, with serious changes to public order and political attacks, although this was nothing new. At the end of 1923 there was a convergence of trade associations, with the Funchal association coming closer to the Lisbon association, among others. The following year, a periodical was acquired in the capital to defend these trade associations and, at the same time, to create a "decisive movement for national salvation". It would later be in its pages that the main lines of thought that shaped and pressured the military coup of 28 May 1926 would be exposed.

The country's political and economic situation in the mid-1920s had become unsustainable and it was the economic classes, with the support of the monarchist fringes and Catholic associations, who pressurised the military to take a stand. The military pronouncement began in the city of Braga, in the north of Portugal, advancing on Lisbon and meeting no opposition. A military dictatorship was thus established and the changes to the main Madeiran structures soon reflected this path. In August 1926, a military officer was appointed to the presidency of the Junta Geral, and in the following months the administrative commission was made up of only military personnel.

In 1928, elections were organised for the presidency of the Republic, with a single candidate, in order to legitimise the situation that had emerged from the previous one, moving from a military dictatorship to a National Dictatorship. At almost the same time, however, once the situation had been legitimised, Dr Oliveira Salazar was appointed to the Finance Ministry, demanding total control of this area, thus also establishing a Finance Dictatorship. The major changes came with tight budgetary control over all the ministries and then with the reform of the tax law, which allowed taxes to be updated in line with inflation.

The island of Madeira was also the protagonist of the last attempt to revolt against the Dictatorship. Funchal's main private banks had been heavily affected by the New York Stock Exchange Crash of October 1929 and the Dictatorship's response had been to merge them, which did not please many of the shareholders. The same situation occurred with the cereal regime, which was subject to concentration of the milling industry and, later, state subsidisation of the price of cereals. The situation led to a popular uprising in February 1931, and the dictatorship responded with a military force sent from Lisbon. However, some of the soldiers sent were not connected to the Dictatorship and it was important to get them away from the capital, so a little over a month later they were the ones to lead another military uprising, in which they were joined by a number of other soldiers who had been deported to Funchal from previous revolutionary attempts.

An expedition to suppress the rebels had already set off on 7 April and preparations were underway for an even more important one, which would follow later, in the order of 1,400 more men, with the Minister of the Navy embarking with the soldiers and commanders, whom Oliveira Salazar had personally dismissed. On 2 May, aware of the impossibility of resistance, the senior members of the revolt decided to surrender, being taken prisoner and later sent to exile, most of them to Cape Verde and another to Mozambique.

The Madeira Revolt ended up giving Salazar the means and strength to act as dictator. A few days later, he was publicly thanked and, a year later, in June 1932, he was finally sworn in as President of the Council and handed the reins of the country that he would keep firmly in his hands for almost half a century. At the end of 1932, he presented a new constitution for public consultation, which was approved by referendum on 19 March 1933, abandoning the previous name of National Revolution in favour of Estado Novo (New State), which was frankly authoritarian, had a single party, the National Union, and was corporative in nature.

The living forces of Madeira, however, soon distanced themselves from the revolt of 1931 and joined the new situation, achieving in 1933 the transfer of the facilities of the old Palace of the General Council, in the parish of Santa Luzia, to the old Misericórdia hospital, in the centre of the city, a hospital transferred to the parish of Monte. On 28 May 1934, the anniversary of the military pronouncement that installed the dictatorship, the statue of Zarco, commissioned in 1922 and then also transformed into a symbol of the new regime, was pompously inaugurated in front of the Junta's new premises.

The Junta's facilities continued to grow in the following years and its staff was responsible for the various organisations that were created afterwards, such as those in the area of tourism, from 1939 onwards, with the Junta president presiding over the installation phases. Between 1940 and 1965, the number of beds increased exponentially, given that Portugal didn't enter World War II, and in the 1960s, with the inauguration of the new phase of the extension of the Funchal harbour quay and the international airport in Santa Catarina, the hotel industry boomed and continued to grow in the following years.

It was against this backdrop that a decree-law was published in March 1969, outlining the appropriate administrative organisation for the start of regional planning, both in the various regions of the mainland and in the so-called Adjacent Islands. The wording of the decree was successively revised and eventually led to the creation of an Economic Studies and Coordination Commission in the Junta, which in the following years would give a new structure to the district services, especially the District General Council, making planning issues the first priority.

V. The military pronouncement of 25 April 1974

In the 1960s, the Dictatorship's intransigence in granting independence to the former African colonies led to the outbreak of a vast colonial war. If throughout the decade the senior staff of the armed forces took on the colonial war as a mission of national defence, the unusual situation of young officers coming from the Military Academy coexisting on the fronts with young militia officers, sometimes particularly politicised, led to a progressive politicisation of the former and the understanding that the only way out was political and never military.

In May 1972, General António de Spínola, then governor of Guinea, had already explained to the President of the Council the inevitability of finding a political way out of the situation and even the impossibility of winning the war on the military front. The immobility of some sectors, however, made the effort totally unfeasible, and the general was eventually removed and, on 25 April 1974, a military uprising broke out, the Armed Forces Movement, which deported the dictatorship's main cadres to the island of Madeira and from there to Brazil.

The major changes proposed were to put an end to the colonial war and to democratise Portuguese society by holding elections for an assembly to draw up a constitution. The Programme of the Armed Forces Movement presented on 25 April created the conditions for a future democratic political experience, paving the way for the subsequent struggle for a truly autonomous regional statute, which took advantage of the successive power vacuums caused by the power struggles on the mainland and which also ended up contributing to the progressive demarcation of the two island regions from that same struggle.

On 7 November 1974, the decree-law establishing the regime for political parties and associations was published, and they actually began to form at the beginning of 1975. In March of that year, a new Planning Board for Madeira was set up in Funchal, whose main and immediate task was to organise the following April's elections for a Constituent Assembly, which opened in Lisbon in June with six Madeiran deputies, with the aim of drawing up and approving a new Constitution for the Portuguese Republic (1976) within a year.

The pressure and confrontations that followed to ensure that the demands of the various political forces were included in the future constitution led to the most troubled period of Portugal's young democracy. Almost unilaterally, the former Portuguese overseas province of Mozambique became independent on 25 June 1975, followed by Cape Verde on 5 July, S. Tomé and Príncipe on 12 July, Angola on 11 November and Indonesia invaded the former Portuguese colony of Timor on 7 December when the few Portuguese forces stationed there became incapable.

The Junta de Planeamento was the author of the first autonomous statute for the Madeira archipelago, based on the same document drawn up in the Azores and according to data already provided by the various regional political parties represented there. The statute was defended in Lisbon at the Council of Ministers, and was drawn up on the basis of the autonomous experience of the English Channel Islands, Jersey, Guernsey and Alderney, which many Madeirans were familiar with, a project that was quite old in Madeira and had been defended long before the Estado Novo.

The government of the Republic was represented by a minister of the Republic who resided in São Lourenço and the regional government was a very small structure modelled on the previous heads of departments of the former Junta Geral, naturally with more competences and increased in number to manage a set of services that until then had depended on Lisbon. The regional assembly would be made up of 18 deputies, representing the 11 municipalities of the archipelago, with the largest having 2 and 3 deputies, but the number would later be increased to 40.

The project was approved for study by the Prime Minister, but from then on it underwent numerous changes over the next 30 years, only becoming definitive in 1999.

VI. The Autonomous Region's self-government bodies

The Junta Governativa was to be short-lived, as it officially resigned on 23 April 1976, due to the upcoming elections for the Assembly of the Republic on the 25th of the same month, although it remained in office in the meantime. On 29 April, the Provisional Statute of Madeira was approved by the Council of Ministers and, on 27 June, in parallel with the first democratic elections for the presidency of the Republic, the first elections were held for the Regional Assembly, which began its work in the noble hall of the former Junta Geral on 19 July 1976. In that first session, it was already stated that among the various competences, the most important was the drafting of the Political-Administrative Statute of the Region and, among the most functional, the drafting of the definitive Rules of Procedure for its use, after which the assembly would receive the President of the Republic.

The first steps were taken towards the constitution of government bodies in the Autonomous Region of Madeira. The next steps were the discussion of the structure of the future regional government, as set out in the Provisional Statute, with a composition in which, in addition to the presidency of the government, there were 8 secretariats. The first regional government was sworn in on 1 October in the São Lourenço meeting rooms, before the Minister of the Republic for the Autonomous Region of Madeira, followed by the presentation of its programme and the vote on the corresponding motion of confidence.

Among the legislative initiatives, many were in the economic and administrative area, such as the creation of its own currency, the regionalisation of banking and the exchange fund, but they were successively amended because, in the meantime, on 28 May 1977, Portugal had applied to join the European Common Market, an aspect that Madeira would follow closely. In October 1977, it was even approved to represent the region on the Commission for European Integration, although the position would not be filled until April 1980.

A new regional government took office on 17 March 1978, presenting the new structure, with three of the previous members. On the previous 7th March, however, after some controversy, the regional assembly had approved the draft regional decree with the region's own insignia, coat of arms, seal and flag, published in the Diário da República on 11th August, which at the end of the year, on 1st November, would be hoisted on the buildings of the regional government and town halls.

The coat of arms of the Autonomous Region of Madeira thus began to bear a blue field with a gold visor bearing a Cross of Christ, in memory of its ancestral origins. Three years later, on 15 July 1980, the Region's anthem was approved and, 10 years later, the arms were completed with two sea lions and a legend. In the last sessions of the second legislative session in 1982, various issues related to public transport were discussed, such as the colours of the Region, blue and yellow, to be used in rental cars, which also caused some controversy. In the meantime, the regional government and assembly continued their work, especially the assembly with numerous draft decrees, in a difficult articulation between it and the Ministry of the Republic, as well as with its counterpart in Lisbon. On 25 July, within this framework, a representative from the region was appointed to the Consultative Commission on Affairs for the Autonomous Regions in Lisbon.

In the meantime, the assembly had extended its activities to the reorganisation of the territory, with specific legislation on expropriations and even the creation of a public basic sanitation company. On 28 June 1978, for example, the public utility and urgency of the expropriations of the Nazaré plan was declared, giving rise to the large housing complex in the São Martinho area, and at the end of the year, a legislative initiative was presented to redefine the areas to be used for military exercises. On 26 May 1979, work also began on the Porto Santo Port of Shelter, a long-standing aspiration of the island that would completely change its traditional seasonal isolation and allow for the further development of tourism on the island, albeit with numerous setbacks and dead times.

In 1981, the President of the Republic held ceremonies in Funchal on 10 June, the Day of Portugal, Camões and the Portuguese Communities, celebrating the event with a commemorative session in the Regional Assembly. Various ceremonies were also held in Funchal on that day, including a major exhibition held at the Municipal Theatre of Funchal and then successively remounted the following year at the Calouste Gulbenkian Foundation in Lisbon and, two years later, at the Casa do Infante in Porto, thus recognising the region's new status on a national level. Autonomy was also recognised that year and celebrated by the Lisbon Mint on 16 October with the minting of two coins of 25 and 100 escudos on behalf of the Autonomous Region of Madeira.

Perhaps one of the greatest revolutions of this era was that of Education, a subject that was the subject of several speeches during the discussion of the 1978 government programme, on the very first day of the debates, even before the day set aside for the discussion of matters relating to this portfolio. The secretary in charge said that the needs of the population were minimally met as far as school attendance was concerned, although the triple regimes in force were not the aim of his office. Some secondary schools, such as Liceu Jaime Moniz, then ran morning, afternoon and evening shifts, and in fact school attendance in the region soared exponentially.

A huge effort was also made in adult literacy, with around a thousand pupils per year. In those years, the then intensive adult study centre, in the general unified and complementary course, prepared 400 students, preparatory and intensive education, 250 working students per year, technical education, 1500 working students and high school education, an average of 650 working students per year. Night centres had also been set up in rural municipalities for working students.

In the meantime, a university extension of the University of Lisbon had been operating in Madeira since 1978, with courses in the sciences and arts. In 1981, the Catholic University also

announced the opening of a university extension for 1982/83 and, on 3 December 1982, the installation committee of the Madeira School of Education was sworn in, with the aim of training teachers for the region's educational establishments. In 1983, in a joint order with the Secretary of State for Higher Education, a commission was set up to study the feasibility of creating and operating a university in the region, which presented its proposals in 1985. The University of Madeira was born on 13 September 1988, with the inauguration of its first founding committee, later incorporating the various courses of the university extensions, institutes and colleges.

The main work of the government and the assembly up until then had been to provide the region with the minimum conditions for its main bodies to function. This was followed by the most pressing problems of economic and social balance, such as the payment of the 13th month, right at the end of 1976, then the reform of the old property regime, some of which was still inherited from the early days of settlement, in 1977, followed by that of minimum accessibility and transport infrastructures, resolving as extensively as possible the expansion and equipping of ports and airports, as well as later, the network of roads and tunnels.

At the same time, certain aspects of the archipelago's coastline were also preserved. In March 1978, the Desertas Islands were classified as a Nature Reserve and, in April 1981, the Regional Assembly approved a proposal to turn the Selvagens into a Nature Park. In November 1981, a regional decree created the Madeira Nature Park, although the installation commission was only appointed in December 1985.

VII. Economic reforms

Within the new institutional framework, the commercial body of the Funchal association was also being restructured as a commercial and industrial body, and so, on 22 July 1976, its general assembly had already met to elect the future managing bodies, for the first time all in the name of the firms and not in individual names, as had been the case until then. It should be noted that the Funchal trade association had been the only one to resist the centralisation of the Dictatorship's corporate state, all the others having been abolished. In 1990, it was reformulated as the Madeira Chamber of Commerce and Industry.

At the end of 1977, the Regional Legislative Assembly received a number of initiatives indicating a profound economic structuring, which was already being decided in a very different way to the directives then underway on the mainland. Thus, in the session of 9 November of that year, the proposals of the Working Group on Customs Franchise (Free Trade Zone Port) in the Autonomous Region of Madeira, the Regionalisation of Banking and Foreign Exchange Budget in the Autonomous Region of Madeira and the creation of the Development Finance Company were submitted to the respective specialised committees.

As a result, on 20 October 1980, the Free Trade Zone was created, considering that it was "an old aspiration of the Madeirans embodied in numerous interventions by the Region's own government bodies". Joining the EEC meant that the country couldn't miss the opportunity to keep up with the development of the more developed countries, although it couldn't be assumed that this would solve the most important structural problems. There were no raw materials in quantity to compete, there was no size, so it was assumed that the country would become somewhat dependent on the more developed countries. So, on 3 January 1981, the government's plenary session created the Office for the Installation of the Free Trade Zone, an issue that the Association had fought for over many years, and which would be installed on 26 August 1982.

The issue of the Free Trade Zone had been made official as early as September 1974 and the project immediately received the support of various elements linked to the economic area and had the

collaboration, in the meantime, of the then Government Junta. A broader study was decided at a meeting on 13 April 1975 and, on the following 22 June, the contract was awarded to the US company International Finance Consultants, whose consultant was, among others, Alan Greenspan, then chairman of the US Federal Reserve between 1987 and 2006. The general political conditions of 1975, with the nationalisations that took place, didn't leave much room for manoeuvre for a project on this scale, which only came to have political room for manoeuvre at the end of 1980.

The issue was presented to the Regional Assembly with the presentation of the government programme at the session of 3 December 1980, having raised doubts about the installation in the Caniçal area of what would be an Industrial Free Trade Zone, a nautical port, a tourist area and a nature reserve. In these famous sessions of 3 and 4 December 1980, several of the great directives of that decade were laid down, such as the case of great accessibility, not only to the archipelago in general, such as the construction of Madeira's new international airport, but also to the growing urban fabric of Funchal, with the presentation of the first studies for the construction of "Cota 40".

In the meantime, the autonomous regions enjoyed a degree of economic autonomy from the Bank of Portugal, and their savings banks, which were not considered banks but in practice functioned as such, were not nationalised. In this context and with the exponential regional economic development in these years, the old Caixa Económica do Funchal, attached to the "4 de Setembro de 1862" Mutual Aid Association, saw its turnover soar, rising from around 500,000 escudos to almost 5 million between 1976 and 1983, benefiting from a certain increase in deposits from Madeiran emigrants, which were important to a certain extent, although the main spring was the bond loans issued by the Regional Government.

At the beginning of that year, it expanded its headquarters in Funchal with one of the largest buildings built at the time in the centre of the city, now known as Banco Internacional do Funchal (BANIF), and also inaugurated new branches in Caniçal and Porto, as well as expanding the facilities of the Machico and Ponta do Sol branches. The new headquarters were inaugurated on 5 and 6 May 1983, when a number of Portuguese economists gathered to give a series of lectures, such as "The Creation of the Free Trade Zone and Accession to the EEC: Their Compatibility and Implications for the Region's Development Process" and "Natural Constraints and the Development of the Madeiran Economy", later printed as a separate issue of the ACIF Informação newsletter.

Throughout the 1980s, the Madeira Free Trade Zone was to be reformulated and integrated into a mixed capital company, SDM - Sociedade de Desenvolvimento da Madeira, SA, a subject that had already been discussed a few years earlier. SDM began operating in 1987, comprising the Madeira International Business Centre (or Free Trade Zone), 4 sectors of activity: Industrial Free Trade Zone, International Services, International Ship Registration and Financial Services, with an Offshore Financial Centre, using external funds and not operating in the domestic market.

With the construction of the Caniçal harbour, Funchal's industrial port structures were progressively transferred to that area, and the city's pier began to operate essentially with large international tourist liners.

VIII. The major regional issues at the turn of the millennium

The life of the region was stabilising in these years, as can be seen in the legislative work of the regional assembly or government, which from then on even kept a significant part of its cast for the next 20 years of government. The speeches made in parliament, for example, at the end of 1983, when the new proposal for the government's organisation was presented, which at the time had 8 secretariats in principle, are proof of this, although the main aspects focused on were precisely those that would

be maintained, such as the association of Tourism with Culture, which thus left the area of Education, where it had been integrated until then.

In the following years, however, the region's network of museums was greatly expanded, and its heritage began to enjoy a high international profile, especially the Flemish art from the 16th century, which was constantly in demand for inclusion in the main European exhibitions in this area. More recently, the restoration work on the Islamic ceilings of Funchal Cathedral, erected in 1514, the largest existing ensemble in Portugal, was awarded the Gulbenkian Heritage Prize in Lisbon in 2020 and the Europa Nostra prize in Venice, Italy, in 2023.

The natural heritage would also be recognised internationally in a short space of time, such as the Laurissilva, a type of humid forest made up mainly of trees from the laurel family, endemic to Macaronesia, the area formed by the archipelagos of Madeira, the Azores, the Canaries and Cape Verde, as well as occasional small patches on the coast of Morocco. It is most widespread in the highlands of the island of Madeira and was included by UNESCO in its list of World Heritage Sites in 1999. More recently, in 2024, Madeira's network of irrigation canals, the so-called Levadas, were also in the final stages of inscription.

In the first decades of this century, various governmental structures have been set up, both in tourism and the environment, whose main concern is the framing of the current mass tourism into sustainable tourism, which is always a difficult and delicate situation. The small size of the island and its population of just over 200,000 inhabitants has gradually made it difficult to adapt to the growing number of tourists, and is therefore a matter that deserves the utmost attention.

Between 1984 and 1987, the Regional Assembly was installed in the old Funchal Customs House, where the old Manueline ceilings and spaces were restored, and the inauguration on 4 December of that year was attended by the highest officials of the Republic and neighbouring autonomous regions. As it was impossible to include a plenary hall in this listed complex, the decision was taken to build it in an annex, erecting a modern, semi-underground building in the old moat of the Santo António da Alfândega fortress, in order to serve the Assembly's needs and affect the design of the older building as little as possible. A page was turned on the long road to regional autonomy and the work of the Assembly, because soon the means and personnel were completely different too.

With European integration, which began with accession to the EEC on 1 January 1986, Madeira was able to take part in the election of the 736 deputies who sit in the European Parliament, where Portugal currently elects 22 deputies. Madeira's MEPs are part of the national lists of the various competing parties and are usually represented by 1 or 2 MEPs, except in 1994 when, due to various withdrawals, Madeira had up to 3 MEPs in Brussels. The constitution of the European Union was defined by the Treaty of Maastricht, signed on 7 February 1992, which forced the Assembly of the Republic to prepare a constitutional revision that included, among other things, the Treaty of Maastricht, which recognised, for the first time, the concept of "outermost regions" for the Atlantic autonomous regions.

It was during these sessions that another autonomous step was taken in the life of the Regional Assembly, with the Minister of the Republic no longer opening the regional legislatures, nor swearing in the regional governments in São Lourenço, but taking office in the Assembly. In the fourth constitutional revision, in 1997, the post was reduced to a moderating function, similar to that of the President of the Republic at national level, and in the sixth revision, in 2004, the designation of Minister of the Republic was changed to that of Representative of the Republic.

In October 1997, a page in the history of Autonomy was turned with the appointment of a new Minister of the Republic, no longer a member of the Armed Forces as before, but a judge counsellor

with extensive experience in government, including as Secretary of State. Relations between the various powers, although always within the framework of some conflict, began to take on a different form, which made it possible to find completely different consensuses. In August 1999, the Political-Administrative Statute of the Autonomous Region was finally published, which, although some details were far from what the Regional Legislative Assembly had proposed, as a result of the various agreements reached by the majority parties in the Assembly of the Republic, had been awaited for decades.

Since 1989, the need to articulate common policies between the Autonomous Regions has even led to the organisation of parliamentary conferences bringing together the Azores, Madeira and the Canary Islands, as well as Cape Verde as a guest country. This is due to the complexity of the various European development programmes, which require joint work in the area of air and sea transport, as well as the financial autonomy of the island regions and even the establishment of bridges between Europe and the American and African continents, since France, for example, also has autonomous regions on these continents.

In March 1996, however, the University of Madeira approved its statutes. Until then, the University had been run by founding committees and, when its statutes were approved, a rector was elected. Even then, the rector's office was housed in the former Jesuit College in Funchal, and from 1992/1993 onwards the classes and research institutes moved to the new Penteada Technology Complex or "Madeira Tecnopolo", in the parish of São Roque in Funchal. The main university ceremonies, which until then had been held first in the noble hall of the former Junta Geral and then in the similar hall of the Legislative Assembly, were now held in the Rectory's function room.

Since then, given that the University, although based in the region, is a national and even European educational institution, all official visits by the presidents of the Republic, for example, have taken place there.

IX. Conclusions: the economic backbone of the future Sahara Region

Given the history of relations in the North Atlantic between the European Atlantic Autonomous Regions of the Azores, Madeira and the Canary Islands, and the coasts of North Africa, everything seems to point to the future of what is now the Moroccan Sahara also involving the creation of an autonomous region of Morocco, a subject that has been under discussion since the Rabat proposal in 2007. With the progressive international recognition of Moroccan sovereignty over the Western Sahara from 2020 and the opening of several consulates in Dakhla and Laayoune, there seems to be some urgency in defining the status of the new Autonomous Region.

The path followed by the Atlantic Autonomous Regions mentioned above was for the central governments to approve preliminary provisional statutes, which were then successively negotiated by the new regions' own bodies, i.e. regional assemblies and governments. The path that will be followed in Morocco could be different, as it will certainly be, in principle, with the promulgation by the government in Rabat of a definitive statute which, with the establishment of its own governing bodies in the Sahara Region, will logically then be subject to proposals for adaptation. Amongst other things, for example, the Portuguese autonomous regions were created with a liaison element and presidential appointment: the then Minister of the Republic, from 2004, Representative of the Republic and with essentially moderating functions, but a figure that does not exist in the Canary Islands, with the region liaising directly with the various bodies of the central government in Spain.

This seminar already included an opinion from the speakers on the inclusion in the Moroccan initiative for autonomous status for the Sahara Region of the future framework for attracting investment, which will provide economic support for the whole initiative to set up the region. While

this has not been the case with European autonomous regions, within another framework of free competition, this may not be the view of the Moroccan central government. Indeed, in some countries, such as Angola in June 2020, a study group was set up with a view to creating the possibility of establishing free trade zones in certain regions, on the initiative of the state or private agents, with tax benefits and incentives, special exchange, financial, labour and migratory regimes.

If the main development vectors of the future Sahara region are to be considered, most likely agriculture and fisheries, as well as the various economic areas linked to them, but also tourism and services, already being implemented in the Dakhla area, in order to create attractions for investment, the central government will, in principle and in a first phase, have to create mechanisms to safeguard them and defend future investors. Given the current complex framework of globalisation and relocation, the future area of tourism and services must also safeguard labour and migration issues, as is the case, for example, in the United Arab Emirates, which we have been following more closely in the areas of hotels and banking, since the local labour market is unable to meet demand, especially in senior management in these same areas.

Article 13 of the Moroccan initiative stipulates that the future autonomous region "shall have the financial resources necessary for its development in all areas". These resources must include a differentiated tax burden in the taxes and duties enacted in the future region, so that it can attract foreign investment. The proceeds from the exploitation of the natural resources allocated to the region should also be safeguarded and the share of these to be collected by the state should be defined, as should the proceeds from existing assets.

With the new developments and the recognition by the United States of Morocco's sovereignty over the Sahara region on 10 December 2020, the opening of a consulate in Dakhla "to promote economic and business opportunities for the region" and the announcement of a major investment plan in Morocco and the future region, it is now up to the government in Rabat to define the future framework for this investment. Within this framework, and given the experience of neighbouring Atlantic autonomous regions such as Madeira, this could involve setting up an International Business Centre (IBC), whether or not it is linked to a low-tax Free Trade Zone, aimed at attracting new investment.

The International Business Centre (IBC) of Madeira, which is part of the Madeira Development Company (Sociedade de Desenvolvimento da Madeira), which manages this structure regionally, offers a very attractive set of benefits, including tax and operational benefits, in a well-regulated and supervised business environment. The IBC covers three main areas of activity: International Services (with Tradings, Holdings and other international services, such as e-Business and Technology), Industrial Free Trade Zone (with production, assembly and storage) and MAR, i.e. the International Shipping Registry of Madeira (with Ships and Shipping Companies and Yachts and Chartering Companies). The IBC of Madeira is fully integrated into the Portuguese and European legal systems and is described by the OECD, the Paris-based Organisation for Economic Co-operation and Development, as a model to follow.

REFLECTIONS ON THE STATUS OF THE CROWN DEPENDENCIES AND FOREIGN DIRECT INVESTMENT – COMPARISON WITH THE MOROCCAN INITIATIVE FOR THE AUTONOMY OF THE SAHARA REGION

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1. INTRODUCTION: DIFFERENCES BETWEEN BRITISH OVERSEAS TERRITORIES AND CROWN DEPENDENCIES[7]

The Crown Dependencies and the British Overseas Territories (BOTs) are two different types of territorial entities that are the results of unique historic and constitutional realities. As a result of their different histories and relationships with the UK, each of these entities has its own constitutional status. The territories classified as Crown Dependencies are the Isle of Man and the Channel Islands. The BOT list includes the following fourteen territories: Anguilla; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Gibraltar; Montserrat; Pitcairn Island, Henderson, Ducie and Oeno Islands; St Helena, Ascension and Tristan da Cunha; Sovereign Base Areas; South Georgia and South Sandwich Islands; and Turks and Caicos Islands. All but one of the Crown Dependencies and BOTs is an island territory; the one exception, Gibraltar, is a peninsular exclave that has in the past been analysed in terms of its island-like characteristics.

The BOTs are very different in terms of geography and environmental conditions. While Gibraltar is located on the European continent, Tristan da Cunha is the most remote inhabited island in the world, about 2,800 km west of Cape Town. Population sizes range from zero in uninhabited territories, like the British Antarctic Territory, to 60,833 in Bermuda, which holds the highest population of all the British Overseas Territories (World Population Review, 2019). In terms of economic performance, Bermuda has an economy roughly the size of all the other BOTs combined, whereas territories such as Pitcairn and Anguilla are relatively poor (House of Commons Foreign Affairs, 2019).

Historically, the Crown Dependencies differ from one another. The Channel Islands are considered to be the remnants of the Duchy of Normandy, while the Isle of Man was in the past connected to Scandinavian rulers. The Crown Dependencies, unlike the BOTs, have never been colonies of the UK (House of Commons Foreign Affairs, 2019). As for the BOTs, in many ways they are considered to be the last remnants of Britain's imperial past. The history of these territories also differs from each other. In the case of Gibraltar, this territory was captured during the Spanish War of Succession in 1704 and, according to the Treaty of Utrecht, Spain yielded in perpetuity to the Crown of Great Britain "the full and entire propriety of the town and castle of Gibraltar, together with the port, fortifications, and forts thereunto belonging" (Gibraltar Government, 2019). In terms of sovereignty, neither the Crown Dependencies nor the BOTs are sovereign territories. They are both self-governing territories which fall under British sovereignty. However, it is important to highlight that they have a different constitutional link with the UK.

Both the Crown Dependencies and BOTs have their own institutional structures. King Charles III is the Head of the Crown Dependencies. In both the Channel Islands and the Isle of Man, the Queen is personally represented by the Lieutenant Governor. In the Channel Islands, there is a Lieutenant Governor in each bailiwick. However, it is important to highlight that the different territories that make up the Crown Dependencies have their own institutions, statutory peculiarities, and territorial divisions, which are different from each other. In this sense, in the Channel Islands, each bailiwick is headed by a bailiff who is the President of the States and of the Royal Court. He or she holds legislative power and exercises judicial power. The States—a term which derives from the French term États—is the Legislative Assembly of the Channel Islands. The Isle of Man's legislative assembly is known as the Tynwald: it is considered to be the world's oldest continuously working parliament in existence and

[7] Mut-Bosque, M. (2020). The sovereignty of the Crown Dependencies and the British Overseas Territories in the Brexit era. *Island Studies Journal*, 15(1), 151-168.

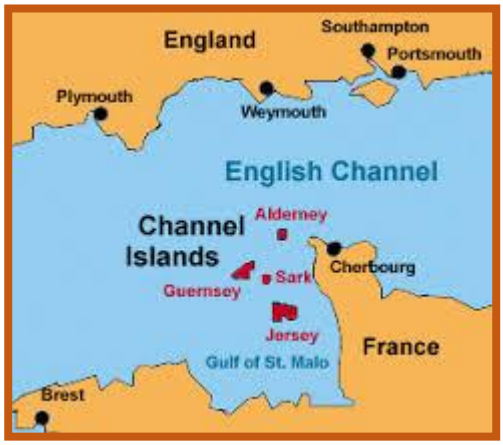
the only working example of a tricameral legislature, dating back to its Viking origins over 1,000 years ago (The Parliament of the Isle of Man, 2019). Moreover, there are institutional differences between the Bailiwick of Jersey and the Bailiwick of Guernsey: for example, the legislative structure of the Bailiwick of Guernsey is more complex than that of Jersey because it includes the Parliament of Sark (called the Chief Pleas) and the Parliament of Alderney (known as the States of Alderney). Regarding the BOTs, every territory has its own institutions, but, in general terms, BOTs have a similar institutional structure (The Parliament of the Isle of Man, 2019). Those territories that have a high level of self-government have their own governments, heads of government, and political party systems. In the case of Gibraltar, the head of the government is the Chief Minister; in the case of Bermuda and the Cayman Islands, it is the Premier. These territories have their own legislative assemblies, which are directly elected by their citizens. They also have their own judicial courts based on common law, but a final appeal may be heard by the Judicial Committee of the Privy Council sitting in London. With regard to the constitutional relationship of the Crown Dependencies with the UK, this is maintained through the Crown and is not enshrined in a formal constitutional document. The UK Government is responsible for the defence and international relations of the Islands. The Crown, acting through the Privy Council, is ultimately responsible for ensuring their good government (Ministry of Justice, 2019). By contrast, the Overseas Territories are considered by the UN Committee of 24 as non-self-governing territories, despite all BOTs declaring satisfaction with their current status and not having requested a change in their status. In this sense, Gibraltar has repeatedly asked to be removed from the list and considers its "presence on the UN list of Non-Self-Governing Territories is an anachronism" (House of Commons Foreign Affairs Committee, 2008). The sovereignty of Gibraltar is a controversial issue in Anglo-Spanish relations because Spain asserts a claim over the territory. Today, the UK government has responsibility for the international relations, defence, and good governance of the Overseas Territories and, in some territories such as Bermuda, the UK government is also responsible for internal security. The Overseas Territories have their own constitutions and domestic laws. Each BOT is constitutionally unique. The degree of self-government depends on the BOT's constitutional relationship with the UK. Larger, more developed BOTs are largely autonomous with regard to their internal affairs, as is the case with Bermuda, Gibraltar, the Falkland Islands, and others. The common thread among them is recognition of UK sovereignty, acknowledgment of the Queen as the Head of State, and British citizenship. Moreover, there are common aspects between the Crown Dependencies and the BOTs. One of the main similarities is that the Crown Dependencies and most of the BOTs enjoy a great level of self-government, and the UK government is only responsible for their international relations, defence, and good governance. All issues related to their internal affairs fall under the competence of each of these territories.

2. THE GEOGRAPHY OF THE CROWN DEPENDENCIES

The Crown Dependencies (CDs) are the Isle of Man and the Channel Islands. The Channel Islands fall into two separate self-governing bailiwicks: The Bailiwick of Jersey (including the uninhabited islands of the Minquiers, Ecrehous, Les Dirouilles, and Les Pierres de Lecq) and the Bailiwick of Guernsey (consisting of Guernsey, Alderney, Sark, Herm, Jethou, Brechou, and Lihou).

- **The Channel Islands** are located just off the Normandy coast of France, mainly in the Bay of St Malo, within the English Channel.
- **The Isle of Man** is strategically located as it is in the middle of the Irish Sea, almost equidistant between England, Scotland, Wales and Ireland.

The CDs are neither large in size nor in population. The Isle of Man has a population of 85,632 and the total land area is 570 km2 (Worldometers, 2020b). The Channel Islands have a total population of 176,012 and the total land area is 190 km2 (Worldometers, 2020a).



Source: https://www.pinterest.es/pin/113504853091824041/

Source: https://www.worldatlas.com/islands/isle-of-man.html

3. THE HISTORY OF THE CROWN DEPENDENCIES

Historically, the CDs differ from one another. The Channel Islands are considered the remnants of the Duchy of Normandy, while the Isle of Man was connected to Scandinavian rulers in the past.

A. The History of the Isle of Man (IM)

The IM is situated strategically in the heart of the Irish Sea. It has historically served as a focal point, drawing the interest of both esteemed traders and unwelcome raiders alike.

In its early days, the island saw the arrival of the first Celtic tribes, who settled and established communities. Evidence suggests that these early settlers likely migrated from Ireland, given the striking resemblance between the Manx Gaelic language and Irish Gaelic. The very name of the island, "Man," finds its origins in Manannán, a prominent Celtic deity associated with the sea.

In the fifth century, the Isle of Man was converted to Christianity by St. Maughold, an Irish missionary. Between AD 800 and AD 815, the Isle of Man saw the arrival of its first Viking Scandinavian (Norses) visitors. Initially, these Norses arrived with various intentions, including wealth distribution and raiding or as some refer to it ‘to pillage and plunder’ (Historic.UK, 2023). By 850, however, settlement began, and the Isle of Man became a key hub connecting Viking outposts in Dublin, northwest England, and the Scottish Western Isles. Under the rule of Scandinavian Kings, the Isle of Man established its self-governing parliament, known as Tynwald, in AD 979. The Norse acquired complete predominance. They maintained their superiority for three hundred years. (The Land of Home Rule)

In 1266, the Treaty of Perth resolved the sovereignty dispute between Norses and Scotland over territories including the Isle of Man, with Norses recognising Scottish sovereignty in exchange for financial compensation.

England's first formal claim to the Isle of Man dates back to 1290, when King Edward I took possession. Despite shifts between Scottish and English rule over the following decades, eventual dominion favoured England. The island came under the control of England in 1341. From this time on, the island's successive feudal lords, who styled themselves "kings of Mann," were all English.[8]

In September 2022, the Isle of Man proclaimed King Charles III as, among other things, "Lord of Mann"[9].

B. The History of the Channel Islands

The Bailiwicks are home to some of the oldest monuments in European history, with some dating back to 3500 BC, including dolmens, Neolithic standing stones, and burial grounds. In addition to these ancient structures, there are impressive fortresses and castles. Historically, the Channel Islands were part of the Duchy of Normandy and became possessions of the English Crown when William the Conqueror became King of England in 1066. Although England lost mainland Normandy in 1204, the islands remained Crown possessions and were divided into the two bailiwicks later that century.

Remaining loyal to the King of England, the Bailiwicks were permitted to maintain their own laws, customs, and liberties. These rights were confirmed by the charters of successive sovereigns, securing for the islands the right to their own judiciaries, freedom from the English courts (i.e., the right to be governed and judged by their own laws in domestic matters), and other important privileges.

4. THE CONSTITUTIONAL STATUS OF THE CROWN DEPENDENCIES

The Crown Dependencies (CDs), unlike the British Overseas Territories (BOTs), have never been colonies of the UK (UK Parliament, 2019). These territories have an ad hoc status, resulting from their unique historic relationship with the British Crown. They are self-governing territories under British sovereignty, but with a distinct constitutional link to the UK. Despite being under British sovereignty, the CDs are not an integral part of the UK and have never been colonies. Historically, they were feudatory kingdoms subject to the kings of England. "The Crown Dependencies are autonomous and self-governing, with their own, independent legal, administrative and fiscal systems" (House of Commons Justice Committee, 2010, p. 6).

The CDs have a great degree of self-government and their own institutions. They have their own directly elected legislative assemblies and their own courts of law. As these territories are not an integral part of the United Kingdom, they cannot elect representatives to Westminster.

King Charles III is the Head of the CDs. In both the Channel Islands and the Isle of Man, the King is personally represented by the Lieutenant Governor. In the Channel Islands, there is a Lieutenant Governor in each bailiwick. Among the CDs, there are statutory peculiarities and different institutions and territorial divisions (Mut-Bosque, 2020, p. 154).

Their constitutional relationship with the UK is maintained through the Crown and is not enshrined in a formal constitutional document. The UK Government is responsible for the defence and international relations of the Islands. The Crown, acting through the Privy Council, is ultimately responsible for ensuring their good government (Ministry of Justice, 2020, p. 1).

Neither the Crown Dependencies nor the BOTs are part of the United Kingdom, so they cannot elect representatives to Westminster. However, in recent times, there have been advocates like

[8] *Encyclopaedia Britannica* (2024), "The Isle of Man", *Encyclopaedia Britannica*. Source: https://www.britannica.com/place/Isle-of-Man

[9] UK Parliament- House of Commons (2024) "The King's style and titles in the UK and the Commonwealth", UK Parliament, 31 January. Source: https://commonslibrary.parliament.uk/the-kings-style-and-titles-in-the-uk-and-the-commonwealth/

Conservative MP Andrew Rosindell (qtd. in Jersey Evening Post, 2017) who claim that they should have their own political representatives in London.

Regarding the international powers of the Crown Dependencies (CDs), since they are not subjects of international law, they do not possess international legal personality. Consequently, they cannot conclude international treaties on their own (*ius contrahendi*) or send and receive official international representatives (*ius legationis*). Moreover, only states have the capacity to sue or be sued for the breach of an international obligation, and only states can be full members of international organisations. Non-state entities can be observers or associated members of international organisations, but not full members. These are international prerogatives reserved exclusively for states, but this doesn't mean that they are able to play a real role on the international stage as international actors.

The UK recognises the Islands' desire to develop their own separate international identity. The current mechanisms for international participation of the CDs are made on the particular circumstances of the issue and require the constant engagement of the UK. Therefore, the CDs cannot negotiate and conclude international agreements due to their lack of international subjectivity and legal personality. In this sense, the UK is responsible for compliance by the CDs with obligations arising under international law, whether deriving from customary international law or from applicable treaties. This is not to say that it is necessary that the UK implements the territories' treaty obligations in practice. However, the UK Government does pay close attention to the way in which the territories implement them because, ultimately, it is the UK which could be held responsible if the territory violates the obligations under a treaty (Hendry & Dickson, 2018, p. 254). However, the UK has enabled a mechanism which recognises the CDs' limited authority to conduct external relations on their own behalf, including the negotiation and conclusion of international agreements – usually in a specific and limited manner; most commonly double taxation treaties or tax information exchange agreements (Carey Olsen Law Firm, 2021). Such authority in practice is usually granted by letter to the territory government and is usually called an entrustment. The entrustment needs to be requested by the CDs and granted by the UK (Ministry of Justice, 2021). Logically, it needs the willingness and conformity of third parties to enter into an agreement with a CD under the above-mentioned circumstances.

Regarding their international presence, the CDs are able to attend international meetings, but as part of the UK delegation. They cannot have their own delegations. With the exception of Jersey, which is a member of the Assemblée Parlementaire de la Francophonie (Assemblée Parlementaire de la Francophonie, 2015), none of the CDs can be full members of international organisations in their own right due to their lack of complete sovereignty.

The international powers of the British Overseas Territories will depend on each territory, but for those BOTs that have greater autonomy, their powers in this area are very similar to those of the Crown Dependencies. For instance, on 17 April 2014, the Government of the United States of America negotiated and concluded with the Government of Gibraltar, which was entrusted by the UK, an agreement on information exchange to facilitate implementation of the Foreign Account Tax Compliance Act (US Department of the Treasury, 2014)

A final crucial consideration revolves around the contentious power of direct rule to ensure good governance in dependent territories. While internal affairs typically fall under the jurisdiction of each territory, the UK bears the responsibility for ensuring good governance. Essentially, if the UK perceives that local governance fails to ensure good governance, it reserves the right to impose direct rule. This raises scholarly debates about the potential imposition of direct rule in Crown Dependencies (CDs), given their distinct relationship with the UK compared to British Overseas Territories (BOTs).

Ordinarily, the UK's legislative power extends solely to areas where it holds competence: defence, nationality, citizenship, succession to the Throne, extradition, and broadcasting. However, UK legislation can be applied to both CDs and BOTs if deemed necessary by UK Government departments or upon request from a Dependency (House of Commons, 2019). This legislative power is contingent upon considerations of "good government," meaning that UK Parliament should intervene only in cases of severe public order breakdown or endemic corruption within a Dependency's government, legislature, or judiciary (House of Commons, 2019).

Despite its subsidiary nature, the direct rule power severely limits the autonomy of these territories. Direct rule from Westminster temporarily suspends the self-government of the CDs -or BOTs- if deemed necessary by the UK. Consequently, such suspension is subject to the UK's unilateral interpretation of what constitutes good government and when this is breached. The lack of legal precision regarding circumstances leading to a breach of good governance renders this power vague and discretionary.

The significance of direct rule was underscored in 2009 when the UK imposed direct rule on the Turks and Caicos Islands following allegations of corruption (Auld, 2009). This action involved suspending parts of the Overseas Territory's constitution and establishing interim direct rule from Westminster through the Governor until the territory's government addressed the corruption issues (Yusuf & Chowdhury, 2019). While direct rule has never been imposed in the CDs, Jeremy Corbyn, the then leader of the Labour Party, suggested in 2016 that the "UK government should consider imposing 'direct rule' on the 14 British Overseas Territories and three Crown dependencies if they do not comply with UK tax law" (BBC News, 2016a).

5. THE INTERNATIONAL STATUS OF THE CROWN DEPENDENCIES VS. THE BRITISH OVERSEAS TERRITORIES STATUS

The CDs have never been considered colonies and they are not listed in the United Nations list of non-self-governing territories.

In contrast, 10 of the 14 British Overseas Territories are included in this list and considered to be territories pending of decolonisation by the Special Committee of 24 (C-24). In 1961, the United Nations General Assembly created a Special Committee with the purpose of monitoring the implementation of the Declaration (General Assembly Resolution 1514 (XV) of 14 December 1960) and making recommendations as to its implementation.

Commonly referred to as the "Special Committee on Decolonisation or C-24", this entity is officially called Special Committee and is to monitor the situation regarding the application of the Declaration on the Granting of Independence to Colonial Countries and Peoples. The C-24, which today brings together 29 UN members as opposed to 24 previously, with the support of the Political Affairs Department of the United Nations Secretariat General, is responsible for the evaluation of the decolonisation processes acknowledged by the United Nations in 16 "Non-Self-Governing" Territories according to the 1946 list.[10]

The Committee considers that a territory ceases to be on the list of Non-Self-Governing Territories if it freely chooses to change its status. However, this choice its restricted to three categories:

- Independence
- Free Association

[10] Government of New Caledonia (2024), "Special Committee on Decolonisation (Committee of 24)", Government of New Caledonia. Source: https://cooperation-regionale.gouv.nc/en/international-cooperation-un-organisations.

- Integration with an independent State

This restriction of choice has been the subject of significant criticism not only by the doctrine but also by the territories themselves. For instance, Richard Buttigieg[11] noted that the Committee had done very little on the issue of Gibraltar. In his opinion, the approach to delisting Gibraltar is outdated. In this sense, there are territories - like Gibraltar - that are satisfied with their current status and they haven't asked for a change of status. The Gibraltar case is a complicated and emblematic case for several reasons, primarily because there is a third party -Spain - that claims sovereignty over this territory in accordance with the principle of territorial integrity. Additionally, the territory itself has repeatedly expressed its discontent at being listed as a non-self-governing territory. Gibraltar has hold different referenda in which its people have reaffirmed their will to remain under British sovereignty. The last one was held on 7 November 2002. Although labelled "unofficial" in practice the second sovereignty referendum was organised by the Government of Gibraltar. It only provided the UK-Spain co-sovereignty option. The question was as follows: "Do you approve of the principle that Britain and Spain should share sovereignty over Gibraltar?" With a turnout of 88%, over 99% of the electorate did not support the joint sovereignty option[12].

It is true that Gibraltarians have never been consulted on all the possible formulas or statuses that they could acquire, but they have never officially requested a consultation like this. Certainly, the Brexit (the UK decision to withdraw the European Union) has directly impacted the daily life of this territory, its institutions, and its citizens, and it may eventually lead to a reconsideration of its status in the future. But for now, despite there are issues that can be enhanced, the Gibraltarians are satisfied with their current status. Gibraltar enjoys broad self-government and has its own Constitution and institutional system. The 2006 Constitution of Gibraltar recognises the right of self-determination and, based on this right, the UK will "never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes"[13].

Therefore, the UK and Gibraltar have met several times with the C-24 in order to note its members that they freely have chosen this option.[14] The 22nd June 2022, Gibraltar Chief Minister Fabian Picardo and Deputy Chief Minister Dr Joseph Garcia met privately with Ambassador Keisha McGuire, Chair of the United Nations Committee of 24, at the UN headquarters in New York in order to show a direct engagement with the Committee beyond the formal annual speeches. The Gibraltar government aimed to discuss ideas for greater involvement in the Committee's work and understand potential opportunities from the Chair. This aligns with Gibraltar's policy to collaborate more closely with the Committee concerning its decolonisation and removal from the UN list of Non-Self-Governing Territories.[15] For its part, the United Kingdom stated that for those Territories with permanent populations that wished so, the UK would continue to support their requests for removal of the Territory from the list of Non-Self-Governing Territories[16]. Certainly, Gibraltar issue is

[11] Crocker, A. (2022), The Political Status of Non-Self-Governing Territories, Old Dominion University Model United Nations Society Issue Brief. Source: https://ww1.odu.edu/content/dam/odu/offices/mun/docs/non-self-governing-territories.pdf

[12] Mut Bosque, M. (2018). Ten Different Formulas for Gibraltar Post-Brexit. DCU Brexit Institute-Working paper, (6-2018).

[13] HM Government of Gibraltar (2006), "Gibraltar Constitution Order 2006", HM Government of Gibraltar. Source: https://www.gibraltarlaws.gov.gi/constitution

[14] Mut Bosque, M. (2018). Ten Different Formulas for Gibraltar Post-Brexit. DCU Brexit Institute-Working paper, (6-2018).

[15] HM Government of Gibraltar (2022), "CHIEF MINISTER'S ADDRESS TO THE UNITED NATIONS GENERAL ASSEMBLY SPECIAL POLITICAL & DECOLONISATION COMMITTEE – UN PLAZA, NEW YORK - 736/2022", HM Government of Gibraltar. Source: https://www.gibraltar.gov.gi/press-releases/chief-ministers-address-to-the-united-nations-general-assembly-special-political-decolonisation-committee-un-plaza-new-york-7362022-8319.

[16] UK Government- Foreign and Commonwealth Office (2023), "Joint declaration of governments of the United Kingdom and British Overseas Territories: a modern partnership for a stronger British family", UK Government- Foreign and Commonwealth Office, 14 December. Source: https://www.gov.uk/government/publications/uk-overseas-territories-joint-declaration-a-modern-partnership-for-a-

complicated. The Resolution 2070 of the XX General Assembly of the United Nations, adopted on 16 December 1965, invites the Governments of Spain and the United Kingdom to begin talks on the sovereignty of Gibraltar without delay. So, the Assembly recognises that Spain is also part of this issue and needs to be involved.

Paradoxically, another British Overseas Territory, the British Indian Ocean Territory, which comprises all the islands of the Chagos Archipelago and until June 1976 also included the islands of Aldabra, Desroches, and Farquhar (which were then ceded to the Seychelles), was formally constituted in 1965 by an Order in Council under the Royal Prerogative.[17] Despite various international tribunals and institutions recognising its colonial nature, this British Overseas Territory is not included in the UN list of Non-Self-Governing Territories.

- On 22 June 2017 the General Assembly adopted resolution 71/292, in which, referring to Article 65 of the Statute of the Court, it requested the Court to render an advisory opinion on the process of decolonisation of Mauritius and the legal consequences of separating the Chagos Archipelago from Mauritius in 1965.[18]
- 25 February 2019 International Court of Justice advisory opinion: the Court concluded that "the process of decolonisation of Mauritius was not lawfully completed when that country acceded to independence" and that "the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible[19]"
- The Resolution of the General Assembly adopted on the 22nd May 2019 welcoming the 25 February 2019 International Court of Justice advisory opinion on the legal consequences of separating the Chagos Archipelago from Mauritius in 1965, demanding that the United Kingdom unconditionally withdraw its colonial administration from the area within six months. By a recorded vote of 116 in favour, to 6 against (Australia, Hungary, Israel, Maldives, United Kingdom, United States), with 56 abstentions, the Assembly affirmed that doing so — in accordance with the advisory opinion — would enable Mauritius to complete the decolonisation of its territory as soon as possible[20].
- The International Tribunal for the Law of the Sea (ITLOS) has affirmed that the Chagos archipelago is part of Mauritius rather than the UK. On January 28, 2021, the International Tribunal for the Law of the Sea (ITLOS) rejected the Maldives' challenges to its jurisdiction in the dispute over the maritime boundary between Mauritius and the Maldives. The judgment was issued by a Special Chamber formed by agreement between Mauritius and the Maldives in 2019. The Maldives argued that the UK was an indispensable third party and that sovereignty over the Chagos Archipelago was disputed. The Special Chamber examined the legal status of the Chagos Archipelago, referring to previous legal determinations, and concluded that the UK's interests were not sufficient to affect the case. It affirmed that Mauritius is the coastal state concerning the Chagos Archipelago for

stronger-british-family/joint-declaration-of-governments-of-the-united-kingdom-and-british-overseas-territories-a-modern-partnership-for-a-stronger-british-family#:~:text=For%20those%20British%20Overseas%20Territories,to%20the%20UN's%20Decolonisation%20Committee.

[17] British Indian Ocean Territory (2024), "History", British Indian Ocean Territory. Source: https://www.biot.gov.io/about/history/.

[18] International Court of Justice (2017), "Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965", International Court of Justice. Source: https://www.icj-cij.org/case/169

[19] Ibid.

[20] United Nations (2019) "General Assembly Welcomes International Court of Justice Opinion on Chagos Archipelago, Adopts Text Calling for Mauritius' Complete Decolonization", 22 May. Source: https://press.un.org/en/2019/ga12146.doc.htm.

maritime boundary delimitation purposes, even before Mauritius' decolonisation is completed.[21]

Therefore, there seems to be some inconsistency in the criteria used to determine whether a specific territory should be included in the UN List of Non-Self-Governing Territories. Additionally, we consider the three categories - independence, free association and integration - for removal from the list to be insufficient, as each territory has specific needs and challenges which cannot be fitted in any of these three categories and need to be creative, and look for an ad hoc category.

Another consideration is that the removal of those territories that are included in the United Nations list of Non-Self-Governing territories will positively impact the international reputation of the UK, which has been severely eroded by legal cases concerning sovereignty disputes among different states, such in the cases of Gibraltar and the Falklands.

6. THE EVOLUTIONARY NATURE OF THE CROWN DEPENDENCIES' STATUS

As we have mentioned before, the Crown Dependencies' (CDs) status is the result of a firmly consolidated historical and political relationship with the UK. However, this status cannot be understood as a static issue since these territories and their people are constantly evolving in terms of identity. Throughout the years, the CDs have expressed their wish to continue developing their self-government, particularly at the international level. In this sense, they want to further develop their international identity and personality, and they propose three main adjustments (House of Commons Justice Committee, 2013, p. 35)

- The speeding up of the process for extending treaties to the CDs at their request;
- Their own international representation;
- To negotiate and conclude international agreements in fields where they have a specific interest.

The UK recognises the Islands' desire to develop their own separate international identity. However, the current mechanisms for increased international participation of the CDs are not enough since decisions are made on the particular circumstances of the issue and require the constant engagement of the UK.

In our view, all these claims should be addressed through negotiation and may or may not result in a change of status, since the legal regime of their current status is not constitutionally limited. It is worth noting that neither the United Kingdom nor the Crown Dependencies (unlike the British Overseas Territories) have a codified constitution that requires cumbersome reforms. Although this system generates some legal uncertainty, as the extent of this status is not clearly and precisely specified, it provides greater flexibility and adaptability to address challenges over the years.

Unlike the majority of British Overseas Territories (BOTs), which have been explicitly granted the right to self-determination in their constitutions - leading some of these territories to choose to become sovereign states - the Crown Dependencies (CDs) do not clearly have this right recognised. This is because they are not considered colonial territories under international law and thus cannot invoke the principle of self-determination. Additionally, this right has not been explicitly agreed upon

[21] Library of Congress (2021), "International: International Tribunal for the Law of the Sea Confirms Sovereignty of Mauritius over Chagos Archipelago". Source: https://www.loc.gov/item/global-legal-monitor/2021-02-23/international-international-tribunal-for-the-law-of-the-sea-confirms-sovereignty-of-mauritius-over-chagos-archipelago/.

between the United Kingdom and these territories, nor is it enshrined in any legal text. Consequently, its recognition is a matter that sparks considerable political, legal, and academic debate.

7. THE CROWN DEPENDENCIES STATUS vs THE FREE-ASSOCIATED STATE STATUS

The CD status -and those BOTs that have greater autonomy, like Gibraltar - is very similar to the Free-Associated State Status (FAS). A FAS is a status by which the dependent territory freely and voluntarily agrees to pool part of its sovereignty and associate with a sovereign state, normally through a constitutive treaty. In return, the associated state receives political, commercial, fiscal or social advantages, such as dual citizenship, free market access, the same currency, certain tax exemptions, tax rebates or certain social benefits. The degree and types of advantage, as well as the degree of power conferred, depends on what the parties agree. Normally, the associated state transfers powers in the areas of defence and international relations.

However, FAS status does not designate a uniform reality, but a heterogeneous one, particularly regarding the special connection between each FAS and the state with which it is associated and the type of free association agreement that each FAS concludes. Generally, these agreements are embodied in an international treaty, which establishes the terms of the association, the way powers are shared between the two parties and the possibility of withdrawal, according to various requirements.

In the case of the Cook Islands and Niue, however, the details of their free association arrangement are contained in several documents, such as their respective constitutions, the 1983 Exchange of Letters between the governments of New Zealand and the Cook Islands and the 2001 Joint Centenary Declaration. There are different examples of FAS in the international community. For instance, the Cook Islands and Niue or Micronesia, the first and second associated with New Zealand, and the third with the US. Regarding the temporality of this status, it can be as definitive or as temporary as the parties would like. In this sense, reality demonstrates that no status is more definitive than another.

However, there are also differences:

- The FAS' status guarantees that the inalienable right of self-determination or secession is clearly stated. This means that if the FAS in the future wants to become fully independent, it has the right to do it.
- Another important difference with the CDs is that the FAS can be represented in the parliament of the state with which it is associated. It is true that not all of the FASs have a representative; it depends on the nature of their association agreement but becoming a FAS would enable this option to the CDs.
- Their international powers, Free-Associate States can decide which content of their international powers are conferred to the State which are associated.
- Direct rule to assure the good governance of the territory: Although this is a subsidiary power, it is very restrictive in terms of these territories' autonomy; since, in practice, it means direct rule from Westminster and the temporary suspension of the CDs' self-government if the UK regards this as necessary. Thus, suspension is subjected to the UK's unilateral interpretation of what good government means and when this is breached. Since there is no legal precision of the circumstances that entail a break of good government, this is a vague and discretional power that the UK retains.

Finally, neither the UK nor the CDs have requested to become a FAS. It is true that a change in the CDs' status to a FAS status would not have any implications in terms of the UN Non-Self-

Governing list of territories, since the CDs are not listed. Regarding the BOTs, none of the 14 territories have requested the FAS status. They have other requests, such as Mauritius, which claims integration with the Chagos Islands (BIOT). However, if the ten BOTs included in the UN list became freely associated states, then it would have positive implications for the UK; they would be removed from the list. In some BOTs' cases, third states need to be included in the discussion regarding their change of status.

8. THE TAX SYSTEM OF THE CROWN DEPENDENT TERRITORIES

The Crown Dependencies (Isle of Man, Jersey, and Guernsey) are self-governing possessions of the Crown, distinct from both the United Kingdom and the UK's overseas territories. They maintain a unique constitutional relationship with the UK, granting them substantial autonomy, particularly regarding taxation and legal matters. Unlike the Crown Dependencies, other autonomous regions within the UK, such as Scotland, do not benefit from the same tax privileges due to their different political and legal statuses and historical relationships with the UK.

a. Tax Autonomy and Constitutional Status

Tax Autonomy:

- Independent Legislative Powers: The CDs have their own parliaments and can pass their own legislation, including tax laws. This means they can set their own tax rates and regulations without needing approval from the UK Parliament.
- Economic Strategy: This autonomy allows the CDs to create tax environments that attract businesses and individuals, often offering lower tax rates compared to other jurisdictions. This is a significant part of their economic strategy.

Constitutional Status:

- Self-Governance: The CDs have a high degree of self-governance. They manage their own domestic affairs, including taxation, while the UK is responsible for their defence and international representation.
- Non-UK Jurisdiction: Since the CDs are not part of the UK, UK tax laws do not automatically apply there. This separation is crucial to their ability to set independent tax policies.

b. Comparison with Scotland:

Scotland, while having some devolved powers, remains an integral part of the UK. Thus, its ability to legislate independently on tax matters is limited compared to the CDs. For Scotland to achieve similar tax autonomy, it would need a significant shift in its constitutional relationship with the UK, potentially involving a move towards greater independence or a unique status akin to the CDs.

c. International Controversy and Reforms

Tax Haven Criticism:

The CDs have faced international scrutiny for their tax regimes, often being labelled as tax havens. This has led to criticism that their tax policies erode tax bases in other countries by attracting businesses and individuals seeking lower tax liabilities.

Response to International Pressure:

In response to growing international pressure and to avoid the tax haven label, the CDs have actively engaged in reforms to align with global tax standards.

G20 Tax Reforms:

In 2021, the G20 approved new international taxation rules, targeting businesses with group turnovers exceeding €750 million (£650 million). The CDs have committed to a "joint approach" to meet these reforms, demonstrating their willingness to adhere to emerging global tax norms.

Specific Tax Policies and Adjustments:

- Isle of Man: Taxes large retailers and banking businesses at 10%, while land and property income is taxed at 20%.
- Guernsey: Banking and insurance firms are taxed at 10%, with large retail businesses and landownership and rental income at 20%.
- Jersey: Certain financial services are taxed at 10%, and utility companies, larger retailers, and property development and rental income are taxed up to 20%.

Government Statements and Future Plans:

- Isle of Man: Manx Treasury Minister Alex Allinson emphasized the island's preparedness to adopt these international reforms while ensuring the changes are well-implemented.[22]
- Guernsey: Deputy Mark Helyar highlighted the importance of staying ahead in global tax norms and working collaboratively with other jurisdictions.
- Jersey: Deputy Ian Gorst stressed the need for careful industry engagement to maintain Jersey's competitive edge.

Business Impact:

The new rules will primarily affect large multinational businesses, while the majority of companies in the CDs will continue to operate under the current corporate tax regimes.

Conclusion of this section:

The Crown Dependencies' ability to exercise tax autonomy is deeply rooted in their unique constitutional status. This autonomy allows them to set independent tax policies, fostering economic growth through favourable tax environments. However, this status comes with international scrutiny, pushing the CDs to adopt reforms that align with global tax standards. The recent commitment to G20 tax reforms underscores their efforts to balance autonomy with international compliance, ensuring they are not perceived merely as tax havens. Any other region seeking similar tax privileges would need to reconsider its constitutional status to achieve comparable autonomy and capabilities.

9. FINAL CONSIDERATIONS FOR BRITISH DEPENDANT TERRITORIES

The paramount observation to underscore in our concluding reflections is that the status of the Crown Dependencies is a singular one resulting from a unique historical reality. It is a formula that has successfully integrated historical privileges and transformed them into a special modern legal regime, with a unique constitutional link to the United Kingdom through the Crown. In this regard, it is important to highlight that the British Monarchy plays a significant role - beyond the merely symbolic. - in giving meaning to this status. Although this status is unique, it shares many similarities with the status of the BOTs. However, a fundamental difference is that the Crown Dependencies have never been colonies, so they are not considered territories pending decolonisation and, therefore, are not

[22] Source: https://www.bbc.com/news/world-europe-isle-of-man-65647759.

included in the UN list of territories pending decolonisation, as these territories have never been considered colonies, whereas most BOTs are listed and regarded as colonial territories.

This implies that the attribution of a status to a territory pending decolonisation must respect and adapt to the historical and political peculiarities of that territory and be capable of establishing a legal and economic regime consistent with those peculiarities, in accordance with international law. In this sense, each colonial case is distinct and requires the study of ad hoc solutions. Homogenising formulas are generally unsatisfactory in the short term and pose problems and difficulties in the medium and long term.

Another important consideration for any successful formula is the active involvement of the territory in question and the ability to establish a genuine negotiation process where all stakeholders can express their preferences. It is crucial to focus on areas of shared agreement to begin constructing a status that addresses the challenges of the 21st century. In this context, any status must not be conceived as a static reality exempt from change. Negotiation must be ongoing and conducted with maximum flexibility to address the various challenges that may arise in the established relationship between the parties. Fundamental legal principles, such as legitimate trust and good faith, must always be taken into account. It is essential to foster a good dialogue climate and to be aware that achievements must be concrete, starting with cooperation in areas of mutual interest to build a relationship based on solidarity.

Finally, for those territories with a colonial legacy, any solution diverging from those endorsed by the United Nations - such as independence, free association, or integration - is inherently controversial. However, this report argues that other formulas can be respectful with the right to self-determination. Therefore, legal creativity must be employed to establish a lasting formula that promotes the gradual development of autonomy for the territory, ensuring that the relationship between territories is forged in a voluntary and free manner. This approach should also accommodate certain territorial privileges that respect the legal and historical traditions of the territory. Furthermore, the connection between the territories should not entail an absorption of the colonial territory; rather, it should institutionalise a bond that brings stability and mutual trust. This bond could be represented, as in the case of the Crown Dependencies and the United Kingdom, by the British Monarchy, symbolically embodied in the territory by a royal representative with primarily ceremonial functions. The status of the Crown Dependencies is very similar to that of Free Associate status, a formula worth in-depth analysis and in line with United Nations guidelines for the future of territories listed as pending decolonisation. The differences and similarities between these statuses have been examined in the relevant section of this paper.

10. COMPARISON WITH THE MOROCCAN INITIATIVE FOR THE SAHARA REGION REGARDING ATTRACTION OF FOREIGN DIRECT INVESTMENT

On 11 April 2007, the Kingdom of Morocco presented to the UN Secretary-General its "Initiative for Negotiating an Autonomy Statute for the Sahara Region" in order to break the stalemate in negotiations on the regional dispute about Sahara.[23] The UN Security Council in successive resolutions qualified the Moroccan efforts as "*serious and credible*". It recalled "*its endorsement of the recommendation (…) that realism and a spirit of compromise by the parties are essential to achieve progress in negotiations*"[24] and its call upon neighbouring states "*to strengthen their involvement to end the current impasse and to achieve progress towards a political solution*."[25]

[23] United Nations Security Council, Document S/2007/206, 13 April 2007.
[24] United Nations Security Council, Document S/RES/2703(2023), 30 October 2023.
[25] Ibid.

Regarding **promotion of foreign direct investment** to support the development of the Sahara Autonomous region, it is worth recalling that:

- The Initiative provides in its Article 13 that the Autonomous Region "*will have the financial resources required for its development in all areas*".
- Those resources include:
  - taxes, duties and regional levies enacted by the Region;
  - proceeds from the exploitation of natural resources allocated to the Region;
  - the share of proceeds collected by the State from the exploitation of natural resources located in the Region;
  - proceeds from the Region's assets.
- In addition, the Region will benefit from "*the necessary funds allocated [by the State] in keeping with the principle of national solidarity*".
- Moreover, the central government is mobilizing all efforts to attract foreign direct investment into the autonomous region.

The new developments worth looking into are the recognition by the United States of Morocco's sovereignty on the Sahara Region of 10 December 2020 and its reaffirmation of "*its support for Morocco's serious, credible, and realistic autonomy proposal as the only basis for a just and lasting solution to the dispute over the Western Sahara territory*".[26] As a result, the United States opened a consulate in Dakhla "*to promote economic and business opportunities for the region*". The US International Development Financial Corporation announced a plan of investment of $5 billion in Morocco and across the region. Similar consulates have already been opened or are planned in Dakhla or Laayoune by many countries.[27]

[26] The White House, "Proclamation on Recognizing the Sovereignty of the Kingdom of Morocco over the Western Sahara", 10 December 2020 (https://bit.ly/35nkmMf).

[27] As of November 2023: Bahrain, Burkina-Faso, Burundi, Cape Verde, Central African Republic, Comoros, Congo, Côte d'Ivoire, Burundi, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eswatini, Gabon, Gambia, Guinea, Guinea Bissau, Haiti, Jordan, Liberia, Malawi, São Tomé & Príncipe, Senegal, Sierra Leone, Suriname, Togo, United States of America, United Arab Emirates, and Zambia.

FOREIGN INVESTMENT AFTER THE SPECIAL AUTONOMY IN ACEH AND COMPARISON WITH THE MOROCCAN INITIATIVE FOR THE AUTONOMY OF THE SAHARA REGION

Dr Mawardi Ismail[28]

EXECUTIVE SUMMARY

As developing countries, Indonesia and Morocco faced territorial integrity problems, with movements to secede from the rule of the Central Government, the Free Aceh Aceh Movement in Indonesia and the Polisario in "Western Sahara" in Morocco. Indonesia successfully resolved the conflict with the Helsinki Memorandum of Understanding (MoU) which gave birth to special autonomy for Aceh, while the settlement of the so-called "Western Sahara" dispute is in process. Indonesia's success in resolving the Aceh conflict has created the stability of security, one of the factors needed for investment.

The same thing that wants to be realized is the creation of welfare for people in conflict areas, where one of the efforts is to increase investment, both domestic investment and foreign direct investment.

Through the Law on the Government of Aceh (Law Number 11 of 2006), the Government of Indonesia gives broad authority to Aceh to manage foreign direct investment, except for oil and gas which is jointly managed by the Central Government and the Government of Aceh, while for other regions the management of foreign investment is fully under the authority of the Central Government. To accelerate the increase in foreign investment, the Central Government and the Government of Aceh with various regulations provide various incentives and facilities for investors who invest in Aceh. However, the delegation of foreign investment authority to the Government of Aceh (in the context of the special autonomy) has contributed to the acceleration of the administrative process of foreign investment, especially in the exploration and exploitation of natural resources.

Although the stability of security and various incentives and facilities for investors have been provided, the increase in investment in Aceh has not occurred optimally. Other regions that do not have a special autonomy status have experienced a significant increase in investment. There are many factors that become obstacles in investment in Aceh after the special autonomy, including (1) complicated regulations; (2) difficult land acquisition; (3) uneven public infrastructure; (4) taxes and other non-fiscal incentives that do not support investment; (5) inadequate skilled labour; and (6) security assurance.

Although the resolution of the so-called "Western Sahara" dispute has not yet been successful, the MOROCCAN INITIATIVE FOR NEGOTIATING AN AUTONOMY STATUTE FOR THE SAHARA REGION proposal offers broader foreign investment powers than Aceh under its special autonomy status. In terms of Foreign Direct Investment (FDI), Morocco has made so many efforts that the ranking of the Easy of Doing Business (EoDB) has improved rapidly, from 69th in 2018 to 60th in 2019 and 53rd in 2020, a spectacular progress. Morocco is also determined to establish itself as the "Gateway to Africa" in investment. In addition, Morocco's policy to facilitate the opening of foreign

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consulates in the Sahara Region to help the autonomous Sahara region attract more foreign investment is a very interesting thing. This policy does not exist in the implementation of the special autonomy in Aceh.

To further accelerate the pace of foreign investment, where security assurance is one of the supporting factors, the resolution of the so-called "Western Sahara" dispute must continue to be pursued.

Several efforts were suggested, among others: the Government should strive to realize common perceptions of regulations governing foreign investment in Aceh, increase socialization about incentives and facilities for investment available in Aceh, and improving the provision of investment-related infrastructure.

INTRODUCTION

Indonesia and Morocco are two developing countries that face territorial integrity problems due to rebellions that want secession to become independent states, namely the Rebellion of the Free Aceh Movement in Indonesian Aceh, and the Polisario Rebellion in "Western Sahara" in Morocco. The Aceh insurgency was successfully resolved peacefully through the Helsinki MoU dated 15 August 2005 facilitated by the Finnish Crisis Management Centre and former Finnish President Martti Ahtisaari, while Morocco wants to resolve the Sahara dispute by peaceful means through its Proposal offering autonomy to the Sahara Region, still to be negotiated and adopted.

The settlement of the Aceh case and the Moroccan case was accompanied by the granting of broader autonomy in order to accelerate the achievement of welfare for the community. For this reason, one aspect that can realize prosperity is by investment facilitated by granting authority through regional autonomy.

The Helsinki MoU has succeeded in resolving the Aceh conflict, while the Moroccan Autonomy Initiative (Negotiating an Autonomy Statute for the Sahara Region) proposal has not yet succeeded, but as Antony Blinken admits, it is something very "serious, credible and realistic".[29] Negotiations between Morocco and the Polisario did not reach any breakthrough simply because of the difference in views. Morocco insisted on discussing only its proposal for the autonomy of the Sahara while Polisario insisted on the right of self-determination as the only solution for the conflict. Furthermore, the United Nations insisted that the proposals of both parties should be included in the agenda, even though this contradicts negotiations without preconditions.[30]

Morocco's seriousness in resolving this conflict is also evident with Morocco's willingness to offer the opportunity to improve its proposal regarding regional autonomy in the negotiations that could result in broader regional autonomy or other agreed terms (such as "special autonomy, similar to Governing Aceh") through dialogue which might greatly help resolving the conflict.[31]

One aspect of general welfare is the reduction of poverty which among others includes the provision of employment through investment. Limited capital is the main problem faced by Indonesia (and Morocco) in investment activities, and to overcome it attracting foreign capital is one of the efforts that must be made. Indonesia as one of the developing countries that continues to carry out development in various sectors to improve the welfare of the community. This is in line with one of

[29] Antony Blinken (US Secretary of State), Agence France Press, Rabat , 7 April 2022.

[4]. Abdenaby Lamiri, French Signal School, Rennes, France, 2010, page 82-83.

[31] Ismail,Mawardi, Special Autonomy as A Tool for Conflict Settlement , a comparison between Aceh (Indonesia) The Sahara Region (Marocco), Paper presented in The International Research Seminar "Territorial Autonomy : An Effectifve Means For The Political Settlement of Conflict", New York, 1 July 2019.

the goals of Indonesian independence as outlined in the Preamble of the 1945 Constitution, namely realizing general welfare.[32]

In order to realize the improvement of people's welfare, economic growth is one of the indicators. For this reason, the Government of Indonesia needs investment worth Rp.7,417.28 trillion to 7,417.86 trillion for 2025 to encourage economic growth of 5.3-5.6%. Especially for foreign and domestic investment, the government sets an investment target of Rp.1,868.2 trillion to Rp.1,905.6 trillion.[33]

Decentralization in investment management is one of the efforts to accelerate investment activities, including foreign direct investment. The same is true of the Moroccan Proposal, where one of the competencies to be given to the autonomous region of Sahara is the authority in the economic sector which includes investment (of course including foreign direct investment).[34]

The main factors of smooth investment, both domestic and foreign direct investment include:

a. Market Potential/Profit Potential

b. Natural Resources

c. Political stability and security

d. Government Policy

e. Infrastructure

f. Human Resources

All of these factors cumulatively determine whether the investment or investment is feasible. Among these factors, the most decisive is Market Potential/Profit Potential (Feasibility). It could be that the shortcomings in one of the other factors are covered by the advantages of the Market Potential / Profit Potential factor.

One example is the case of investment in natural gas processing and management by PT Arun NGL in North Aceh Regency from 1974 to 2015[35]. PT Arun NGL was established with an initial capital of USD 940,000,000, its shares are owned by PT Pertamina 55%, Mobil Oil Inc 30% and Japan Indonesia LNG Company (JILCO) 15%. Although at that time the security conditions in Aceh were not good,[36] the investment operations for gas processing were running with security accountable to the army. This can happen because the potential profit from the results of gas processing is very large.

More simply, the feasibility of an investment is determined by the potential for economic benefits, the existence of legal certainty, especially related to licensing, and the existence of security certainty.

The 1945 Constitution regulates the local government system that adheres to decentralization, de-concentration and assistance duties in the implementation of regional government authority. For some regions, special autonomy was also introduced. Article 18 B paragraph (1) of the 1945 Constitution states that the State recognizes and respects special or special local government units

[32] In the 4th paragraph of the Preamble of the 1945 Constitution, it is stated that the purpose of the Indonesian State Government is to protect the entire Indonesian nation and all Indonesian bloodshed and to promote general welfare, educate the life of the nation and participate in implementing world order based on independence, lasting peace and social justice.
[33] Koran Tempo (Temponews), date 27 April 2024.
[34] See also Morocco Proposal, Point II A.
[35] PT Arun NGL is a Natural Gas Processing Operator Company. Natural Gas Reserves founded in the Arun village on 24 October 1971 by Mobil Oil Company.
[36] There was a rebellion of the Free Aceh Movement on 4 December 1976 which was proclaimed by Hasan Tiro and only completed with the Helsinki MoU signed on 15 August 2005.

regulated by law. On this basis, in Indonesia there are several provinces with a status as special autonomous regions, and one of them is the Aceh Province.

To accelerate investment in Aceh, the Government delegates authority to the Government of Aceh as stipulated in Chapter XII of Law Number 11 of 2006, especially article 165 paragraph (1) and paragraph (2).[37] The resolution of conflicts through the Helsinki MoU is also an important factor for the establishment of security stability, which is one of the conditions for smooth investment, including foreign investment. The existence of security certainty in Aceh was also stated by Aceh Governor Bustami in a meeting with the Political Advisor of the British Embassy at the Governor's Residence on April 23, 2024, where Governor Bustami stated that Aceh's condition after the 2024 general election was safe and peaceful.[38]

To exercise this authority in the field of investment, the Government of Aceh established the Aceh Qanun on Investment, namely Qanun Aceh Number 5 of 2018 concerning Investment. These qanuns (regulations) include domestic investment and foreign direct investment.

In addition to the regulations mentioned above, to facilitate and accelerate investment, a Law on Job Creation has been issued, namely Law Number 6 of 2023 (LNRI of 2023 Number 41, TLN Number 6856). This law replaces Law Number 11 of 2020, which was annulled by the Constitutional Court of the Republic of Indonesia with Decision Number 91/PUU-VIII/2020. This law, which was drafted based on the Omnibus Law method, amends a total of 81 existing laws, which are related to investment. Previously, for investment arrangements, Law Number 25 of 2007 concerning Capital Investment was issued, including Foreign Direct Investment.

In addition to Law Number 6 of 2023, Law Number 4 of 2023 concerning the Strengthening and Development of the Financial Sector was also issued, which revised 23 laws that have the potential to hinder investment.

In relation to efforts to resolve conflicts through granting autonomy, there are several issues that we want to discuss, including:

1. The extent to which the autonomy status can encourage increased foreign direct investment (FDI) to the autonomous region;

2. What role are carried out by the central government and local governments to accelerate foreign investment;

3. What benefits can the autonomous region gain from the existence of the FDI;

4. What incentives and facilities can be provided by the Central and local governments to encourage increased foreign investment;

DESCRIPTION

1. INVESTMENT IN GENERAL

The existence of investment is a necessity for the success of economic development as an important part of efforts to realize community welfare. Investment requires sufficient capital, and for

[37] Article 165 paragraph (1): Residents in Aceh can trade and invest internally and internationally in accordance with laws and regulations, Paragraph (2): The Government of Aceh and the district / city government in accordance with their authority can attract foreign tourists and grant licenses related to investment in the form of domestic investment, foreign investment, export and import by taking into account the norms, standards, and procedures applicable nationally.
[38] AJNN Net, 23 April 2024.

that, for developing countries, there needs to be investment by investors through investment both domestically and from abroad.

To regulate this investment issue, Indonesia issued Law Number 25 of 2007 concerning Investment, which was amended by Law Number 6 of 2023. In consideration of letter (c) of the Law, it is stated that to accelerate national economic development and realize Indonesia's political and economic sovereignty, it is necessary to increase investment to process economic potential into real economic power using the capital originated, both from within the country and from abroad. Furthermore, in Article 1 point 1 of the Law, it is explained that investment is all forms of investment activities both by domestic investors and foreign investors to do business in the territory of the Republic of Indonesia. Through this Investment Law, the Government also provides various incentives and facilities for investors.

From this provision, it is clear that, for investment, both capital from within the country and from abroad is needed, namely through foreign direct investment. To accelerate this investment, the Government provides facilities to investors who make investments. Through this law, the Government guarantees equal treatment to all investors from any country who invest in accordance with laws and regulations, except for investors who are from countries that acquire privileges under bilateral agreements. In addition, Article 18 Paragraph (4) also regulates various forms of facilities or incentives provided to investors (including foreign investors).[39]

A breakthrough to increase investment (both domestic and foreign) was made through the establishment of Law Number 11 of 2020 concerning Job Creation. This law amends a number of laws that are considered to hinder investment, but because their formation is considered not in accordance with the guidelines for the formation of laws and regulations, this Law Number 11 of 2020 was later annulled by the Constitutional Court with decision Number 91/PUU-XVIII/2020. As a replacement, the President issued a Government Regulation in Lieu of Law (Emergency Legislation), Number 2 of 2022 concerning Job Creation, which was later enacted into law by Law Number 6 of 2023.

Although, various efforts have been made, investment conditions in Indonesia have not been encouraging. In 2020, the World Bank ranked Indonesia 73rd out of 190 countries in terms of Easy of Doing Business. This ranking is far below Singapore (No. 2) and Malaysia (No. 12), and also below Morocco (No. 53).

In terms of capital investment in Indonesia, there are several obstacles. According to the Investment Coordinating Board, there are at least five obstacles that investors often face in investing in Indonesia that make foreign investment interest in Indonesia decrease. The five obstacles are: (1) convoluted regulations; (2) difficult land acquisition; (3) uneven public infrastructure; (4) Non-tax and incentives or other fiscal measures that do not support investment; and (5) skilled labour which is not adequate.[40]

In terms of FDI, Morocco has made so many efforts that the ranking of the Easy of Doing Business (EoDB) has improved rapidly, from 69th in 2018 to 60th in 2019 and 53rd in 2020, a spectacular progress. Morocco is also determined to establish itself as the "Gateway to Africa" in

[39] See Article 1 number 1, Article 6 and Article 18 paragraph (4) of Law of the Republic of Indonesia Number 25 of 2007.
[40] Hilma Meilani, HAMBATAN DALAM MENINGKATKAN INVESTASI ASING DI INDONESIA DAN SOLUSINYA, dalam "Info Singkat" Pusat Penelitian Badan Keahlian DPRRI, Vol.XI.No.19/I/Puslit/Oktober/2019 (OBSTACLES TO INCREASING FOREIGN INVESTMENT IN INDONESIA AND THEIR SOLUTIONS, in "Short Info" Research Center of DPRRI Expertise Agency, Vol.XI.No.19/I/Puslit/October/2019).

investment. To realize this, various efforts were made, for example establishing The Africa Continental free Trade Area (CFTA) which is effective in 2021.[41]

Furthermore, according to the United Nations Conference on Trade and Development (UNCTAD), Morocco attracted the ninth most FDI in Africa in 2021. Inbound FDI rose by 52 percent in 2021 to $2.2 billion, vs $1.7 billion in 2020 and 2019 and a 2018 peak of 3.6 billion. In June 2019 Morocco opened an extension of the Tangier Med commercial shipping port, making it the largest in Africa and Mediterranean; the government is developing a third phase for the port which will increase its capacity to five million twenty-foot equivalent units (TEUs).[42]

2. INVESTMENT IN THE REGIONS

In accordance with article 1 paragraph (1) of the 1945 Constitution, Indonesia is a unitary state in the form of a Republic. All regions are divided into large regions (Provinces) and small regions (Districts / cities) by taking into account the specificity and diversity of regions (Article 18 and Article 18 A of the 1945 Constitution).

On that basis all government activities are located in regional areas, and the relationship of authority between the Central Government and Regional Governments is regulated by law. On that basis, the Law on Regional Government was formed, both general and special. The administration of government is carried out in three ways: decentralization, de-concentration and assistance tasks (*medebewind*). The general decentralization is now regulated in Law Number 23 of 2014, while the special autonomy (asymmetric decentralization) is regulated in each separate law, including Law Number 11 of 2006 concerning the Aceh government which also contains the privileges and specificities of Aceh.[43]

Through decentralization, both symmetric and asymmetric, the central government delegates some of its authority to the regions on the basis of the principle of the widest autonomy which includes authority in the field of investment. The authority delegated to the regions is regulated in detail, except for Aceh where what is regulated in detail is only the authority of the Government which is national.[44]

The authority of the Government in the field of investment (investment), both domestic investment and foreign investment in regions whose regulation is through the Law on Regional Government in general (symmetrical decentralization), is contained in Annex Undang_Undang Number 23 of 2014, while for Aceh (which is asymmetric) as long as it is not determined as a national government policy, it becomes the authority of the Government of Aceh or the Regency / City Government in Aceh in accordance with what is regulated in Law Number 11 of 2006.

In an effort to accelerate investment, before Law Number 11 of 2006 was formed, for the Sabang Area in Aceh, the Government issued Government Regulation in Lieu of Law (Emergency Law) Number 2 of 2000 concerning the Sabang Free Trade Zone and Free Port. This Emergency Law was later passed into law by Law Number 37 of 2000. With this Law, the Central Government, Aceh Government, Aceh Besar Regency Government and Sabang City Government, delegate licensing authority in the field of investment and trade to the Sabang Free Trade Zone and Free Port Concession Agency. With this Law, the Sabang Area is designated as an area within the jurisdiction of the unitary State of the Republic of Indonesia, which is separate from the customs area so that it is free from the

[4141] US Department of State, 2023 Investment Climate Statement : Morocco.
[42] Ibid.
[43] This Act is an implementation of the Helsinki MoU of 15 August 2005.
[44] The national government authority in Aceh is regulated in Government Regulation Number 3 of 2015.

imposition of import duties, value added tax, sales tax on luxury goods and excise. This facility is expected to encourage export-import activities through the port of Sabang.

3. INVESTMENT IN THE SAHARA AUTONOMOUS REGION OF MOROCCO

The Sahara Region is definitively part of the territory of the Kingdom of Morocco. In this region there was a dispute between the Sahrawi Arab Democratic Republic/Polisario Front and the Kingdom of Morocco[45].

For the resolution of this dispute, the Kingdom of Morocco offered a proposal granting broad autonomy to the territory of the Sahara Region, known as the MOROCCAN INITIATIVE FOR NEGOTIATING AN AUTONOMY STATUTE FOR THE SAHARA REGION. This proposal is seen as a comprehensive, credible and realistic solution, but until now has not been accepted by the Polisario. Through this proposal the Kingdom of Morocco offers a very wide autonomy. In its point I.5, it is affirmed that the Sahara populations will themselves "run their affairs democratically, through legislative, executive and judicial bodies enjoying exclusive powers". They will have the financial resources needed for the region's development in all fields, and will take an active part in the nation economic, social, and cultural life. Meanwhile, the authority of the Kingdom remains only in certain fields. The State will keep its power in the royal domains, especially with respect to defence, external relations and the constitutional religious prerogative of His Majesty the King.[46] Morocco's proposal also provides an opportunity for foreign consulates in the Sahara Region, where Morocco's policy to facilitate the opening of foreign consulates to help the autonomous Sahara region by attracting more foreign investment is a very interesting approach. This policy does not exist in the implementation of special autonomy in Aceh.

The autonomy offered by the Kingdom of Morocco to the Sahara Region as part of conflict resolution is broader than the delegation of authority of the Central Government to Regional Governments in the context of implementing autonomy and special autonomy in Indonesia. On this basis, the Moroccan proposal is very realistic as a basis for negotiating a settlement of the dispute, compared to the demands for independence that are impossible for the Kingdom of Morocco to meet. The regional autonomy plan was rejected by Polisario who wanted a referendum with the options of independence for the Sahara Region instead. Conflict resolution through referendum is prone to threatening territorial integrity, therefore the refusal of Morocco is understandable. In relation to this, Indonesia had a bad experience with the break-away of East Timor from the sovereignty of the Republic of Indonesia, when the referendum was chosen as a solution to the resolution of the conflict in East Timor.[47]

Under the substance of the Moroccan Autonomy Initiative, the broad autonomy that will be granted to the Sahara Region will allow increased investment, including overall foreign investment in Morocco. This potential is marked by Morocco's sincerity in systematically opening up and being very attractive in attracting foreign investment. Morocco seeks to transform itself into a regional business hub by leveraging its geographically strategic location, political stability, and world class infrastructure to expand as a regional manufacturing and export base for international companies. Morocco actively encourages and facilitates foreign investment. Morocco is also showing serious efforts as part of the

[45] The Polisario front announced the establishment of the Sahrawi Arab Democratic Republic as an independent state, in 1976.
[46] MOROCCAN INITIATIVE FOR NEGOTIATING AN AUTONOMY STATUTE FOR THE SAHARA REGION, Point I.5 and Point I.6.
[47] See: Darmasjah Djumala," Soft Power Untuk Aceh", Gramedia Pustaka Utama, Jakarta 2012, pp. 164-165.

Government development plan, by continues to make major investment in renewable energy and is on track to meet its stated goal of 52 percent total installed capacity by 2030.[48]

The existence of adequate support from various countries, as well as support from the United Nations, will give new hope for the improvement of the welfare of the people in the Moroccan region in general and especially for the Sahara region. This condition will be a positive energy for the resolution of conflicts that have drained quite a lot of energy and lasted long enough. Based on the above point of view, Morocco's proposal has a better chance of being accepted if it is seen as providing space for Polisario's aspirations, as long as it does not contradict the sovereignty and territorial integrity of the Moroccan Kingdom. At the same time, Polisario should also be realistic by not holding on to the option of independence in a referendum, which is clearly not negotiable for Morocco.[49]

4. INVESTMENT PULL FACTORS

Investment in a country or in a region is influenced by many factors. Because investment is one of the efforts that can directly affect the welfare of the community, all countries or regions are competing to offer facilities and incentives that will be an attraction for investors to invest in a country or region. Before deciding to invest or invest in a country or region, investors consider various factors related to the success of their investment.

In relation to regional autonomy, the role of local governments (both provincial and regency/city) becomes more important and strategic in line with legal provisions on regional autonomy and the spirit of decentralization[50]. For example, regarding foreign direct investment (FDI) which in the early stages of investment is under the authority of the central government, in the next stage it can be given to regional governments, if it has been equipped with adequate laws and regulations.[51]

The authority in the investment sector given to the Regional Government should be responded by providing various facilities that attract investors to invest in a region. Among the pull factors are the conditions or facilities available in terms of: Market Potential / Profit Potential, Political Stability and Security, Government Policy, Infrastructure and Human Resources. The availability of comprehensive available conditions and facilities seems to affect the increase in investment, compared to the autonomous status of a region.

5. FOREIGN DIRECT INVESTMENT AND THE SPECIAL AUTONOMY OF ACEH

Aceh is one of the areas that has an attractive natural resource potential for investors. After the Arun LNG era ended, now several foreign investors are exploring oil and gas, both onshore and offshore of Aceh. In addition to the oil and gas sector, investment opportunities in Aceh also include industry, trade, agriculture, fisheries, forestry and other sectors.

As a unitary state in the form of a Republic, the authority to administer government lies with the Central Government which is carried out according to law. For effectiveness and efficiency, some of the authority of the government is delegated to the regions, both provincial and district / city areas, which is known as "decentralization", both symmetrical decentralization through the Law on Regional

[48] US Department of State, 2023 Investment Climate Statement: Morocco (Executive Summary).
[49] Ismail Mawardi, *SPECIAL AUTONOMY AS A TOOL FOR CONFLICT SETTLEMENT, A Comparison between Aceh, Indonesia and the Sahara Region, Morocco, page 7.*
[50] See: Didik J. Rachbini, *Arsitektur Hukum Investasi Indonesia* (Analisis Ekonomi Politik). Jakarta PT Indeks: 2008, page 11.
[51] Ibid, page 98.

Government in general[52] as well as asymmetric decentralization, among others, with special autonomy for Aceh.[53]

The authority of government affairs related to FDI includes part of which is delegated to the regions. For regions with ordinary autonomous status (symmetrical decentralization) the authority for investment affairs is divided between the Central government and regional governments, where FDI is the authority of the Central Government. For the Aceh province with special autonomy status the authority of FDI became the Authority of Aceh. This is regulated in Article 165, especially Article 165 paragraph (2) of Law Number 11 of 2006 which reads "The Government of Aceh and District/City Governments can attract foreign tourists and grant licenses related to investment through domestic investment, foreign investment, imports and pay attention to norms, standards and procedures applicable nationally". The only exception relates to government affairs authority for investment in oil and gas, where the authority is jointly managed by the Central Government and the Government of Aceh. This is affirmed in Article 160 paragraph (1) of Law Number 11 of 2006 "The Government and Government of Aceh jointly manage oil and gas natural resources located on land and sea which are the territory of Aceh's authority".[54]

For other provinces, the authority to manage oil and gas natural resources is entirely the authority of the Central Government. The regulation is contained in the Law on Oil and Gas. The implementation of the authority for joint management of oil and gas natural resources in the Aceh jurisdiction is further regulated by a government regulation. On this basis, Government Regulation Number 23 of 2015 was formed. Based on this Government Regulation, the Aceh Oil and Gas Management Agency (BPMA) was formed[55].

To accelerate investment in accordance with the provisions of Article 166 of Law Number 11 of 2006, the Central Government provides various facilities in the form of tax breaks and various other facilities.

The implementation of investment affairs under the authority of Aceh is further regulated by Qanun Aceh, namely Qanun Aceh Number 9 of 2009, which was later replaced by Qanun Aceh Number 5 of 2018 concerning Investment. Based on its authority, with this Qanun the Government of Aceh provides various facilities that can attract investors to invest in Aceh. Investment arrangements, both domestic and foreign direct investment contained in Aceh qanun Number 5 of 2018 are to encourage investment in Aceh to take place quickly, safely and effectively. In this Aceh Qanun, among others, it is regulated about the Investment Policy regulated in Article 3 to Article 6. The policy is among others as stipulated in Article 3 paragraph (1), namely:

a) encourage the creation of a conducive climate for investment to strengthen Aceh's competitiveness in the national and international economy;

b) accelerate the increase in investment;

c) make optimal use of investment opportunities as mandated in the Law on the Government of Aceh and the Law on Investment;

[52] Now Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government, along with various implementing regulations.
[53] Law Number 11 of 2006 concerning the Government of Aceh along with various implementing regulations.
[54] Aceh's jurisdiction is up to a distance of 12 nautical miles offshore.
[55] Oil and Gas management outside Aceh Province is fully under the authority of the Central Government and is carried out by the Special Task Force for Upstream Oil and Gas Business Activities (SKK Migas).

d) provide equal opportunities for domestic investment and FDI while taking into account Acehnese and national interests in accordance with laws and regulations;

e) ensure security and legal certainty in doing business for investors from the licensing process until the end of investment activities in accordance with laws and regulations;

f) encourage and open opportunities and protection for the development of MSMEs and cooperation; and

g) increase productivity and competitiveness for the realization of prosperity and welfare of the people and uphold Islamic values, justice, equality and people's participation and be efficient

In addition to the various facilities and incentives provided by the Central Government and the Government of Aceh, the availability of natural resources in Aceh is quite adequate, both oil and gas natural resources and other natural resources. In addition, the successful resolution of the Aceh conflict with the Helsinki MoU dated August 15, 2005, significantly affected security stability. Experience in the exploration and exploitation of Natural Gas by Mobil Oil Company in North Aceh (era 1971 to 2015), in an atmosphere of security disturbances by the Free Aceh Movement, requires the Company to provide extra funds to finance security involving the Indonesian National Army. Only because of the huge profit factor that allows the Company to be willing to provide these funds, even though this policy has received protests from various circles of society (national and international).

Taking into account the investment policy after the implementation of special autonomy in Aceh, investment in Aceh should take place quickly, safely and efficiently. However, the reality is that after the enactment of special autonomy with various supporting regulations, it has not been able to accelerate investment in Aceh. This is, as expressed by Sanusi, since Aceh's broad special autonomy based on the law governing of Aceh known as LOGA has not been implemented optimally because it still faces various obstacles included in the legal aspects.

These obstacles include, among others, the incompleteness of the implementing rules, both to follow up on central and regional laws and regulations. In addition, there is also a discrepancy in the provisions of laws and regulations between one another.[56] Actually, the provisions regarding investment authority regulated in Law Number 11 of 2006 are special laws (*lex specialis*), which can override general law provisions based on the legal principles of *lex specialis* as a derogation to *lex generalis*.

In reality, the Central Government is less concerned about the specificity of Aceh, so there are policies of the Central Government that conflict with the provisions of the specificity of Aceh. For example, the authority in investment, which according to Article 165 paragraph (2) states that the investment authority, both domestic and foreign, is the authority of the Government of Aceh, but the Minister of Investment/Head of Foreign Investment Coordinating Board (BKPM) violated it by issuing Decree Number 20220405-01-92695 regarding the revocation of PT LMR's IUP on the grounds that based on Law Number 4 of 2009 as amended by Law Number 2 of 2020, the authority for mineral and coal management in the province is the authority of the Central Government.

In fact, Article 173A of the Law clearly states that the transfer of authority does not apply to provinces that have a law of privilege and specificity. For Aceh, it is also expressly regulated that

[56] Sanusi, OTONOMI KHUSUS DALAM PENANAMAN MODAL DAN PERMASALAH HUKUM YANG TERKAIT: STUDI KASUS DI PROVINSI ACEH (Special Autonomy in Investment and Related Legal Issues: Case Study in the Province of Aceh), *Journal QANUN*, Number 51 , 2010, p.295.

mineral and coal management is the authority of Aceh.[57] This was also acknowledged by the Minister of Home Affairs of the Republic of Indonesia, who in his letter dated July 22, 2021 Number 118/4773/OTDA stated that in terms of mineral and coal authority in Aceh, the Government of Aceh has special authority for its management.

The disharmony of regulations and policies of the Central Government, even among the ranks of the Central Government itself (between the Minister of Investment and the Minister of Home Affairs) certainly causes legal certainty which causes reduced investor interest to invest in Aceh.

Although Aceh through special autonomy has greater authority compared to other autonomous regions, and has offered various attractive facilities and incentives through Aceh Qanun Number 5 of 2018, it is still far behind compared to other provinces. Currently 5 provinces with large investment realization are West Java, DKI Jakarta, East Java, Central Sulawesi and Banten. In terms of investment realization, Aceh is ranked 27th out of 34 provinces in Indonesia.[58]

However, the delegation of foreign investment authority to the Government of Aceh (in the context of special autonomy) has contributed to the acceleration of the administrative process of foreign investment, especially in the exploration and exploitation of natural resources.

To facilitate investment activities, including FDI, the Government issued various regulations, and finally by issuing Law Number 6 of 2023 concerning Job Creation which revised around 81 existing laws that were considered to hinder investment. At the regional level, especially in Aceh, an Aceh Qanun on Capital Investment was formed, namely Aceh Qanun Number 5 of 2009, which was later replaced by Aceh Qanun Number 5 of 2018 concerning Investment.

With these various regulations, various policies, facilities and incentives have been provided for investment, which is expected to be a driver of increased investment. With authority on the basis of the special autonomy, Aceh provides various facilities and incentives for investment, including those regulated in Article 13 to Article 24 of Aceh Qanun number 5 of 2018, in addition to various facilities and incentives provided in the investment area carried out in the Arun special economic zone that is established with Government Regulation Number 5 of 2017 concerning the Arun Lhokseumawe Special Economic Zone.

FDI in Aceh is generally in the natural resource sector, both oil and gas and non-oil and gas sectors. Among the foreign companies currently operating in Aceh are Enso Asia Inc/Trianggle Pase (Singapore), which manages the Pase block, Mubadala Energy (United Arab Emirates) in the South Andaman working area, and Conrad Asia Energy Ltd (Singapore) in the West Aceh Block and Singkil working area.

One of the foreign investors, the Cooperation Contract Contractor "Mubadala Energy" from Abu Dhabi (United Arab Emirates), has succeeded in finding potential gas reserves of 6 TCF of gas in place in the waters off the coast of Aceh, namely the south Andaman working area.

The policy of opening foreign consulates in the regions will greatly assist investors in the investment administration process, especially licensing issues, but until now there have been no foreign consulates operating in Aceh, although it is possible depending on the needs of the foreign government and the approval of the Central Government.

[57] See Articles 156 and 165 of Law Number 11 of 2006.
[58] Bahlil Lahadalia, Minister of Investment and Head of BKPM, KBN Antara, January 25, 2023.

This is understandable because it is sensitive in relation to foreign involvement in the Aceh conflict. In this context Morocco's proposal is more advanced with the policy to facilitate the opening of foreign consulate in the Sahara Region to help the autonomous Sahara region attract more FDI.

GUARANTEES FOR INVESTORS

In addition to the various facilities and incentives provided, the Government of Aceh with Aceh Qanun Number 5 of 2018 also provides various guarantees for investors, including those regulated in Article 4 to Article 6. Article 5 for example stipulates:

a) The Government of Aceh will not take expropriation actions against the ownership rights of investor capital, unless there is a valid reason;

b) In the event of a takeover, the Government of Aceh shall provide compensation in accordance with the agreed amount;

c) Likewise, Article 6 stipulates that investors can transfer their assets to the party they want.

FOREIGN DIRECT INVESTMENT BENEFITS FOR THE REGION

It is undeniable that investment is an activity that can directly and quickly advance the welfare of the community in the region. With the investment, at least this is what will happen:

a) The creation of jobs that will reduce unemployment;

b) Increase in local original revenue, in the form of regional taxes and regional levies;

c) Increased economic/business activity as a multiplying effect of investment activity;

d) The occurrence of technology transfers.

a) Job creation

One of the problems faced by the region is unemployment due to lack of employment opportunities. Investment requires labour, both skilled and ordinary labour. Meeting the needs of skilled workers is usually done by recruiting and training local workers or bringing ready-made workers from outside.

Positions of ordinary (non-skilled) workers usually more numerous, are filled with recruiting local personnel. These policies include among others Aceh Qanun Number 5 of 2018, namely Article 2 paragraph (2) letter b (creating jobs for the welfare of the community) and Article 14 letter b (absorbing local labour).

b) Increase in local original revenue, in the form of regional taxes and regional levies

Local original revenue is a component of regional revenue for the administration of local government. Local taxes and local levies are the main components of local original revenue.

Article 1 number 20 of Law Number 1 of 2022, concerning the Financial Relationship of the Central Government with local governments, formulates the Regional Original Revenue, i.e., the regional revenue obtained from regional taxes, levies and the results of the management of segregated regional wealth and other legitimate local original income in accordance with laws and regulations.

In relation to investment, local taxes and regional levies are obligations that must be fulfilled by investors. More investment will certainly have an impact on increasing regional revenue, in addition to an increase in regional taxes and regional levies as a result of the development of other activities as a multiplying effect of investment.

c) Increased economic/business activity as a multiplying effect of investment.

Every investment must require material supplies (both capital and supporting goods) produced or supplied by partners (vendors). Thus, investment activities also drive other businesses or investments that will support the smooth running of the main investment.

d) The occurrence of technology transfers

In general, FDI in the region uses more advanced technology compared to existing technology. The Government of Aceh provides facilities and incentives to investors who make investments that meet certain criteria. One of the criteria for obtaining facilities and incentives is the existence of "technology transfers" (Article 14 letter i Qanun Aceh Number 5 of 2018).

6. THE ROLE OF THE CENTRAL GOVERNMENT FOR INVESTMENT IN ACEH.

To accelerate the realization of investment in Aceh, the Government has established various policies, including by expanding Aceh's authority in the field of investment including foreign investment. Article 165 paragraph (2) states that the investment authority, both domestic (PMDN) and foreign direct investment (PMA), is the authority of the Government of Aceh. In addition, previously a national policy has also been regulated that licensing for investment is carried out through one door, namely BKPM at the Centre and the One-Stop Investment and Integrated Services Office (DPMPTSP) in the regions.

CONCLUSIONS AND RECOMMENDATIONS

Based on the description above, several conclusions can be drawn as follows:

1) Investment, both domestic (PMDN) and foreign direct investment (PMA), is a very important economic activity in order to accelerate the realization of people's welfare.
2) The Central Government has made various efforts in order to accelerate the realization of investment by issuing supporting regulations, including by forming Law Number 6 of 2023 concerning Job Creation which revises 81 Laws suspected of hindering investment.
3) There are many factors that encourage investment in a region, including profit potential, availability of natural resources, legal certainty and ease of licensing, and security certainty. Among these factors, the availability of natural resources and profit potential seem to be more influential.
4) In terms of investment, Indonesia is still lagging behind compared to other developing countries. The World Bank still ranks Indonesia 54th out of 190 countries in terms of Easy of Doing Business (EDB). In this case, the Kingdom of Morocco is in a better position, which is ranked 53rd.
5) Although not yet effective, the investment opportunities offered by the Kingdom of Morocco to the Sahara Region in the proposal MOROCCAN INITIATIVE FOR NEGOTIATING AN AUTONOMY STATUTE FOR THE SAHARA REGION, Point I.5 and Point I.6, are broader than the authority in the investment sector in the context of implementing regional autonomy in general and special autonomy in Indonesia.
6) In particular, Aceh has wider authority than other autonomous regions. The authority in the field of foreign direct investment is the authority of Aceh based on Law Number 11 of 2006, while for other regions, foreign investment is the authority of the Central Government based on Law Number 23 of 2014.

7) Although Aceh through national regulations and regional regulations (Qanun Aceh Number 5 of 2018) has provided various facilities and incentives in investing (both PMDN and PMA), but still investment activities have not shown optimal development and results (investment realization in Aceh ranks 27 out of 34 provinces in Indonesia); However, the special autonomy policy in Aceh has given new hope that foreign investment in Aceh will be easier.

8) There are still several obstacles in the realization of investment, including (1) complicated regulations and legal uncertainty; (2) difficult land acquisition; (3) uneven public infrastructure; (4) taxes and other non-fiscal incentives that do not support investment; and (5) inadequate skilled labour.

9) In terms of foreign investment authority, there is still a dissimilarity of understanding between the Central Government (Minister of Investment and Head of BKPM) and the Government of Aceh, even though Article 165 paragraph (2) of Law Number 11 of 2006 expressly stipulates that foreign investment is the authority of Aceh. This creates legal insufficiency which becomes an obstacle in the realization of investment;

10) Investment provides many benefits to the regions, including

    a. The creation of jobs that will reduce unemployment;

    b. Increase in local original revenue, in the form of regional taxes and regional levies;

    c. Increased economic/business activity as a multiplying effect of investment activity.

    d. The occurrence of technology transfers.

RECOMMENDATIONS

Based on the above conclusions, it is recommended:

a) The government should strive to create a common perception of regulations governing foreign investment in Aceh;

b) The Central Government and the Government of Aceh should increase socialization about the facilities and investment facilities available in Aceh;

c) The Central Government and the Government of Aceh should continuously improve the provision of infrastructure related to investment.

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PROMOTION OF FOREIGN DIRECT INVESTMENT IN THE FAROE ISLANDS

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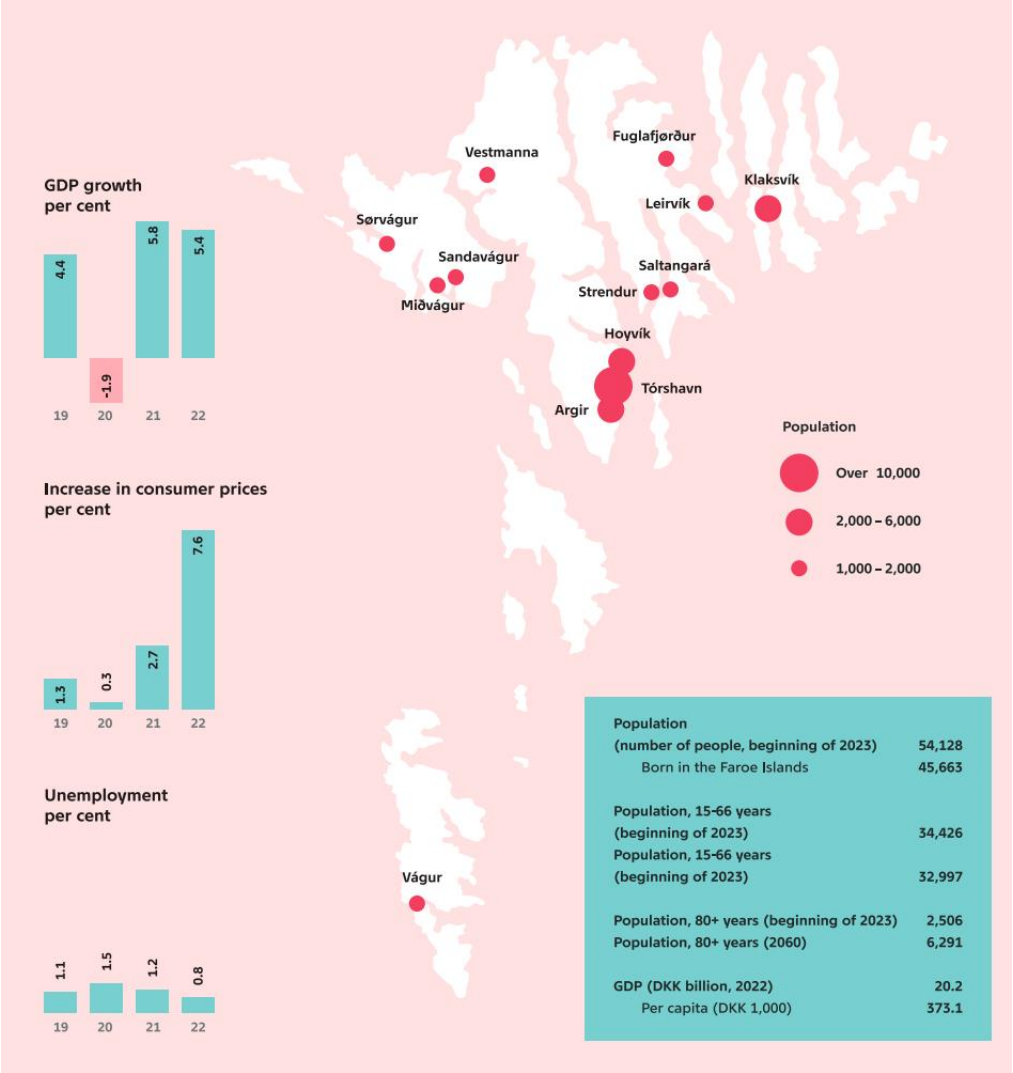


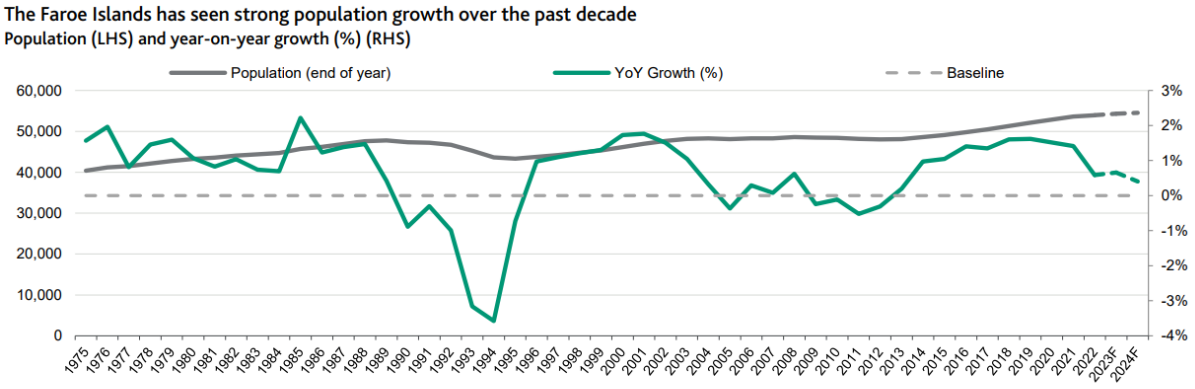
Recent developments in central economic figures and population statistics. The map shows the Faroe Islands, where the inhabitants are dispersed over the 18 islands, whereof only one has no residents.

Source: "Demographic headwinds increase the need for fiscal adjustment in the Faroe Islands", January 2024, Danmarks Nationalbank

I. Introduction

The Faroe Islands, an autonomous region within the Kingdom of Denmark, have a distinct legal and administrative framework that significantly influences their economic policies and foreign direct investment (FDI). In contrast to Denmark, the Faroe Islands are not a member of the European Union. The Faroe Islands consist of 18 islands located in the Atlantic Ocean, between Scotland and Iceland, with a growing population, with around 54,000 inhabitants. The islands' 29 municipalities vary widely in terms of size, from fewer than 50 inhabitants to around 20,000. Municipalities vary also widely in terms of financial strength, with stronger ones including Klaksvík and Tórshavn.

In recent years, the Faroe Islands have seen strong population growth, which has been fuelled by growth in jobs and the economy as a whole.



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Sources: Landsbankin Foroya and Moody's Investors Service

The Faroe Islands Parliament (*Løgting*) has 33 elected members, who in turn elect an executive body (*Landsstýrið*) headed by a chairman. Foreign policy, defence, and the monetary and judicial systems are overseen by the Danish Parliament (*Folketing*). A commissioner represents Denmark in the islands. Education is based on the Danish system. The islands have good medical services.

Poor fiscal discipline in the 1980s, coupled with the collapse of the Faroese fishing industry because of overfishing, resulted in an economic crash in the early 1990s that required Danish intervention.

For a long time, a substantial minority has sought full independence from Denmark, and in 1999 the Faroese government entered negotiations with the Danish government about conditions for full independence. An important point in the talks was the yearly payment of one billion Danish krone (ca. $144 million) from Denmark as half the export earnings. The negotiations ended without any major revisions to the Self-governing Act of 1948, but the Assumption Act and the Foreign Policy Act of 2005 were implemented as a consequence of that process.

The Assumption Act of 24 June 2005 was an extension to the Self-governing Act of 1948, which grants the Faroe Islands extended self-rule. The Faroese government and parliament has the mandate to govern on most issues except for foreign, security, and defence policy, monetary policy, the police, and the court system. The Foreign Policy Act of 2005 was based on a treaty between the Government of Faroes and the Government of Denmark as equivalent parties. The Act stipulates that the Government of the Faroes may negotiate and conclude agreements under international law with foreign states and international organisations, but this does not apply to agreements under international law affecting defence and security policy.

The Faroese government receives an annual grant from the Danish state of DKK 707 million kroner (ca. $1 billion), which corresponds to 2.5 per cent of GDP and close to 8 per cent of the Faroe Islands' operating revenue in 2023. This broad control over revenue supports the Faroese government's financial flexibility; around 92% of the Faroese government's operating revenue is derived from sources under its control. This grant is for “Joint Matters” that have not been transferred to the Faroese government's control. The grant is intended and indeed spent on social welfare, schools and health sectors, though the Faroese government does have freedom over how the grant is used. This grant is fixed in nominal terms, whereby inflation is diluting the real value of the grant over time.

According to a recent Credit Opinion Note by Moody’s Investor Service from August 2023:

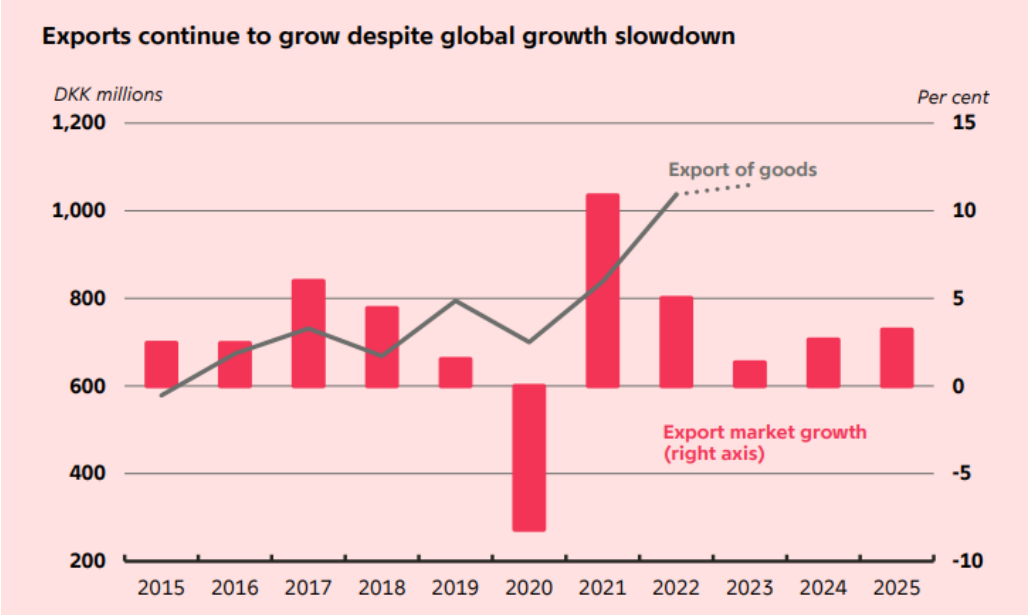
> “*Faroe Islands has a consistent track record of sound budgetary results. Because of its strong economic fundamentals, Faroe Islands has historically generated solid operating revenue, which, along with effective spending-control mechanisms, has led to sound operating results*.”

This analysis delves into the specifics of the Faroese economy, addressing some of the critical questions about FDI mechanisms, impacts, and governance. By comparing the Faroese approach to other small autonomous regions, the reader gains insights into how autonomy can shape economic strategies and outcomes.

II. Recent economic development

The Faroese economy is booming, with pressure on production capacity in large parts of the economy. Expansion has been going on for well over a decade, only temporarily halted by the coronavirus pandemic in 2020. The economy is generally healthy, helped by the strong economic recovery of recent years. The Faroese economy is currently characterised by high employment and low unemployment, a balance of payments surplus and positive foreign assets, low public debt and well-consolidated households.

Real GDP grew by 5.4 per cent in 2022, and the increase in activity is driven mainly by the service and primary sectors, each of which contributed about half of the total growth. Over the past ten years, growth in the Faroe Islands has been among the highest in Europe.



Source: "Demographic headwinds increase the need for fiscal adjustment in the Faroe Islands", January 2024, ***Danmarks Nationalbank***

The Faroe Islands has a small, open economy that relies heavily on trade with the outside world. Exports are concentrated around fisheries and aquaculture, which account for more than 90 per cent of total goods exports. Faroese goods exports (measured in value) saw solid growth of just over 20 per cent in both 2021 and 2022, see chart above. This is especially true in light of high growth in the Faroese export markets and historically high global prices for salmon, herring and mackerel.

Faroese export companies so far appear to be only slightly affected by the global growth slowdown, and goods exports have continued to increase during 2023 and 2024, albeit at a slower pace than before. Fish exports are generally less sensitive to global economic fluctuations, and the Faroese export sector can therefore be expected to have a certain degree of resilience to cyclical changes.

Faroese fisheries benefit greatly from being able to fish in different waters. A number of international agreements have ensured that the Faroe Islands and neighbouring countries have been

able to fish in each other's waters, which has acted as a risk diversification. For decades, the Faroese fisheries agreement with Russia and other countries has allowed the Faroese to fish primarily for cod in the Barents Sea, while Russian ships have fished primarily for blue whiting in Faroese waters.

Russia is historically one of the Faroe Islands' largest export markets and currently accounts for around 10 per cent of total Faroese exports. After a big drop in exports to Russia in the wake of the invasion of Ukraine, fish exports have rebounded. Excluding salmon exports, which have been suspended since the invasion, fish exports to Russia are roughly the same as before the war. While most fish species are sold in many countries, Russia is the main buyer of Faroese herring and mackerel, which are harder to sell on other markets.

The improvement in the Faroese economy is also reflected in the labour market, where employment has increased in recent years. In November 2023, employment was over 28,000, corresponding to more than 80 per cent of the population between the ages of 15 and 66. This is among the highest employment rates in Europe. The unemployment rate has been 0.7 per cent since spring and has been below 1 per cent since the beginning of 2022. This means that everyone available for the labour market is employed. The labour market growth of recent years is the result of a large influx of foreign labour instead. Employment has increased by 1,500 people since 2019, with almost 1,200 of those coming from abroad.

Despite several good years in the Faroese economy, there has not been a significant surplus on the public balance sheet. Neither are significant surpluses in public finances expected in the coming years. The public sector thereby contributes to amplifying the boom in a period when private demand is high, rather than contributing to a more stable economic cycle. The fact that public finances have not improved sufficiently during the boom means that the public sector in the Faroe Islands is postponing necessary adjustments and risks having to implement austerity measures during a recession.

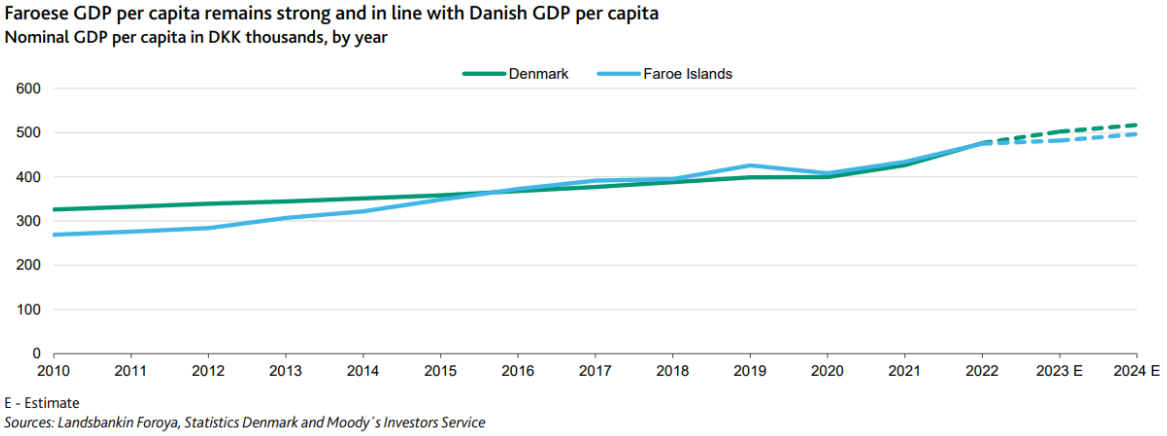
A significant part of Faroe Island income is generated by companies utilising the Faroese marine and fisheries resources. Per capita, the Faroe Islands are by far the largest producer of seafood in the world. A monolithic economy like the Faroese is relatively vulnerable to external factors, and it is therefore important to focus on pursuing a stability-orientated fiscal policy that puts money aside in times of prosperity. This can help mitigate the consequences of, for example, changing external conditions that affect parts of the Faroe Islands' primary source of income.

It is only natural that some of the profits from the common Faroese natural resources are redistributed and accrue to the general population through taxation of abnormally high profits, known as the economic rent. Taxes on fish catches and aquaculture contribute to this redistribution. It is important that such taxes are designed appropriately so that they do not distort incentives. The tax system should thus not affect the decisions of Faroese companies on such matters as the onward processing of fish. The organisation of catch and aquaculture taxes should be evaluated on an ongoing basis to ensure that trends in current tax revenues reflect those in the economic rent.

In May 2023, the Faroese parliament decided to revise such taxes, which, according to the Ministry of Finance and the Ministry of Foreign Affairs, Industry and Trade, is estimated to increase revenues for the Faroe Islands Government by a total of 1.1 per cent of GDP. The changes mean that taxes increase faster when sales prices rise and decrease faster when prices fall. The new tax on aquaculture products is based on the profit from the fish after production costs. Revenue from fees on fishing licenses amount to another approximately 1.2 per cent of GDP. Public revenues from fees on utilisation of natural resources thus amount to over 2 per cent of GDP.

Given the prosperous development in the last decade with higher economic growth than in Denmark, the GDP per capita of the Faroe Islands has surpassed that of Denmark, making the living

standards on average higher in this autonomous region of the Kingdom of Denmark. Low levels of corporate debt combined with high returns on capital investments has limited the need for foreign direct investments in the most capital-intensive export sectors of fisheries, salmon farming, and tourism.



Source: Credit Opinion Government of the Faroe Islands, August 2023, Moody's Investors Service

III. Statutory Provisions for Attracting FDI and capital

The Faroe Islands operate under the Home Rule Act of 1948 and the subsequent Self-Government Act of 2005, which grant them extensive autonomy in most areas except for defence, foreign policy, and monetary policy, which are managed by Denmark. Within this autonomous framework, the Faroese government has established specific statutes and policies to attract FDI, but the government has also implemented some policies limiting FDI in certain sectors.

In the aftermath of the Financial Crisis in 2008-09, the Faroese government put FDI on the agenda with some initiatives under the slogan "Invest in the Faroe Islands". The objective was to attract more foreign investments. Focus was on simplifying administrative processes, offers tax incentives, and provides guarantees to protect foreign investments. This is aligned with Faroese economic goals, emphasizing sustainable development, innovation, and diversification beyond traditional fisheries. But the laws regulating the most important export sectors, the fisheries and the aquaculture, constrain the ownership of foreign citizens.

Fishing companies holding fishing licenses issued by the Faroese Government can have 33% foreign ownership today, but prior to 2032 these companies must be fully owned by Faroese citizens. This was implemented in the Faroese law of fishery regulation in 2019. The ownership of aquaculture companies holding fish farming licenses are also somewhat constrained by law from 2012, since no single shareholder can hold more than 20 per cent of the share capital. One of the three salmon farming companies with fish farming licences is a subsidiary of the largest fish farming company in the world, MOWI, headquartered in Norway, but they were exempted from this new legal act. The largest fish farming company, Bakkafrost, produces approximately 70 per cent of the Faroese total salmon production, and this company is listed on the Oslo Stock Exchange in Norway with over 80% of the outstanding shares being held by international institutional investors. The farmed salmon industry stands for producing approximately half of the export value of the Faroes, and FDI has been crucial for its successful development in recent years.

IV. Impact of FDI on the Faroese Economy

FDI has played a crucial role in transforming the Faroese economy. Key sectors such as aquaculture, fisheries, and tourism have significantly benefited from foreign investments historically.

For example, the Faroese salmon farming industry, heavily supported by investments from international pension funds and other investors, has seen production grow from 50,000 tons in 2010 to over 80,000 tons in 2023. This sector alone contributes approximately 7% of the Faroese GDP, almost 50% of the exports of goods, and employs a substantial portion of the workforce in several regions of the Faroes. Historically, FDI also played an important role in the fisheries sector, but the Faroese government has banned foreign ownership in companies holding fishing licenses going forward.

Tourism has also been a growing sector, with investments in infrastructure and services helping to increase the number of visitors. The number of tourists visiting the Faroe Islands grew from 60,000 in 2010 to over 100,000 in 2023. One of the large companies has been supported by foreign investments, while the other companies rely on international lending through the banking sector.

In recent years, new foreign direct investments have not played a major role in the Faroese economy, which can be explained by the lucrative economic development with low debt level of the corporate sector, since the growth in revenue and profits have been reinvested in an expansion of the capital leading to further economic growth. Public investments have been funded by taxes and issuance of debt.

Over the next decade, the Faroese economy needs to make huge investments in for example the green energy transition (amounting to more than 25 per cent of GDP), new sub-sea tunnel (approximately 20 per cent of GDP), a new university campus, and other social welfare related investments. Although most of these investments will likely be debt financed in the public sector, there will be other sectors of the Faroese economy who will depend on direct foreign investments.

According to Moody's Investor Service, the Faroese government has manageable and stable debt levels:

> "*At year-end 2022, the net direct and indirect debt (NDID) consisted of direct debt of DKK5.1 billion a d another DKK0.7 billion as indirect debt, represented by the Faroese government guaranteed unfunded pension liability under* Foroya Livstrygging *(LIV), translating into NDID of 65.7% of operating revenue... The Faroese government has some off-balance-sheet activities and is exposed to public companies' debt amounting DKK2.7 billion at year-end 2022. Overall, the company in charge of the tunnels is assessed as self-supporting, so we do not include their debt into the government's NDID ratio*."

V. Faroese Administrative Procedures

Foreign investors interested in the Faroe Islands can deal directly with Faroese authorities without requiring approval from the Danish central government. The Ministry of Trade and Industry streamline the investment process, where the Company Registry is a one-stop-shop for investors. This autonomy in handling FDI enhances efficiency and responsiveness, making the Faroe Islands an attractive destination for foreign capital.

Also, the Faroese legislation on company registration and business reporting is being aligned to relevant EU legislation, which should simplify decision making for international investors considering investing the Faroe Islands.

VI. Joint Control on Return on Investment

There is no joint control between the Faroese and Danish governments regarding the return on investment (ROI) and proceeds from FDI. The Faroese government independently oversees these aspects, ensuring that investments benefit the local economy. This independence allows the Faroese authorities to implement policies that maximize the local economic benefits of FDI.

Greenland, Åland, and the Isle of Man also exhibit similar autonomous control over ROI from FDI. Greenland retains full control over mining royalties and other investment returns, while Åland and the Isle of Man manage their revenue from maritime and financial services independently. This commonality underscores the importance of economic autonomy in maximizing the benefits of FDI for small regions.

VII. Retention of Profits from FDI through taxation

The Faroe Islands retain the profits from foreign investments, subject to local taxation policies. Corporate tax rates in the Faroe Islands are set at 18%, which is competitive and designed to attract and retain foreign businesses and investments. The revenues generated from these taxes are reinvested into local infrastructure, education, and healthcare, promoting overall regional development. Also, there is a capital income tax rate of 35% on for example dividends, but international investors domesticated in countries with double taxation agreements with the Faroe Islands can apply for being reimbursed the paid dividend tax by documenting taxation in their home country.

Greenland has a similar approach, with a corporate tax rate of 30%, and the revenues are primarily used for social services and infrastructure development. The Åland Islands have a unique tax regime where part of the taxes collected is returned to Finland, but they retain substantial revenue for local development. The Isle of Man offers a zero percent corporate tax rate for most businesses, significantly boosting local reinvestment and economic growth.

VIII. National Legislation and Guarantees for FDI

While the Faroese government has its own investment promotion strategies, these are aligned with national legislation that provides guarantees for investors. Denmark's stable legal and economic environment ensures that foreign investors in the Faroe Islands benefit from strong legal protections and a predictable business climate.

Moody's Investor Service also highlighted the importance of the current relationship with the Government of Denmark in their reaffirmed rating of the Government of the Faroe Islands with the stable Issuer Rating of Aa2:

> "*We consider Faroe Islands to have a strong likelihood of extraordinary support from the Government of Denmark. This reflects our assessment that the current relationship with the Government of Denmark is unlikely to change in the medium term. We also take into consideration the intensive extraordinary support provided to the islands in response to the financial crisis of the 1990s. While Denmark has no formal obligation to provide extraordinary support to the Faroe Islands, it has historically supported the Faroese government on a number of occasions. In the 1990s, the Faroese government borrowed — largely from Denmark, given the scale of the crisis — to fund the nationalisation of Føroya Banki and Sjovinnubankin and to bridge the deficits of the recovery plan were established, the Faroese began standalone borrowing, ultimately using these and other reforms' funds to repay Denmark. In 2010, Denmark (through* Finansiel Stabilitet*) also assumed control over EiK, a failing bank with operations in both the Faroes and the Danish mainland. This action is consistent with Denmark's responsibility for financial regulation (the banking sector). The relationship with Denmark remains important as a likely source of liquidity support, were independent financing to be tested*."

Greenland operates under similar guarantees provided by Danish legislation, offering a stable environment for mining and energy investments. The Åland Islands benefit from Finnish legal guarantees, which ensure a secure investment climate for their maritime sector. The Isle of Man, under

British jurisdiction, provides robust legal protections, attracting significant FDI in financial services. These regions all leverage the legal stability of their sovereign states to enhance their attractiveness to foreign investors.

IX. Expression of Priority Sectors for FDI

The Faroese government actively identifies and promotes priority sectors for FDI, such as aquaculture and tourism. These sectors are highlighted in national and regional development plans, and the Faroese authorities work closely with potential investors to align investments with local economic priorities.

Also, historically FDI has played a major role in the fisheries sector as well as oil exploration sector. Oil exploration was high on the development agenda in 2002-2006, where several international oil companies applied for and utilized oil exploration licences in the Faroese continental sector. These licences were issued by the Faroese government, and the potential income and profits would have been taxed by the Faroese authorities. Going forward, there is some talk of attracting new investments in to oil exploration in the Faroe Islands.

The Faroese government has recently banned foreign equity ownership in companies holding fishing licenses issued by the Faroese fishing authorities. This ban is set to take effect from 2032.

X. Conclusion

The Faroe Islands exemplify how a small autonomous region can effectively manage and benefit from FDI. Through specific statutory provisions, independent control over economic affairs, and strategic promotion of priority sectors, the Faroe Islands have created a conducive environment for foreign investment in some sectors. Comparing the Faroese approach with other small autonomous regions like Greenland, the Åland Islands, and the Isle of Man reveals common strategies and successes in leveraging autonomy to attract and manage FDI. By maintaining efficient administrative procedures, retaining investment profits, and ensuring legal guarantees, these regions illustrate the significant economic benefits that autonomy can bring.

Historically, foreign direct investments by international fishing and oil exploration companies have played a major role in developing these important industries. Today, the Faroese aquaculture industry is partly owned by international investors and salmon companies, which demonstrates the importance of having an attractive investment climate for these capital-intensive sectors. Based on the profitable development of the Faroese corporate sector in the last decade, there has not been as much focus on the need for foreign direct investments funding the huge capital investments driving the economic growth, since the corporate sector has low debt levels and reinvests the profits in the local society to expand their activities.

The Faroese government has a good track record for servicing public debt and has a high credit rating providing it with the fiscal flexibility to fund the public investments planned for the near future. The autonomous status of the Faroe Islands as self-governing region in the Kingdom of Denmark has given the society the flexibility to pursue opportunities for funding the corporate sector with inflow of foreign direct investment historically, but also the flexibility to manage the rich natural resources of fisheries and fjords for salmon farming in a way that benefits the local society. Denmark would certainly not have managed the fishery of the Faroe Islands in the same way as the fisheries policy is a part of EU governance and thus dictated from Bruxelles. With regard to FDI, the Faroese government has also taken steps to limit the scope of these investments based on the political will of the local society.

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PROMOTION OF FOREIGN DIRECT INVESTMENT IN ZANZIBAR AND COMPARISON WITH THE MOROCCAN INITIATIVE FOR THE SAHARA REGION

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Contents

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I. Introduction

On 1st February 2024 the President of Zanzibar Dr. Hussein Ali Mwinyi assented to a brand-new legislation called Zanzibar Investment Act, 2023 and in so doing automatically bringing that important legislation into force. This is a very broad Act which, unlike the past legislation on this subject matter, covers various areas of investment in Zanzibar. The coming into operation of this Act is a clear indication of the high value that the Revolutionary Government of Zanzibar places on investments to the socio-economic development of the isles.

In order to place the desire of the President of Zanzibar to fully utilize investors for the development of Zanzibar and its people, it is important to explain in very clear terms the place of Zanzibar within the United Republic of Tanzania. This will lead to appreciation of the law and the rights and duties it carries within it in the context of the country's political and administrative set-up.

II. The Political Set-up in Tanzania

Zanzibar which is an archipelago consisting of two main islands of Unguja and Pemba and other over 50 small islands is part of the United Republic of Tanzania. It existed as a separate sovereign State known as the People's Republic of Zanzibar, until 26th April 1964 when it united with the then Republic of Tanganyika to form Tanzania.

The Union was agreed in such a manner that while the Republic of Tanganyika disappeared, Zanzibar retained a substantial amount of autonomy to determine its own domestic affairs. The agreement between the two states styled Articles of the Union stipulated clearly which affairs would be common to the two entities and called Union Matters[61] and which ones would remain in the hands of the Revolutionary Government of Zanzibar. At first, there were 11 items on list of Union Matters but over time they have doubled to 22.[62] The domestic affairs of former Tanganyika were placed in the hands of the Union Government. Investments were among the items out of the Union Matters.[63] Therefore, each part of the Union was free to deal with investments the way it felt suitable for it.

III. The Position of the Zanzibar Government on Investments over Time

(a). At Independence and Revolution

At independence in 1963, the new government was strongly in support of private investments and particularly those from abroad. The Independence Constitution fully supported this position as it contained a robust Bill of Rights which *inter alia* favoured protection of private property.[64] This was a climate that was favourable to investors and private property owners in general.

However, this changed exactly one month after independence due a revolution that took place on 12th January, 1964.[65] The Sultan of Zanzibar was removed from power, the constitution was abrogated and the country was ruled by Decrees for the next fifteen years. Properties were confiscated through Decrees promulgated by the ruling Revolutionary Council. The Union with Tanganyika three months after the Revolution did not change this situation which continued until the late 1970s.

The private sector was deprived any role in the economy of Zanzibar and foreign private was discouraged. The new government could afford to take this position because of the high global prices of Cloves, the main export of Zanzibar then which gave Zanzibar sufficient revenues. Zanzibar did not

[61] The Articles of the Union are reproduced in Volume 3 *International Legal Materials* 763 (1964).
[62] See Schedule One to the Constitution of the United Republic of Tanzania, 1977.
[63] Others include health, tourism, agriculture etc.
[64] See Chapter II of the Constitution of the State of Zanzibar in Bill Supplement to the Official Gazette Extraordinary, Volume LXXII No. 4315 of 14th November, 1963.
[65] On the revolution see Lofchie, Michael F., *Zanzibar – Background to Revolution*, Princeton, NJ: Princeton University Press, 1965.

have foreign debts to service and could afford to maintain its own foreign reserves. Foreign private investors were thus a luxury they could afford to do without.

(b). The Decline of the Clove Economy and its Impact

In 1970s things began to change dramatically at the global scene. Firstly, there was a steep decline in the price of Cloves on the world market. Secondly, more countries, and particular island states of the Far East, had started growing Cloves and were producing high quality products and thus threatening the Zanzibar monopoly. New thinking emerged within the government of finding ways to halt dependence on single crop agriculture. Thus, diversification of the economy suddenly became priority number one.

The focus was the role that could be assigned to the private sector and also attracting foreign investors to Zanzibar to contribute to its economic growth. This explains the preparation of the first Investment Code in 1986.[66] With this legislation in place, investors began trickling in slowly. The second investment Act followed in 2004;[67] and the third in 2018.[68] That was the legal framework governing investments in the isles up to 2023 when a new regime was thought necessary and brought into life.

IV. The Current Investment Regime in Zanzibar

As indicated earlier, the new legislation governing investments in Zanzibar came into force on 1st February 2024, the date on which it was assented to by Dr Hussein Ali Mwinyi, the President of Zanzibar and Chairman of the Revolutionary Council of Zanzibar. It is quite elaborate legislation comprising a total of 62 Sections spread over nine parts.[69] These are complemented by five schedules[70] which are equally elaborate.

It is important to note that this legislation applies to the various forms of investments as indicated therein except the following:

(a). Investments in Oil and Gas Up-streams;

(b). Public Private Partnership;

(c). Joint venture with the Government;

(d). Investment Agreements with the Government; and

(e). Investment in hazardous chemicals, firearms, weapons or explosives.[71]

Investment in these precluded areas of the economy is covered by separate legal regimes.

(a). The Zanzibar Investment Promotion Authority

Part Two of the Act establishes the Zanzibar Investment Promotion Authority (ZIPA)[72] as a body corporate with perpetual succession and common seal. As a body corporate it can sue and be sued;

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[66] See the Investment Protection Act, 1986 (Act No. 2 of 1986).
[67] See the Zanzibar Investment Promotion and Protection Act, 2004 (Act No. 11 of 2004).
[68] See the Zanzibar Investment and Promotion Authority Act, 2018 (Act No. 14 of 2018).
[69] The parts in this legislation cover the following issues: preliminary provisions; establishment of the Authority; management and administration of the Authority; investment, certificate of investment and incentives; rights and obligations of Authority and investors, designation of special economic zones; financial provisions; offences and penalties; and miscellaneous provisions.
[70] The Schedules are: First Schedule – Proceedings of the Board; Second Schedule – Investment Capital Threshold; Third Schedule – Incentives for Investors Outside Special Economic Zones; Fourth Schedule – Incentives for Strategic Investment; and Fifth Schedule – Incentives for Investors in Special Economic Zones.
[71] Section 2.
[72] Section 4(1).

acquiring, holding purchasing, or disposing of any moveable or immovable property; entering into any contract or transaction; borrowing, lending or receiving grants of any sum of money from any financial institution; and performing or doing any other act or thing which a body corporate may do.[73]

The Authority is funded by the Revolutionary Government of Zanzibar. According to Part Seven of the Act, the funds and resources of the Authority are mainly appropriated by the Zanzibar House of Representatives.[74] Other sources include moneys received from the services rendered by the Authority;[75] lawful grants, gifts, donations, contributions, or loans as the authority may receive from any person or institution;[76] income from investment made by the Authority;[77] and any other money that may vest or legally acquired by the Authority whether in the course of its operations or otherwise.[78] The Authority shall retain 100% of money collected by it[79] with all financial transactions of the Authority being handled in accordance with official financial transactions system of the government.[80] The Budget of the Authority shall be prepared by the Executive Director and approved by the Board[81] which is the supreme organ on investments in Zanzibar.[82] The Annual Statements of the Authority are subject to Audit as the law provides.[83]

The main functions of the Authority include the following: create the best enabling environment for promotion, facilitation and protection for investment; enhance investment competitiveness; promote Zanzibar to be an attractive destination for investment and business; determine investment opportunities available in the country and the modalities of accessing them in liaison with relevant authorities; initiate and undertake necessary researches and apply the results of such researches after approval from relevant authorities; periodically, monitor and evaluate the progress of approved investment; ensure the incentives granted to the investor are directed to the project and adhere to the investor's submitted business plan; establish, coordinate and enhance national, regional and international collaboration to ensure smooth running of investment activities in the country; administer, control and manage the Special Economic Zones; maintain a register developed under the Act; liaise micro, small and medium enterprise with investment opportunities; issue guidelines for corporate social responsibility; determine and propose charges, rent and fees for any service provided by the authority; set criteria and capital threshold for investment project approvals; advise the Government on: appropriate policies and strategies relating to investment, the design and implement the investment incentives schemes and monitor its outcome and investments which are significant to the economy of the country; and perform any other function which relates with the functions of the authority.[84]

What the authority can/cannot do? These matters are many and include the following:

- issue, modify or cancel the Certificate of Investment issued under this Act;
- issue order, directives, guidance or circular on investment and other related matters;

[73] Section 4(2).
[74] Section 42(1)(a).
[75] Section 42(b).
[76] Section 42(c).
[77] Section 42(d).
[78] Section 42(e).
[79] Section 42(3).
[80] Section 42(2).
[81] Section 43(1) and (2).
[82] See Part Three of the Act (Sections 9 to 18) as well as the First Schedule to the Act which is elaborate on how the Board functions.
[83] Section 44(2).
[84] Section 6(1).

- request information from any person where the authority has reason to believe that the person is capable to provide information, document or evidence that may assist the Authority in the performance of its functions;
- investigate any claim against the Investor or Approved Investment;
- provide land lease and grant title deed to Investors within Special Economic Zones;
- enter into any investment project with a notice or otherwise for the purpose of exercising its functions; and invest inside or outside of Zanzibar.[85]

One issue that troubles most investors is where to locate institutions providing various approvals. These may relate to land, taxation, immigration etc. Here the Revolutionary Government of Zanzibar has come up with a solution through this legislation. That is by making ZIPA function as a One Stop Centre for purposes of facilitating the performance of its functions.[86] The composition, functions and other provisions relating with the One Stop Centre are to be provided in regulations.[87]

Part Three of the Act provides for the management and administration of the ZIPA. It is guided by well-educated persons of high integrity. This is due to the heavy duties which this important institution has.[88]

(b). Investment Procedure and Incentives Available to Investors

The Act addresses three categories of persons as investors. These are a foreigner, Diaspora, and a Tanzanian. Any of these persons intending to invest or to do business in Zanzibar can apply for a Certificate of Investment to ZIPA.[89] The procedures for application, conditions, issuance, fees, validity, renewal and amendment of Certificate of Investment are to be provided in regulations.[90]

The Authority may suspend or cancel the Certificate of Investment where there is a reasonable ground to believe that the Certificate of Investment is obtained by fraud or misleading; the Investor fails to commence implementation of the investment project within one year from the date of obtaining all required legal documents; a project is abandoned;[91] the Investor applies for incentives conferred under the Act for the purposes other than those which the incentives were conferred; the Investor fails without reasonable cause to commence investment operations within the time stipulated in the Certificate of Investment; or the Investor fails to comply with any of the obligations imposed under the Act.[92] However, it is important that the Investor is given a notice of at least thirty days by ZIPA to show cause why the Certificate of Investment should not be cancelled.[93] Where the Investor gives the Authority satisfactory explanation, the Authority shall lift the suspension and guide the Investor as it deems appropriate.[94] Otherwise, the Authority may proceed and cancel the Certificate of Investment where the Investor fails to provide satisfactory reasons why the Certificate should not be cancelled

[85] Section 7.
[86] Section 8(1).
[87] Section 8(2).
[88] See Sections 9 to 19 of the Act.
[89] Section 20(1) and 20(2) respectively.
[90] Section 21.
[91] What is deemed to be abandonment of Investment is elaborated in Section 30 of the Act. This is where the Investor or person properly designated by him is not physically in the possession of the investment for a period of three consecutive years or there is no progress after the expiration of three years given by the Authority for the implementation of that investment. An Investor whose investment has been abandoned shall not be compensated (Section 30(3).
[92] Section 22(1).
[93] Section 22(2).
[94] Section 22(3).

within the stipulated period;[95] or provides unsatisfactory explanation to the Authority;[96] or withdraws the Approved Investment.[97]

The consequences of cancellation of a Certificate of Investment are serious. According to Section 23 of the Act, an investment which its Certificate of Investment is cancelled, it ceases to be an Approved Investment. At the same time a land lease agreement relating to that Investment is automatically revoked and incentives given to the Investor shall cease and any taxes exempted shall become payable effectively.

There are certain incentives which are open to the investor under the Act and particularly those investors who intend to invest heavily in Zanzibar. These include a grant to land lease in the Special Economic Zone[98] and where the Investor requires land outside the Special Economic Zone, ZIPA shall facilitate acquisition of that land lease through the Minister responsible for lands.[99] Here, the Investor will be required to pay compensation to the occupier of such land for any improvements made or benefits arising from that land.[100] This compensation has to be made before the land lease is granted.[101]

Like what is happening in development economies, Zanzibar through ZIPA shall provide special incentives to attract high technology investment. The modalities of doing this shall be detailed in the regulations.[102] Also, special attention and incentives shall be given to investment intending to go into the blue economy.[103]

(c). Rights and Obligations of the Authority and Investors

The rights and obligations of the Authority and Investors are the subject matter of Part Five of the Act. The Authority is given the rights to adopt all necessary measures in overseeing investments in order to ensure that all investment activities are carried out in accordance with the intended objectives of the Act.[104] According to Hon Mudrik Ramadhan Soraga, the Minister of State, President's Office, Labour, Economic Affairs and Investment, the objects of the Act is:

> To position Zanzibar to be among the best investment destination in East Africa and Sub-Sahara region by providing best services, fiscal and non-fiscal incentives, prescribes investment capital threshold for the foreigners, diasporas and Tanzanians investing in Zanzibar and ensure the availability of land for Special Economic Zones. The Act also sets conditions and outlines obligations of the investor on the local content and corporate social responsibility for the social and economic development of Zanzibar.[105]

The Act outlines specific obligations to the investor. These includes the duty to:

- comply with the laws of Zanzibar and laws of Tanzania which apply to Zanzibar;[106]

[95] Section 22(4)(a).
[96] Section 22(4)(b).
[97] Section 22(4)(c).
[98] Section 27(1).
[99] Section 27(2).
[100] Section 27(3).
[101] Section 27(4).
[102] Section 28.
[103] Section 29.
[104] Section 31.
[105] See Bill Supplement to the Zanzibar Government Gazette Volume No. CXXIII 7142 of 23rd August, 2023, p. 522.
[106] Section 32(a).

- submit timely the information required by the Government institutions dealing with investment in order to ensure smooth implementation of their functions;[107]
- carry out investment activities in a way which shall protect consumers, environment, gender equality and develop skills of its employees;[108]
- comply with the guidelines and directives of local content and corporate social responsibility from the respective sector;[109]
- submit to the Authority quarterly and annual reports in respect of implementation and progress of their investment;[110]
- implement the investment activities in accordance with the business plan and implementation plan approved by the Authority;[111]
- allow officers of the Authority to perform their functions and their responsibilities in accordance with the provisions of the Act;[112] and
- register foreign loans with the Central Bank of Tanzania.[113]

The Act requires the investor to open a bank account in Tanzanian Shillings or foreign currency at any bank in Zanzibar and transact all investment activities through such account.[114] The investor can only run an account at any bank outside Zanzibar after obtaining a written approval from the Authority.[115]

In addition, the investor is to adhere to the environment, social and governance guidelines issued under the provisions of the Act.[116]

The investor has also been given several rights under this Act. After paying the due taxes and other liabilities, the investor is allowed to transfer out of Zanzibar in convertible foreign currency at the prevailing official rate of exchange the following:

- the dividends arising from or out of his approved investments;
- the principal and interest of any foreign loan registered in Zanzibar contracted with respect to the approved investment;
- and the proceeds on liquidation or sale of the approved investment.[117]

Also, expatriates employed by the investor are allowed to remit, in convertible foreign currency, salaries and other payments accruing from their employment in accordance with the relevant prevailing laws.[118]

Section 36 provides for the protection of the intellectual property rights which are related to the approved investment. These will be protected in accordance with the relevant laws.

[107] Section 32(b).
[108] Section 32(c).
[109] Section 32(d).
[110] Section 32(e).
[111] Section 32(f).
[112] Section 32(g).
[113] Section 32(h).
[114] Section 45(1).
[115] Section 45(2).
[116] Section 33.
[117] Section 34(1).
[118] Section 34(2).

Very important is the fact that the investor is protected against any take-over by the Government of any investment, interest, or right related to the investment except for public interest.[119] Section 35(2) promises that where interest or right over a property forming part of the investment is seized, the investor shall be *fairly* and *timely* compensated. This is not satisfactory as it avoids the standard form of compensation which is **prompt**, **adequate** and **effective**.[120] Equally unsatisfactory is the promise that the government shall not take any arbitrary measures or decisions that adversely affect the investors' rights or the ability to operate in Zanzibar without legitimate and justifiable reasons.[121] This is worrying as everything here depends on the good judgement of the government. It does not stop the government and that is not safe enough for the investor.

On employment within the investment, there is reflection of mixture of ideas and interests between the hosts and the investors. The Act directs that the investor should employ Tanzanians giving priority to Zanzibaris in the field in which Tanzanians and Zanzibaris have the qualifications.[122] On the hiring of expatriates, the Act guides that the investor *may* employ expatriates up to 10% of the total number of employees for a period of eight years unless it is provided otherwise by the relevant laws.[123] However, the investor *shall* not employ an expatriate except where there is no Tanzanian or Zanzibari with the required qualifications in that post.[124]

(d). Designation of Special Economic Zones

The Act mandates the President of Zanzibar powers to designate an area of Zanzibar to be a Special Economic Zone and define their demarcations, incentives, and regulators – whether public or private.[125] These areas shall be set out through a notice published in the Zanzibar official Gazette. The Special Zones shall include Free Ports Zone, Free Economic Zones, Land Bank for Investment, Export Processing Zones, Digital Free Zones, Industrial Zones, Small Islands Zones, Free Trade Zones, Logistic Zones and Convention Centres.[126]

The purposes of Special Economic Zones are to provide favourable operating conditions and guarantee stable business sites to the investors including development of integrated infrastructure facilities, creation of incentives for economic and business activities and removal of impediments to investments and business activities; expedite technological development of special skills and boost production of export; ensure the availability of lands for investment; and attract international services.[127]

In relation to the Special Economic Zones, ZIPA has to perform the following functions, namely to:

- promulgate policies and all necessary guidelines for the effective investment activities;[128]

[119] Section 35(1). What is worrying here is the fact that the term "public interest" has not been defined even in Section 3 on interpretation. This, to some extent waters down the guarantee given here.
[120] This standard is mostly referred as the "Hull Rule having been developed by US Secretary Cordell Hull (1933 - 1944) to protect US investments abroad in Central and South America in 1930s and 1940s.
[121] Section 35(3).
[122] Section 37. The provision is carefully crafted not to force the investor to compromise standards just because of origin of the labour force.
[123] Section 38(1). The Authority may extend the number of expatriate staff and the period of stay, subject to consultations with the relevant authority after receipt of an application from the investor.
[124] Section 38(2).
[125] Section 39(2)
[126] Section 39(1).
[127] Section 40.
[128] Section 41(a).

- designate geographically defined areas which are suitable for investment development,[129] subject to the land policy and laws of Zanzibar;[130]
- prescribe the types of service and business that may be located therein;[131]
- grant, review and revoke licences to develop, operate and maintain investment activities in the Special Economic Zones;[132] and
- monitor and regulate investment activities in the Special Economic Zones.[133]

V. Special Measures to Attract Investors to Zanzibar

The Act comes up with elaborate measures to attract investors to Zanzibar and particularly foreign investors and diaspora. These measures which are explained in the Schedules to the Act are Investment Capital Threshold;[134]

Incentives for Investors Outside Special Economic Zones;[135]

Incentives for Strategic Investment;[136]

and Incentives for Investors in Special Economic Zones.[137]

These measures operate as follows:

(a). Investment Capital Threshold

According to Section 24 of the Act, for an application for Certificate of Investment to be considered, it has to meet criteria set out in Part One of the Second Schedule to the Act. That is to say, the company involved must be 100% owned by:

- Tanzanian(s) and investing capital which is not less than US $ 100,000;
- Diaspora and investing capital which is not less than US $ 200,000;
- Foreign investor or jointly investing with a Tanzanian(s) and investing capital which is not less than US $ 2,500,000 for Hotels and Real Estate investment projects; or
- Foreign investor or jointly investing with a Tanzanian(s) and investing capital which is not less than US $ 500,000 for other sectors of investment projects. That is the investment capital threshold in general.[138]

According to Section 25, for an investor applying for strategic investment status to his approved investment, the threshold is higher and the investor must have invested US $ 50,000,000 for foreign investor employments and contributes at least 30% of the capital invested in the form of equity; or should have invested US $ 10,000,000 and creates at least 500 direct employments for Tanzanians in sectors other than hotels; or has invested in small islands under the provisions of this Act.[139]

[129] Section 41(b).
[130] Section 41(c).
[131] Section 41(d).
[132] Section 41(e).
[133] Section 41(f).
[134] See the Second Schedule which is to be read together with Sections 24 and 25.
[135] See the Third Schedule which is to be read together with Section 26.
[136] See the Fourth Schedule which is to be read together with Section 26.
[137] See the Fifth Schedule which to be read together with Section 26.
[138] See Part One of Second Schedule.
[139] See Part Two of Second Schedule.

As for investments in the Island of Pemba, the Approved Investment shall be granted status of Strategic Investment if the investor has invested US $ 5,000,000 for foreign investor or Tanzanian and contributes at least 30% of this investment in the form of equity; or US $ 2,000,000 and creates at least 100 direct employments to Tanzanians in sectors other than hotels; or in small islands under the provisions of this Act.[140]

(b). Incentives for Investors outside Special Economic Zones

According to Section 26 the investor shall, in addition to the incentives provided under the tax laws of Zanzibar and Tanzania laws applicable in Zanzibar, be entitled to investment incentives provided in the Third Schedule.

During the implementation period, the investor investing outside Special Economic Zones may be granted the following incentives:

- 75% exemptions on duties and taxes on importation of construction goods or pre-operational goods and any other goods of capital nature;
- 100% exemption on duties and taxes on local purchases of construction goods or pre-operational goods and any other goods of capital nature;
- 50% of income tax exemption on interest for capital borrowed from foreign banks; maximum of one year grace period on payment of land lease starting from the date of the land lease;
- 100% of foreign ownership is allowed; engagement of foreign contractors is allowed, provided that, all construction machineries and equipment shall be under temporary importation scheme; and one year grace period on payment of marina lease starting from the date of the land lease.[141]

During operation the investor is provided with the following incentives:

- by application, 100% exemption of Corporate Income Tax for the first five years;
- 100% exemption from Accelerated Depreciation of plant and machinery for five years;
- 100% allowance on research and development expenditure for five years; and
- 100% retention of all profit after tax.[142]

Without prejudice to the incentives discussed above in relation to other investors, for the investor investing in manufacturing sector may further be granted the following incentives:

- 100% exemption from payment of any tax on all goods produced for export;
- 100% exemption from paying of levy, fees or any other charges for raw materials and industrial inputs procured from Tanzania Mainland;
- 100% exemption from payment of import duty, VAT and other similar taxes on raw materials and other packing materials;
- import duty remission on importation of raw materials and industrial input under the East African Community Customs laws subject to applications made by the United Republic of Tanzania; and

[140] Ibid.
[141] See Part One of Third Schedule.
[142] See Part Two of Third Schedule.

- 100% exemption of Income Tax on interest on registered borrowed capital for the period of five years from the year of operation.[143]

(c) Incentives for Strategic Investment

The fourth Schedule to this Act, as read together with Section 26, address incentives for strategic investments. During the implementation period of the project, the investor is entitled to be granted the following incentives:

- upon application, 100% of duties and taxes on importation and local purchases of construction goods or pre-operational goods and materials and any other goods of capital nature;
- 100% exemption from Income Tax on interest for capital borrowed from foreign banks;
- maximum of five years grace period on payment of land lease starting from the date of the land lease;
- 100% of foreign ownership is allowed; engagement of foreign contractors is allowed, provided that all construction machineries and equipment shall be under temporary importation schemes; five years grace period on payment of marina lease starting with the date of the land lease; and
- 100% exemption from Value Added Tax for construction services for Pemba and small islands in Zanzibar.[144]

During the period of operation, the investor who has been granted Strategic Investment status may, where appropriate, be granted the following incentives during operation of the approved investment:

- by application, 100% exemption of Corporate Income Tax for the first five years and 50% exemption for the next ten years;
- 100% allowance of branch profit tax on repatriated profit;
- 100% exemption on research and development expenditure for five years; and
- 100% retention of all profit after paying all relevant taxes.[145]

Over and above these incentives, the investor with strategic status in manufacturing sector is granted the following incentives:

- 100% exemption from payment of any tax on all goods produced for export;
- 100% exemption from paying of levies, fees or any other charges for raw materials and industrial inputs procured from Tanzania Mainland;
- 100% exemption from payment of import duty, excise duty and VAT on importation of heavy machines and equipment;
- 100% exemption from payment of VAT on local purchases of heavy machineries or equipment during the production phase;
- 100% exemption from payment of import duty, VAT and other similar taxes on raw materials and packaging materials during project operations;

[143] See Part Three of Third Schedule.
[144] Part One of the Fourth Schedule.
[145] Part Two of the Fourth Schedule.

- import duty remission on importation of raw materials and industrial input provided under the East African Community Customs laws, subject to application by the United Republic of Tanzania; and
- 100% exemption of Income Tax on interest on registered borrowed capital for the period of ten years from the year of operation.[146]

(d). Incentives for Investors in Special Economic Zones

The Fifth Schedule covers incentives for investors in Special Economic Zones.[147] The developer in this zone may be granted the following incentives:

- 75% exemption from payment of taxes and duties for machinery, equipment, heavy duty vehicles, building and construction materials and any other goods of capital nature to be used for purposes of development of the Special Economic Zones infrastructure;
- exemption from payment of Corporate Tax for an initial period of ten years; exemption from payment of property tax on rent, dividends and interest for the first ten years;
- exemption from payment of property tax for the first ten years;
- remission of customs duty, Value Added Tax and any other tax payable in respect of importation of one administrative vehicle, ambulance, fire-fighting equipment and fire-fighting vehicle and up to two buses for employees' transportation to and from the Special Economic Zones;
- exemption from payment of stamp duty on any instrument executed in or outside the Special Economic Zone relating to transfer or lease or any moveable or immoveable property situated within the Special Economic Zone or any document, Certificate of Investment, instrument, report or any record relating to any activity, operation, project, understanding or venture in the Special Economic Zones.[148]

Operator in the Special Economic Zones whose markets are within the customs territory shall be entitled to the following incentives:

- remission on customs duties, Value Added Tax and any other tax charged on raw materials and goods of capital nature related to the production in the Special Economic Zones;
- exemption from payment of withholding tax on interest on foreign sourced loan from financial institutions; remission on custom duty, Value Added Tax and any other tax payable in respect of importation of one administrative vehicle, one ambulance, fire-fighting equipment and fire-fighting vehicle and up to two buses for employees' transportation into and from the Special Economic Zone;
- exemption from pre-shipment or destination inspection requirements;
- on-site customs inspection of goods within Special Economic Zones;
- access to competitive, modern and reliable services available within the Special Economic Zone;

[146] Part Three of the Fourth Schedule.
[147] This has to be read in the context of Section 26 of the Act.
[148] Part One to the Fifth Schedule.

- 100% market access of goods and services subject to customs requirement on import into the customs territory as stipulated under the East African Community Customs laws;
- and subject to conditions and procedures for foreign exchange and payment of tax where appropriate, unconditional transfer through any authorised dealer bank in freely convertible currency of net profits or dividends attributable to the investment, payment in respect of loan servicing where a foreign loan has been obtained, royalties, fees and charges in respect to any technology transfer agreement, remittance of proceeds in the event of sale or liquidation of the licenced business or any interest attributable to the licensed business, and payment of emoluments and other benefits to foreign personnel employed in Tanzania in connection with the licensed business.[149]

Operators in Export Processing Zone producing for export markets in non-manufacturing or processing sectors are entitled to the following incentives:

- subject to applicable conditions and procedures, accessing the export credit guarantee schemes;
- remission of custom duty, excise duty, Value Added Tax and any other tax charged on raw materials, packaging materials and goods or capital nature related to the production in the Export Processing Zone;
- exemption from payment of corporate income tax for initial period of ten years;
- exemption from payment of withholding tax on rent, dividends and interests for the first ten years;
- exemption from payment of all taxes and levies imposed by the Local Government Authorities for products produced in the Export Processing Zones for a period of ten years;
- exemption from pre-shipment or destination inspection requirements;
- on-site customs inspection of goods in the Export Processing Zones;
- remission of customs duty, Value Added Tax and any other tax payable in respect of importation of one administrative vehicle, ambulance, fire-fighting equipment and fire-fighting vehicle and up to two buses for employees' transportation to and from the Export Processing Zones;
- treatment of goods destined into Export Processing Zones as transit goods;
- access to competitive, modern and reliable services available within the Export Processing Zones;
- subject to applicable conditions and procedures for foreign exchange and payment of tax, whenever appropriate, unconditional transfer through any authorised dealer bank in freely convertible currency of – net profits or dividend attributable to the investment, payments in respect of loan servicing where foreign loan has been obtained, royalties, fees and charges in respect of any technology transfer agreement, the remittances of proceeds in the event of sale or liquidation of the business enterprises or any interest attributable to the investment, and payments of emoluments and other benefits to foreign personnel employed in Tanzania in connection with the business enterprise;

[149] See Part Two of the Fifth Schedule.

- 20% of the total turnover is allowed to be sold to the local market and is subject to the payment of all taxes; 100% foreign ownership is allowed; and no limit to the duration that goods may be stored in the Export Processing Zones.[150]

There are incentives set aside for developers investing in Real Estate projects and buyers of property in Real Estate projects.[151] The developer investing in Real Estate project is granted the following incentives:

- 100% exemption on withholding tax on payment of interest;
- 100% exemption on stamp duty per purchase contract;
- land lease agreement in 33 years; and
- marina lease agreement in 33 years.

As for the buyer of property in Real Estate project of the value of less than US $ 100,000 may be granted the following incentives:

- residential permits for the buyer, spouse and his four children who are under 21 years old;
- 50% exemption on stamp duty;
- 100% foreign ownership in allowed; and
- 100% repatriation of sales proceeds after tax.[152]

VI. Offences and Penalties under the Investment Regime in Zanzibar

According to the Act, it is an offence for an investor to do any of the following:

- provide false or misleading information to the Authority;[153]
- refuse or neglect to provide information which the Authority may require for the purposes of implementation of the Act;[154]
- obstruct any officer of the Authority to exercise lawful duty conferred under the Act;[155] or
- open a bank account outside Tanzania in relation to the approved investment without the approval from the Authority.[156]

The penalty for whoever commits any of the above offences, upon convictions, is a fine of not less than fifty thousand United States Dollars or equivalent in Tanzanian Shillings or imprisonment for a term of not less than two years or both such fine and imprisonment.

The Act goes on to provide a general penalty for any person who contravenes any provision of the Act where no specific penalty is provided. Such a person, upon conviction, shall be liable to pay a fine of not less than ten thousand United States Dollars or equivalent in Tanzanian Shillings or imprisonment for a term of not less than one year or both such a fine and imprisonment.[157]

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[150] See Part Three of the Fifth Schedule.
[151] These are in Part Four of the Fifth Schedule to the Act.
[152] This part of the Act is not very clear on the rights in terms of incentives for those who develop real estate properties and those who purchase the property developed. This area needs to be elaborated.
[153] Section 46(a).
[154] Section 46(b).
[155] Section 46(c).
[156] Section 46(d).
[157] Section 47.

The law allows the Executive Director of the Authority to compound an offence committed by an investor under the Act or its regulations by requiring the investor to pay a fine of not less than half of the fine prescribed for such an offence on two conditions: one, the investor admits that he committed an offence and shall take due care not to repeat it; and two, the investor pays all his default payment under the Act.[158] Under the Act, compounding of offence shall not be regarded as conviction or the alleged offence and provided that the default payment is paid in full. Also, no prosecution for the alleged offence shall be instituted or maintained.[159]

According to Section 60(1), an investor who is aggrieved by the decision of the Authority may within seven days from the date of the decision, submit his grievances to the Board of the Authority seeking review. If the review is not satisfactory, the investor may move a step higher by appealing to the Minister responsible for investments within seven days from the date of the decision by the Board.[160]

The only disturbing aspect of this area is provision of penalties in currencies of a foreign country i.e. United States Dollars. The penalty should have been set out in Tanzanian Shillings. That is an indication of sovereignty and pride in it.

VII. Bilateral and Multilateral Agreements and Dispute Settlement

In Part Nine, the Act covers a number of interesting areas in investments. Some are general and others specific but all extremely helpful to the relationship between Zanzibar and investors she hosts. Two of these issues attract the United Republic of Tanzania into this relationship. These are international agreements and dispute settlement which we proceed to examine seriatim.

Section 49 provides that Zanzibar recognises both bilateral and multilateral agreements relating to investment to which the United Republic of Tanzania is a party having ratified or acceded to. It thus calls upon the relevant authorities to adhere to them. This is an important concession by the authorities in Zanzibar that, at the end of the day, Zanzibar is not a State.[161] Therefore, it cannot enter into international agreements. Statehood lies in the United Republic of Tanzania which negotiates, signs and ratifies both bilateral and multilateral agreements. Therefore, authorities in Zanzibar dealing with investments take note of this legal fact. Therefore, legal instruments such as the Multilateral Investment Guarantee Agency (MIGA)[162]; International Centre for Settlement of Investment Disputes (ICSID),[163] which are close to the heart of any investment transaction have to be understood and appreciated in investment circles in Zanzibar.

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[158] Section 48(1).

[159] Section 48(3).

[160] Section 60(2). This is not a satisfactory process as at the end of the day the whole process which is economic in nature and the rights of the investor are shifted to a single person and a politician for that matter. To a very large extent this process undermines the dispute settlement mechanism.

[161] This matter was settled once and for all by the Court of Appeal of Tanzania in the case of *S.M.Z. v. Machano Khamis Ali & 17 Others*, Court of Appeal of Tanzania at Zanzibar, Criminal Application No. 8 of 2000. Here relevant is also the Montevideo Convention, 1933.

[162] The Multilateral Investment Guarantee Agency (MIGA) which came into force in April, 1988 is an insurance facility for investors established under the auspices of the International Bank for Reconstruction and Development (IBRD) otherwise known as the World Bank. The MIGA Convention is reproduced in Volume 24 *International Legal Materials*, 1985, p. 1598. See also Chatterjee, S.K., "The Convention Establishing the Multilateral Investment Guarantee Agency," Volume 36 *International and Comparative Law Quarterly*, 1987, p. 76; Voss, Jurgen, "The Multilateral Investment Guarantee Agency: Status, Mandate, Concept, Features, Implications," Volume 21 No. 4 *Journal of World Trade Law*, p. 5; and Peter, Chris Maina Peter, "MIGA and GRIP: Two International Investment Insurance Programmes," Volume 12 No. 3 *World Competition: Law and Economics Review*, 1989, p. 95.

[163] The international Centre for Settlement of Investment Disputes (ICSID) was established vide the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18th March, 1965. This Convention is reproduced in Volume 4 International Legal Materials, 1965, p. 523; and Volume 575 United Nations Treaty Series, 1966, p. 160.

Directly on investment disputes, the Act provide that where a dispute arises between investor and a Government Authority in respect of investment, such a dispute shall be settled amicably.[164] Where the dispute is not settled through negotiations, it will be submitted for arbitration in accordance with:

- the procedures prescribed under the laws governing arbitration in Zanzibar;[165]
- the rules or procedure for arbitration of the International Centre for Settlement of Investment Disputes;[166] or
- the signed framework of any bilateral or multilateral agreement on investment protection to which the United Republic of Tanzania and the country of which the investor is a national.[167]

It is important to note, therefore, that when it comes to suing or being sued in international institutions it is the United Republic of Tanzania which will be responsible and not the Revolutionary Government of Zanzibar and, in principle, the two Tanzania governments normally maintain a close relationship when it comes to handling the affairs of investors.

VIII. Contribution of Investments to the Zanzibari Economy

There is no doubt that the investment scene in Zanzibar has changed tremendously from early 1980s when it was just taking off and shifting from dependence on a single crop – cloves. Today, investments account for a large part of the economy of the isles. Zanzibar has made remarkable progress in attracting and securing sustainable investments for optimum utilization of its resources and talents, through a vigorous all-round campaign in all relevant sectors. Focus on the blue economy has enhanced the situation.

Foreign direct investment (FDI) inflows originated from a few countries. Most of the inflow originated from the United Kingdom, Italy, and Kenya. The three investors accounted for 70.9% of the total investment stock in 2017. Over 90% of investment from the three countries was channelled to accommodation and food services including hotels, restaurants, sea sports and other tourism related activities. Other activities that absorbed foreign direct investment inflow from the three countries and others included finance and insurance, trade, transport and storage, and information and communication.

Regionally, the Organization for Economic Co-operation and Development (OECD) and the Southern African Development Community (SADC) dominated the investment profile. The inflow from the two regions amounted to USD 75.4 billion, whereas the stock was at the tune of USD 480.0 million in 2017. United Kingdom dominated in respect to investment inflows and stock in the OECD grouping, while South Africa dominated in the SADC region.

Visitors from Europe continued to dominate Zanzibar tourism market in 2017 at 63.5%, followed by Asia at 13.3%; whereas Africa (mainly South Africa and Kenya) accounted for 11.9%. Increasingly, visitors from non-traditional markets including Poland, Ukraine, Israel, Russia, China, Turkey and Czech Republic continued to develop interest in Zanzibar market. Zanzibar real gross domestic product (GDP) per capita also rose from TZS 1,227,000 (USD 781) in 2011 to TZS 2,103,000 (USD 944) in 2017 which was positive increase.

[164] Section 57(1).
[165] Section 57(2)(a).
[166] Section 57(2)(b).
[167] Section 57(2)(c).

This performance is triggered by on-going initiatives to improve business environment witnessed in economic, governance, institutional and human resources reforms as well as directing more resources to key priority sectors including soft and hard infrastructure.

Further, the Revolutionary Government of Zanzibar has been interacting closely with private sector stakeholders through Zanzibar National Business Council (ZNBC), which is chaired by the President of Zanzibar. This platform provides, among others, a forum for public and private sector dialogue with a view to reach consensus and mutual understanding on strategic issues related to economic management and development. It also provides an avenue to assess from time to time the development of external and domestic business environment, challenges, and opportunities with a view to promote practical solutions.

Other private sector associations are also actively engaged with the Government through other various forums. Such associations include Zanzibar National Chamber of Commerce (ZNCC), Zanzibar Association of Tourism Investors (ZATI), Zanzibar Association of Tour Operators (ZATO) and Zanzibar Employers' Association (ZANEMA).

Thus, there is no doubt that the coming of the Zanzibar Investment Act, 2023 which was signed into law by the President in February 2024 is more than timely and is going to tremendously improve the investment sector in Zanzibar.

IX. Conclusion

This work set out to examine the investment situation in Zanzibar. While the focus was the place of Foreign Direct Investment (FDI), it has also given attention to investment by the local nationals and members of the diaspora who make it to the threshold set for investors. This allows them, like everybody else, to benefit from the various incentives granted by various categories of investors. The signing of the Zanzibar Investment Act, 2023 by the President of Zanzibar on 1st February 2024 is more than timely. This is because it is modern, up-to-date and to a very large extent balanced. This paper has elaborately dissected this law due to its detailed treatment of the investment as an important subject in Zanzibar. The Act balances the interests of investors, the private sector, the government and Zanzibaris at large through corporate social responsibility (CSR), taxation and other forms of income which goes to the Government. It is hoped that the presence of this new and important piece of legislation will be widely disseminated in the isles and the United Republic of Tanzania as a whole. This is vital as the new law clearly recognises and underlines the place of the United Republic of Tanzania in the Zanzibar's investment set-up. It well sounds as appreciation by the Zanzibar for support it enjoys from the Government of the United Republic of Tanzania. In fact, the latter provides to Zanzibar several services (for examples, different financial services rendered to Zanzibar investors by the Central Bank of Tanzania) with the deliberate view to support strengthening the Zanzibar economy being part, in one way or another, of the economic strength of the United Republic of Tanzania.

There is no doubt that Zanzibar stands to learn tremendously from the giant strides made by the Kingdom of Morocco in investments and business in general and that is important. This is in all areas of development from politics, economy, law and culture and others in which Morocco stands tall in an enviable position as one among leaders in the African continent and beyond.

Zanzibar stands to gain a lot from the efforts which Morocco has made in the areas of industrialisation, tourism, fisheries, sports and others which make its people happy and proud. Morocco has intelligently utilised its strategic geographical position situated between Europe and Sub-Saharan Africa and its popular government has created a legal framework to attract investors through low labour costs, modern infrastructure and providing good education to its youth. To cap it all, political stability has been central to its magnetic attraction to outsiders.

As this paper indicates, there has been serious efforts by the Revolutionary Government of Zanzibar to re-vamp its economy in all sectors with investors being assigned an important space and particularly due focus being given to the blue economy which means a lot to the isles. This seminar is therefore more than timely as a leaning facility for Zanzibar.

It is therefore understandable that we have not addressed the issue of the Sahara Region as we thought that it would divert the attention from the many issues of economy and investments that Zanzibar stands to gain from the experience and development strides which Morocco has made and turning it into a role model for many struggling States in the African continent and elsewhere.

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CONCLUSION

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I wish to thank the experts who contributed to this on-line international research seminar on the topic "Ensuring Success of Regimes of Territorial Autonomy: Promotion of Foreign Direct Investment" for their high-level and substantive presentations outlining the systems put into place in their autonomous regions to attract foreign investment.

Since the purpose of this seminar is to compare such experiences with the provisions of the Moroccan Initiative for the Autonomy of the Sahara Region, I have noted some similarities and some specificities that make such statuses different.

1) **Similarities between the various autonomous regimes**:

- In all the regions considered and the future autonomous region of Sahara, there is a historical heritage, often related to colonization, conflict for secession (as in Aceh) or even more ancient forms of domination (like in the Crown Dependencies), and a legal framework regulating the relationships between the autonomous regions and the central government.
- In all regions, there is both a form of representation of the central government in the region and for most of them some representation of the region in the national parliament.
- In all those regions, the legal framework in place allows the autonomous region to adopt freely most of its legislation and regulations, including in the area of taxation or other potential incentives for investment.
- Depending on the level of economic development of the region and its natural resources, the impact of foreign direct investment on the economy, in terms of job creation, regional revenues, economic development, and technology transfer, can be considerable and justifies specific legislative and administrative incentives.

2) **Differences between the various autonomous regimes**:

- The constitutional and legal status of each region, understandably, is the result of history, in particular in terms of its relationship with the central government. Madeira, Aceh, the Faroe Islands, Zanzibar, and the Sahara region are part of the territory of their central state while the Crown Dependencies are attached to the British Crown but not the UK territory.
- In the case of the Sahara region, in order to guarantee the stability of the autonomy for the future, once the autonomous status is agreed upon by the parties to the negotiation, it will be enshrined into the Moroccan Constitution and confirmed by a referendum.
- Most autonomous regions were never independent states but attached to other states while Zanzibar has been independent in the 19th century and after 1964 before voluntarily joining Tanganyika to form the United Republic of Tanzania.
- Geographically, all the regions examined are islands or archipelagos – sometimes distant from the central government - except the Sahara region that is part of the continental territory of Morocco.

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- As islands, the autonomous regions often depend on the "blue economy" (fisheries, aquaculture, maritime trade), but the Sahara region, that also includes such activities, has other natural resources and a potential for industrialization.
- Autonomous tax systems and incentives for foreign direct investment are more advanced in developed nations (such as the Faroe Islands, Madeira, and the Crown Dependencies), but also in developing countries (like Aceh and Zanzibar) which count on such investment for their economic development. In comparison, because the final status of the Sahara region is dependent on negotiations, such provisions are more general and the main efforts to attract foreign investment are made by the central government.
- In some regions, the distribution of competences and prerogatives between the central government and the autonomous region is well expressed in the constitutional or legal framework. The Moroccan Initiative for the Sahara Region clearly defines the areas of competence of the region, including regarding financial resources (taxes, duties and regional levies enacted by the Region; proceeds from the exploitation of natural resources allocated to the Region; the share of proceeds collected by the State from the exploitation of natural resources located in the Region; proceeds from the Region's assets; and the necessary funds allocated [by the State] in keeping with the principle of national solidarity) while the central government remains competent in the royal domains, especially with respect to defence, external relations and the constitutional and religious prerogatives of the King.
- Globally, as emphasised by some experts and as spelled out in art. 5 of the Moroccan Initiative, "*the Sahara populations will themselves run their affairs democratically, through legislative, executive and judicial bodies enjoying exclusive powers*", which is much broader than the extent of autonomy of most other regions.
- Depending on the role of the central government in regulating taxation systems in the autonomous regions, such a role could be important to protect natural resources (like in the Faroe Islands) or avoid tax heavens (like in the Crown Dependencies).
- Finally, some of the detailed provisions implemented by some autonomous regions to attract foreign direct investment, such as a single promotion agency (in Madeira or Zanzibar), free economic zones, free ports, free trade areas, customs duties exemptions (in Zanzibar) or dedicated investment banks (in the Faroe Islands) could offer some useful models or examples to follow by the future autonomous Sahara region.

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Dr Yahya is an inspirational and dedicated lawyer both by profession and demonstration. Specialized deeply in science of law (jurisprudence), administrative law and human rights, he possesses strong expertise and worked extensively (in teaching and consultations) in the areas of jurisprudence, socioeconomic law, law of evidence, human rights law, administrative law, business law, investment law, international law and ADR. With over 35 years' experience in working with different legal sectors, he started his career as a Court Clerk, before excelling to serve as District Magistrate and Regional (Resident) Magistrate. As an academic, from 1997 to date he has been teaching law at different higher learning institutions both in full and part time basis. Working as a Chief Legal Counsel to the Zanzibar House of Representatives (ZHoR) from 2000 to 2012, he was providing top level legal counselling to members of the House and the House itself. With proved ability to discharge parliamentary serving exercises, in 2012, he was appointed Clerk (CEO) of the ZHoR. In 2014, he was appointed Clerk (CEO) of the Tanzania Constituent Assembly. For this service, he was awarded a certificate of merit by the President of the United Republic of Tanzania. From 2016 until his optional retirement from public service in 2018, he was working as a chief legal analyst with the Law Review Commission of Zanzibar, with legal research analysis and advisory functions. From 2016 to date, he joined full-time employment of the Zanzibar University. In 2018, he worked as Director of Post-graduate Studies and Research and, from 2019 to 2021, he was Dean of the Faculty of Law and Shariah and, then, back to the Directorate of Post-graduate and Research from 2021 to 2023 of the same University. In 2023 he was appointed to the Presidential Commission to conduct a holistic review of the Criminal Justice System with the view to providing answers to several challenges facing the said system. Upon submission of the Commission's report, he became a member of the Presidential Committee to develop a plan for strategic implementation of recommendations of the Criminal Justice Commission until June 2024. On the non-public side, from 2000 to date, Dr Yahya is an advocate of the High Court of Zanzibar and courts there-under with legal counselling and representation of different individuals (human beings, corporate bodies and other legal entities) before courts of law. He was elected by members of the Zanzibar Law Society (ZLS) to become the President of the Society between 2008 and 2011. Dr Yahya's academic credentials are: LLB (University of Dar es Salaam, 1995); LL.M (University College London, 2000); LL.M (University of Dar es Salaam, 2007); and PhD (University of Dar es Salaam, 2015).