

SPECIAL ECONOMIC ZONES FOR THE MALDIVES

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This paper is a high level overview of developments concerning the Maldives and is not intended to be fully comprehensive or legal advice. For more information, please contact:

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SUMMARY

The Maldives has taken a significant step towards attracting foreign investment and diversifying the economy through its recent passing of the Special Economic Zone Act (Act No. 24/2014) (**SEZ Act**). The Act has now commenced and plans are already underway to kick-start SEZ developments across a number of sectors.

DEVELOPMENT CONTEXT

Geography and economic development

The Maldives has just 298km² of land spread over 90,000km² and the local population of 330,000 people inhabit only 10% of the nation's 1,192 islands. The country's distinctive geography and picturesque landscapes has led to strong international investment in the tourism sector and a strong domestic fishing sector, but it has also constrained development in a number of more traditional growth sectors and presented unique challenges around energy generation and transmission.

Diversifying and stimulating the economy through SEZs

SEZs around the world have generally been successful in attracting foreign investment, developing industry, creating jobs, diversifying the economy, enhancing transfer of knowledge and technology, contributing to the construction or improvement of transportation, communication and utilities infrastructure and acting as a trial region for new government policies.

The Government of the Republic of the Maldives is looking to replicate these successes within the Maldives through introducing the SEZ Act. Following his ratification of the SEZ Act on 1 September 2014, President Yameen highlighted how important the Act was for the economic transformation and unparalleled development of the Maldives. The SEZ Act is described as an integral part of the ongoing work to stimulate economic growth in the Maldives.

The Chairman of the Board of Investments (the body responsible for administering the SEZ Act) intends to appoint a SEZ technical committee in September, nominate the geographical areas for zone development and have the zones "readied for investors" within the month of November.

THE SEZ ACT

Establishment of Zones

The SEZ Act allows for unsolicited proposals from the private sector to develop and operate SEZs. A developer can apply for a 'permit' from the Board to develop a zone, with the permit application to set out

the proposed economic activity to be conducted within the zone, and the proposed geographical location of the zone. The President will issue a presidential decree each year which will set the minimum investment threshold required for a zone, and the geographical areas nominated for zone development, with the first such decree expected to be made shortly.

The Chairman of the Board of Investments, Tourism Minister Adheeb, has said the Board will decide on development applications based on the potential for each atoll and will prioritise investment proposals based on the type of infrastructure investment. It is likely that preference will be given for Developers constructing multi-faceted developments across value-adding sectors that aid in diversifying the Maldives economy. Investments in health, education, IT, export-oriented manufacturing, ports or finance (for instance) may be preferred. Indeed, the SEZ Act contemplates several types of zones, including industrial estates, export processing zones, hi-tech parks and free trade zones, which underlies the diversification focus of the SEZ Act.

A permit will specify the incentives available to the developer (and its sub-developers) which will generally include a range of tax exemptions, exemptions from import duties on capital goods imported for the development, management and operation of the zone, entitlement to a 66 + 33 year lease of the land on which the zone is established, a reduction in restrictions on the employment of expatriates, and unrestricted inward and outward capital remittances. The President has a discretion to grant incentives over and above those listed in Schedule 1 to the SEZ Act.

A developer and the Board will also enter into an Investment Agreement which, among other things, may provide the mechanism for the resolution of disputes between the Board and the developer (which can include international arbitration) and may provide a mechanism for calculating the compensation due in the event of expropriation.

Board of Investments - one stop shop

The SEZ Act empowers a Board of Investments to oversee SEZs in the Maldives. The Board is a 'one stop shop' and is authorised to coordinate with all Maldivian Government departments to facilitate approvals, permits and licenses within zones and

generally to make policies for zone development. Once established, each zone will have its own 'one stop shop' established within its boundaries, and will have a Zone Superintendent, who will monitor the activities within the zone and report back to the Board.

Investors

The developer is responsible for bringing investors into the zone. Investors will enter into an investment agreement with the developer, but must also obtain an investment licence from the Board.

Like the permit, the investment licence will set out the incentives available to investors, which are generally the same as available to developers however the length of the tax exemptions available are capped. The length of these exemptions are generally between two and 20 years, but is dependent on the industry. In general, the exemptions are shorter for tourism, sports and other business industries, and longer for the port-building manufacturing, logistics, transportation, communication, and service industries.

Asset protection

In addition to investment incentives, the SEZ Act also seeks to address the other key aspect of encouraging investors into the Maldives SEZs - asset protection.

Under the SEZ Act, there is a requirement for adequate compensation for any expropriation of a development or investment by the Maldivian Government. However, the SEZ Act gives a large carve out for action that may be taken by the Government that will not be considered an act of expropriation and for which no compensation will be payable.

The SEZ Act also provides for protection to developers and investors from new or increased taxes, with the President able to grant an exemption from these where they adversely affect the incentives available.

CHALLENGES FOR INVESTORS

While the SEZ Act is a significant step forward, there are aspects of the current legislative framework within the Maldives that may receive particular focus and/or present challenges for some potential developers or investors:

- the SEZ Act restricts employment of expatriates in senior management positions to 10% (although exemptions are available at the discretion of the Board, an exemption will not be given in excess of five years);
- it should be noted that the Constitution of the Republic of the Maldives prohibits foreigners from owning land within the Maldives, or holding a lease in excess of 99 years (although the SEZ Act allows a company with 51% Maldivian holding to take a freehold interested in property); and
- wider legislative reform that would support the success of the zones (including around land registration, mortgages and enforcement of foreign arbitral awards) has not yet been undertaken (however we understand that the Government is working on a number of laws that have been considered restrictive to foreign investment).

CONCLUSION

While famous worldwide for its unique and picturesque landscape, the passing of the SEZ Act may well be the catalyst for genuine economic diversification and sustained growth for this young and emerging democracy. The SEZ Act is a positive development, likely to be well received by both local and foreign developers/investors. The coming 12 months will be interesting in terms of the efficiency of implementing projects under this new framework.

FURTHER READING (CLICK THROUGH)

- [Invest Maldives English translation of SEZ Act](#)

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ABOUT STEPHEN WEBB

Stephen is Head of DLA Piper's Asia Pacific Energy Sector and leads the Renewable Energy & Climate Change Group. He advises on projects across the Asia-Pacific, the Middle East, Africa and South America. His experience includes advising on all forms of power projects, pipelines, transportation, oil and gas, petrochemical and mining projects. Recently Stephen has been advising on a number of economic zone projects in Asia and oil and gas projects as well as maritime boundary matters, including in the Timor Sea. He was recommended in this year's Chambers and Legal 500 reports, listed in the Global IFLR1000 and in the Australasian Lawyer's 2014 Hot 40 list as "the type of projects lawyer that top tier clients with an interest in the Asia-Pacific region trust on deals that are a 'first' of their kind".

For more on Stephen, please [click here](#).

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