

Colombo Port City Economic Commission Act

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The Colombo Port City Economic Commission Act was passed in Parliament on the 19th of May 2021 and is pending certification by the Speaker.

We seek to highlight herewith some salient features of this new law.

Framework of the Port City law



- The Port City is an area of 660 acres of reclaimed land located in Colombo within the Western Province of Sri Lanka and is a part of the administrative District of Colombo.
- This area of land is to be developed as a Special Economic Zone (called the Colombo Port City Special Economic Zone), to facilitate investments and doing business in Sri Lanka with emphasis on the service economy.
- Ease of doing business is facilitated through minimizing compliance obligations that are otherwise applicable under the Companies Act Companies Act, No 7 of 2007 and the Inland Revenue Act, No 10 of 2006. Further, exclusions are provided from various other laws such as the Foreign Exchange Act, No. 12 of 2017 and the Termination of Employment of Workmen (Special Provisions) Act, No 45 of 1971.
- Setting up operations within the zone is also simplified in that all licenses and approvals required for the business will be facilitated and obtained through a special body called the Colombo Port City Economic Commission which will act as a single window investor facilitator.
- The intention is for this zone to be an international business and service hub with specialized infrastructure to promote key economic activities especially;
 - international trade
 - shipping logistic operations
 - offshore banking and financial services
 - information technology and business process outsourcing
 - corporate headquarter operations
 - regional distribution operations
 - Tourism & entertainment

- Investments into the zone has the benefit of enjoying tax holidays and exemptions from a plethora of direct and indirect taxes.
- The zone is primarily intended to attract foreign direct investments and hence it is a key condition to have foreign sourced funding to engage in business within the zone. Whilst there are certain opportunities for investors with local funding the key qualifying criteria remains to be the requirement of having a foreign direct investment.
- In order to carry out business within the Port City a license must be obtained from the Commission.
- The Commission will also sign an agreement which is legally binding with every person doing business within the Port City setting out the terms, conditions, the total value of foreign direct investment committed to be made and the concessions and exemptions afforded for the project.
- Land within the Port City vests with the Commission and any lease of land for a project will have to be executed with the Commission.
- In order to afford investor protection the law specifically states that notwithstanding anything in any other written law, no license, permit or other approval granted under the Port City law, or any deed of transfer or indenture of lease executed by the Commission may be terminated or amended in any manner detrimental to the interests of the respective investor.
- An International Commercial Dispute Resolution Centre will be set for the purpose of offering mediation or any other alternate dispute resolution services within the Port City on any dispute with the Commission, an employee, a resident or an occupier of the zone.
- Priority will also be given in the Sri Lankan courts, in relation to legal proceedings instituted on civil and commercial matters in relation to any business carried on in the Port City and such cases are to be heard promptly on a day-to-day basis.



Investing within the Port City

1. What type of business can be carried out within the Port City?

Any form of lawful business including a business of providing financial or non-financial services and offshore businesses can be carried out within the Port City.

2. Who can engage in business within the Port City?

Only authorized persons are permitted to engage in business within the Port City. An authorized person can be either a natural person, a company, a partnership or a foundation.

3. What is needed to obtain approval as an 'authorized person'?

In order to be an authorized person it is mandatory to apply and obtain a license from the Commission.

In the case of a company, in addition to such a license it is also mandatory to have a certificate of registration as an offshore company under the Companies Act, No. 7 of 2007.

4. What documents are needed to obtain a license from the Commission?

An application form must be submitted to the Commission along with other documents as specified. A non-refundable processing fee will also have to be paid at the time of lodging the application.

5. Will the license be given to all those who apply?

No. Granting a license is at the discretion of the Commission.

However, one key criterion is that **all investments made to carry on business in and from the Port City must be raised outside Sri Lanka**. If this condition is not met it is presumed that a license will not be issued. As such, local investors wishing to engage in business in the Port City will be debarred unless such local investor has funds raised from outside Sri Lanka.

6. What would qualify as foreign funds raised outside Sri Lanka?

The law expressly states that the following foreign funds **cannot** be used;

- Funds in a foreign currency account maintained or operated in Sri Lanka and

- Foreign currency loans obtained from a licensed commercial bank or a licensed specialized bank within the meaning of the Banking Act

Therefore, it is presumed that any foreign funds lying with foreign banks or through loans raised outside Sri Lanka

(including that of Banks outside Sri Lanka) can be utilized.

7. Given the above restriction can't a local investor ever be a part of an investment within the Port City?

A local investor (even if with no foreign funds raised abroad) has the opportunity to be a part of a business within the Port City.

As per the Port City Law, if, a local investor has leased land from the Port City, such local investor can apply to engage in business along with another investor or a consortium of investors who has foreign funds.

It is presumed that the contribution by the local investor into the project will be limited to the value of the leased land and that the Commission will permit the local investor to sublease the land to the Project Company.

8. Can a local investor pay for the lease of land in Sri Lankan rupees?

Yes, the lease can be paid for in Sri Lankan rupees in accordance with such terms and conditions as may be determined by the Commission.

If the lessor, in turn transfers the leasehold rights to another person/company within a period of 5 years and the payment for same is received in foreign currency, the lessor is required to remit the sum so received in foreign currency to a Resident Foreign Currency Account in the manner as maybe prescribed.

9. What is required to register a company as an offshore company?

As mentioned in point number three above, in the case of a company, it is mandatory to have a registration as an offshore company. Once an application is made (along with other specified documentation) to register the Company as an offshore company, the Commission will recommend to the Registrar of Companies of Sri Lanka to register the said company as an offshore company. Therefore, by virtue of this process a company will be deemed to be an "offshore company" for purposes of the

Companies Act No 7 of 2007. As such it is assumed that an existing Sri Lankan company will have to register a new company as an offshore company in order to carry on business within the Port City (subject to meeting other conditions such as having foreign raised funding).

10. What are the consequences of registering as an offshore company?

- The company is exempt from having to comply with the provisions of the Companies Act, No 7 of 2007 as to the general administration of a Company that would otherwise apply to a normal company incorporated under the Companies Act - the intention herein appears to be to limit the compliance burden of having to comply with the provisions of the Companies Act.
- The company is deemed to be a non-resident company within the meaning of the Inland Revenue Act - the intention herein appears to be to reduce the compliance burden of having to register and file tax Returns in certain circumstances and to extend to an investor certain tax exemptions granted under the Inland Revenue Act.

11. Can local individuals purchase residential accommodation within the Port City?

There is no restriction for locals to buy residential accommodation within the Port City.

The law specifically permits an authorized person to accept Sri Lankan rupees in respect of any goods or services provided by such authorized person within the Port City to a citizen of Sri Lanka or a resident. Therefore, it is presumed that under this section locals are permitted to purchase residential accommodation within the Port City using Sri Lankan rupees.

12. Can office space be rented within the Port City?

Any person intending to engage in business within the Port City must be an authorized person which consequently requires a license from the Commission and an offshore company registration (in case of a company). As such, a person intending to merely rent out office space within the Port City too maybe subjected to such conditions.





Offshore banking business within the Port City

1. Can local banks apply to carry out offshore banking business within the Port City?

A company licensed to engage in banking business in Sri Lanka in terms of the Banking Act or a company licensed to carry on banking business under any law in any other country may make an application to the Commission to engage in offshore banking business in the Port City.

If such application is accepted by the Commission a recommendation will be made to the Minister of Finance to proceed to grant a license under the Banking Act to engage in offshore banking business in the Port City.

However, the Port City law also requires a company intending to carry out offshore banking

business to be registered as an offshore company under the Companies Act, No 7 of 2007. As such, it is assumed that an existing local Bank will have to register a new company under the Companies Act (with offshore status) in order to carry on offshore banking business within the Port City.

2. Do local banks too have to raise funds overseas in order to do offshore banking business?


Yes, it appears that this requirement of the investment having to be financed from funds raised overseas applies to local banks as well.

3. What type of business can be carried out by those engaged in offshore banking business?

The law provides a list of businesses that are permissible which includes the following;

- Accept savings, time and demand deposits from any authorized person or a non-resident person in any designated foreign currency
- Borrow any sum in a designated foreign currency from any non-resident
- Engage in any transaction in any designated foreign currency with any other offshore banking unit
- Engage in any other transaction in a designated foreign currency, with a non-resident





Parameters within which an authorized person must operate

1. Can an authorized person do business with persons outside the Port City?

Yes, it is possible subject to authorization by the Commission. An authorized person can apply to the Commission for authorization to engage in business outside of the Port City with a citizen of Sri Lanka or a resident, who is engaged in business in Sri Lanka outside the Area of Authority. The approval will be given based on the interest of the national economy and maybe subject to conditions.

Tax concessions will not be extended to such business activities carried outside the Port City.

2. Can persons outside the Port City provide services or goods to an authorized person?

There is no express provision which bars an authorized person from receiving goods and services from persons outside the Port City. Regulations issued under this law are expected to contain details pertaining to supply chain involvements.

3. Can local persons enjoy the facilities within the Port City?

Yes, citizens and residents (residents include companies incorporated in Sri Lanka, Partnerships and branch offices) are permitted to use any retail facility or services within the Port City at restaurants, cinemas, entertainment facilities, shopping facilities or parking facilities. There may however be levies imposed on a citizen or resident on the purchase of goods within the Port City at the time of taking such goods out of the Port City.

4. Do locals need foreign currency to enjoy the facilities within the Port City?

No restriction. Sri Lankan rupees can be used for payments within the Port City. Any authorized person is permitted to accept payment in Sri Lankan Rupees in respect of any goods or services provided by such authorized person within the Port City to a citizen of Sri Lanka or a resident.

5. Is the authorized person permitted to have rupee accounts?

Yes, given that it is permissible to accept rupees for payment by citizens and residents, authorized persons are permitted to maintain rupee accounts in relation to such payments received. These rupees may be converted to foreign currency subject to the conditions that may be prescribed.

6. Employment of personnel

An authorized person may employ a resident or a non-resident. However, whether the employee is a resident or a non-resident such employee must be remunerated in foreign currency.





Concessions granted for projects within the Port City

1. Will an authorized person automatically qualify for concessions?

No. All authorized persons do not automatically qualify for tax concessions.

Tax concessions are given only to an authorized person who carries on a “Business of Strategic Importance” as explained below.

2. What is a ‘Business of Strategic Importance’?

This could be any business which is identified by the Commission in consultation with the President or the subject Minister as having national interest or is in the interest of the advancement of the national economy and which is likely to bring economic and social benefit to the country, or is likely to change the landscape of the Colombo Port City or which will enable global or regional business.

3. What type of tax concessions are available to a Business of Strategic Importance?

The tax concessions for each business too is to be determined by the Commission in accordance with the regulations issued under the Act. Therefore, not all businesses will enjoy similar tax concessions as it depends on the contribution made by each project to the economy.

The Commission has the power to grant exemptions from the following enactments;

- The Inland Revenue Act, No 24 of 2017
- The Value Added Tax Act, No 14 of 2002
- The Excise (Special Provisions) Act, No 13 of 1989
- The Customs Ordinance
- The Ports and Airports Development Levy Act, No 18 of 2011

- The Sri Lanka Export Development Act, No. 40 of 1979
- The Betting and Gaming Levy Act, No 40 of 1988
- The Entertainment Tax Ordinance
- Casino Business (Regulation) Act, No 17 of 2010
- The Finance Act, No 11 of 2002
- The Finance Act, NO 5 of 2005
- Termination of Employment of Workmen (Special Provisions) Act, No 45 of 1971

The law permits exemptions from the above laws to be given for a maximum of forty years.

5. Would all authorized persons enjoy exemptions from the Foreign Exchange Act, No 12 of 2017?

No. The Act does not provide for a blanket exemption from the Foreign Exchange Act, No 12 of 2017. Exemptions from the Foreign Exchange Act will be given only for a Business of Strategic Importance on a case-by- case basis at the discretion of the Commission in accordance with the Regulations issued under the Port City law.

The Foreign Exchange Act, No 12 of 2017 and the Monetary law may be amended separately in the future to facilitate the use of foreign currency within the Port City.

4. What concessions are available to persons employed by an authorized person?

A non-resident employee is exempted from income tax as per the law on such persons income earned in Sri Lanka and outside Sri Lanka. The Commission will assist and facilitate the visas of such non-resident as well.

A resident who is employed by an authorized person too will be exempted from income tax on the income derived by the authorized person.



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