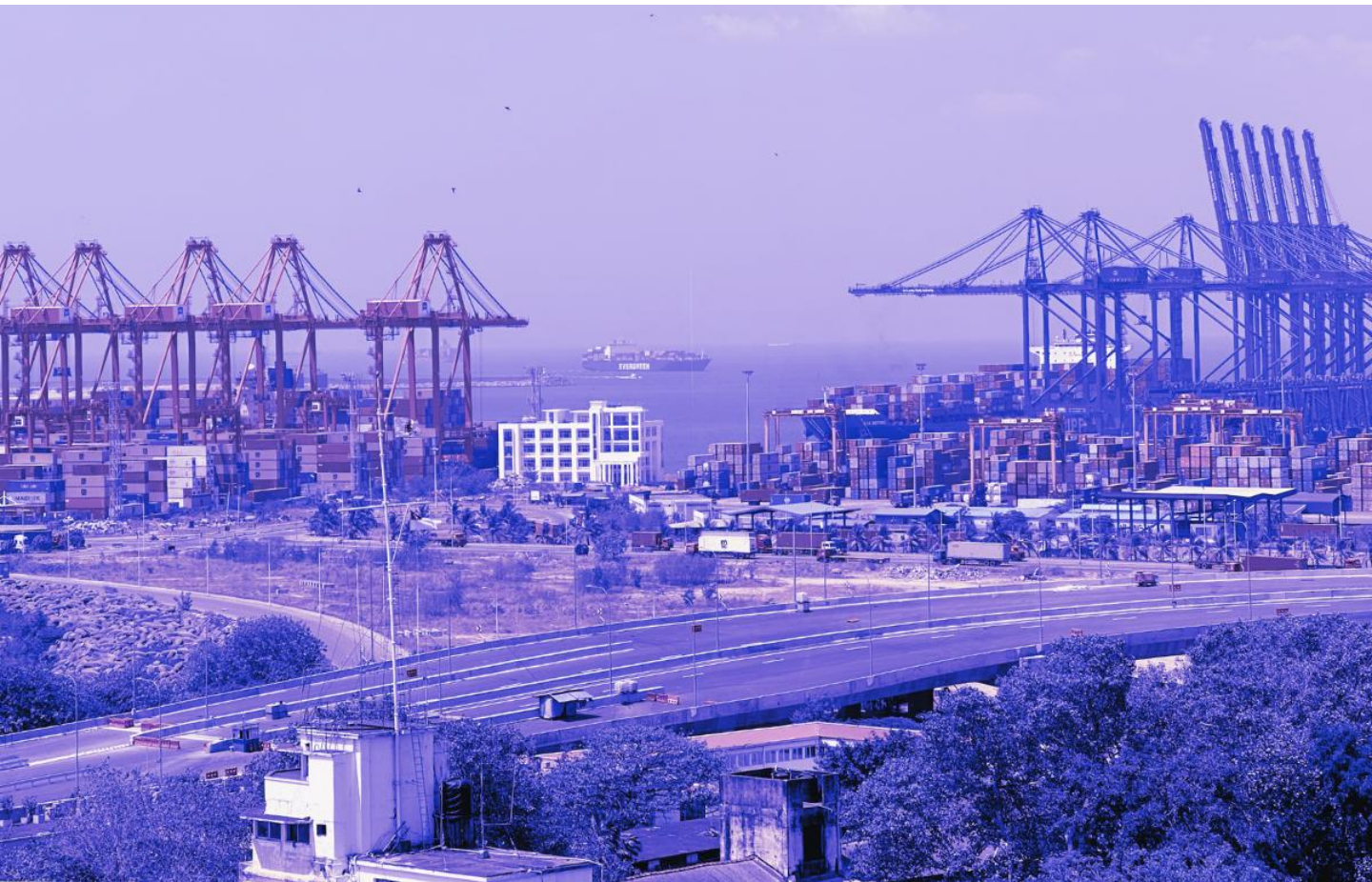


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Sri Lanka's New Investment Law in Global Comparison: 7 Key Observations

By Senith Abeyanayake and Anushka Wijesinha



Anchored to global trade policy trends identified by the UNCTAD in a recent report, this policy brief presents seven observations comparing these trends to the Economic Transformation Act No 48 of 2024. The ETA is now a primary piece of legislation setting out the contours for investment policy and regulation in Sri Lanka. The analysis and observations in this Policy Brief can inform any forthcoming discussions by the Government of Sri Lanka regarding amendments to, and implementation of the ETA.

Sri Lanka has consistently struggled to attract Foreign Direct Investment (FDI) since the end of the war, with annual averages falling below US\$ 1.5 Billion. With the debt restructuring process being completed, the country is now looking to strengthen the growth framework - a key aspect of which is to attract more private sector investment.

Recognizing the shift needed, and intending to restructure the investment attraction, regulation, and facilitation landscape in the country, Parliament passed the Economic Transformation Act No. 45 of 2024 (ETA), which contained several new legal and institutional arrangements governing investment.

The ETA repeals previous national laws governing investment and establishes a new legal and institutional structure, thus operating as Sri Lanka’s investment law. Under the ETA, the Board of Investment ceases to exist, and its functions are absorbed by two new institutions: the Economic Commission and Zones Sri Lanka. See Annex 1 for details.

While the acts’ future was unclear following the elections, [the President recently announced](#) the new government’s intention to implement the ETA with amendments.

Sri Lanka is not alone in developing and reforming its national investment laws to face local and global challenges. [A policy brief published in December 2024](#) by UN Trade and Development (UNCTAD) uses its [Investment Laws Navigator](#) to review investment laws in 132 countries and identifies six emerging trends as outlined in Table 1.

The investment-related provisions of the ETA (Part II, Chapters I to XI in particular) primarily set out the new contours for investment policy and regulation in Sri Lanka, and it is useful to assess these alongside the findings of UNCTAD’s report.

This policy brief presents seven preliminary observations. These observations can inform the forthcoming GoSL discussions regarding amendments to, and implementation of, the ETA.

Table 1: Six trends in investment laws identified by UNCTAD

Trend	Explanation
Investment laws as a dynamic policy instrument	Laws governing investment are becoming more prevalent. Such laws increasingly apply to both foreign (FDI) and domestic investments.
Investment laws and sustainability	There is a growing focus on sustainability being an objective within investment laws.
A broader emphasis on investors’ obligations	Laws are increasingly highlighting investor obligations alongside investor rights.
Investment incentives increasingly feature in investment laws	A variety of incentives are offered in investment laws with an increasing focus on incentives with specific policy objectives.
Facilitation provisions are on the rise	Investment facilitation provisions - stipulating streamlining, transparency, and facilitation services - are increasingly featured in investment laws.
The shift towards domestic dispute settlement	Though dispute settlement provisions are increasingly included in investment laws, newer laws display a decline in consent to arbitration and references to domestic courts have sharply increased.

Source: UNCTAD Investment Policy Monitor #29 December 2024

Observation 1: The ETA may be unique in its inclusion of quantitative targets for FDI

The UNCTAD report notes that investment laws have been increasingly adopted since 1990 with African and Asian developing economies driving its popularity. Most of the laws featured in the UNCTAD Investment Laws Navigator are exclusively dedicated to investments.

In contrast, though the ETA exercises the functions of an Investment Law through Part II and III of the Act, its stipulations extend to overall economic policy and international trade. Part 1 of the ETA sets out the National Policy on Economic Transformation (National Policy), which includes an extensive list of time-bound quantitative targets the government is to achieve in the short and medium term. This includes two targets for FDI by 2030: net FDI to be at least 5 percent of GDP and 40 percent of such net FDI to be export-oriented (Section 4 (f)).

Given that all government policies are to conform with the National Policy (Section 6), and the two new institutions governing investments (Economic Commission of Sri Lanka and Zones SL) are expressly tasked with assisting the achievement of the National Policy (Section 9; Section 14 (a); Section 32 (1)), the investment law provisions of the ETA must be read in conjunction with the National Policy contained in Part I.

The incorporation of investment-related quantitative targets was not to be found in any of the 49 investment laws passed during the period 2015 -2024 in the UNCTAD Investment Laws Navigator.

However, this does not exclude the possibility of such quantitative targets being included in other laws and policies in these countries, like the [Socio-Economic Development Plans of Vietnam](#). Preliminary concerns raised on Part 1 of the ETA include [the political and practical feasibility of legislating such quantitative targets](#) amidst a volatile local and global economic climate and [ambiguities surrounding the legal implications of failing to meet the quantitative targets](#) as specified in Section 7 (2).

Observation 2: The ETA governs both domestic and foreign investments, with qualified applicability

Though initially investment laws mainly focused on FDI, the UNCTAD finds that more recent laws predominantly apply to both domestic and foreign investors. The investment laws stipulated in ETA apply to both domestic and foreign investors as well with a few qualifications.

Firstly, the protections for foreign investors and investments guaranteed in Part II are available only to foreign investments registered with the Economic Commission (Section 34 (2)). Secondly, only domestic investors registered with the Economic Commission can access facilitation services stipulated in Part II (Section 34 (3)). Thirdly, a negative list containing restricted or prohibited sectors and industries for foreign investment is to be prescribed through regulations (33 (1) (c)). Finally, both Parts II and III do not apply to the Colombo Port City Special Economic Zone (Port City) (Sections 10 (2); 60 (2)).

Initial interpretations of the ETA also explore the possibility of the Economic Commission's mandate being practically limited to promoting and facilitating FDI that predominantly generates export and local employment due to the heavy emphasis on these two objectives (Sections 4 (f) (ii); 12 (a); 12 (d); 12 (g)). However, given the variety of stated outcomes expected through investments including 'significant benefits to the overall development of the economy' (Section 12 (d)), 'economic diversification' and 'technological advancement' (Section 13 (d)), such a limitation may not exist.

It is also currently ambiguous if the Port City Economic Commission shares a comparable mandate to the Economic Commission in assisting the government to achieve the National Policy including the FDI target. Though the Port City is not exempt from Part I of the ETA, the Port City Economic Commission is not listed as an agency in Section 9.

Observation 3: The investment-related provisions of the ETA do not prominently feature environmental considerations and sustainability

UNCTAD observes a significant increase in the incorporation of sustainability as an objective in the investment laws enacted within the last decade. Such incorporation can take varied forms. Most laws include sustainability in the preamble, objectives, or purpose, while some incorporate such references into the definition of an investment ([Egypt](#)). Countries such as [Burkina Faso](#) include investment incentives that are targeted towards sustainability-related outcomes.

The emphasis on sustainability and environmental considerations varies across different parts of the ETA. But unlike the increasing global trend, the ETA does not explicitly link investment with environmental considerations and sustainability.

The preamble to the act expressly mentions sustainable development and the emergence of environmental challenges. The National Policy includes the achievement of Net Zero by 2050 as an express goal. However, Part II refers to environmental protection only when introducing entry requirements, expropriation, and voluntary standards expected to be adhered to by foreign investors (Sections 33 (2), 39 (4), and 41 (5)). In Part III, the powers of Zones SL include the conducting of environmental impact assessments and monitoring the implementation of environmental commitments (Section 63).

Compared to Part I, environmental considerations and sustainability feature less in the investment-related provisions in Parts II and III. They do not appear substantially in the objectives of the Economic Commission nor in the definition of an investment (Section 59 (1)). Though Section 12 (a) specifies the promotion of 'sustainable FDI' as an objective of the Economic Commission, it is unclear if the provision refers strictly to economic sustainability or a broader conception of sustainability. So, unlike the increasing global trend, the ETA does not explicitly link investment with environmental considerations and sustainability.

Observation 4: The ETA places more emphasis on investor rights than obligations

The investment laws reviewed by UNCTAD display a considerable shift from predominantly focusing on investor rights (such as safeguards against expropriation and fair and equitable treatment) to investor obligations (such as compliance with domestic laws and disclosure requirements).

Though only 14 percent of laws enacted before 1996 featured investor obligations, this figure rises to 57 percent when considering investment laws enacted in the last decade. Table 2 provides an overview of the most common investor obligations included in the UNCTAD review.

The ETA specifies investor rights in Chapter 9 titled investment guarantees. It guarantees fair and equitable treatment (Section 36) and safeguards against unreasonable expropriation (Section 39) for all investments. Foreign investments are guaranteed national and most favored nation treatments (Section 37) along with the free transfer of payments in convertible currency (Section 38).

While countries such as [Ethiopia](#) also explicitly refer only to foreign investments in provisions regarding free transfer of payments, others such as [Cambodia](#) maintain an open definition to include domestic investments.

Section 41 of the ETA stipulates investor obligations. There are two critical observations when comparing the ETA with the trends identified by UNCTAD. Firstly, section 41 only includes the most popular of the obligations featured in investment laws such as compliance with domestic laws (Section 41 (1)), Fiscal obligations (Section 41 (3)) and disclosure of information (Section 41 (4)). It also highlights an obligation to not engage in bribery and corruption (Section 41 (2)). However, other investor obligations featured in recent international laws such as CSR, environment, and human rights are not meaningfully included. It only refers to these elements through an expectation that foreign investors will voluntarily incorporate internationally recognized standards on CSR, environment, human rights, community relations, and labour (Section 41 (5)).

Secondly, since Section 41 on obligations is specified only for foreign investors, the ETA is silent on domestic investor obligations.

Table 2: Most commonly included investor obligations

Type of Investor Obligation	% among laws with investment obligations
Compliance with domestic laws	62
Disclosure of Accounting and Financial Information	46
Fiscal Obligations	44
Labour Rights and Standards	39
Environmental Protection	36
Local Employment Obligations	35
Public Health	13
Corporate Social Responsibility (CSR)	12

Source: UNCTAD Investment Policy Monitor #29 December 2024

Observation 5: The ETA provides limited coverage on investment incentives

UNCTAD notes a sharp rise in the inclusion of investment incentives in investment laws with over 80 percent of laws adopted in post-2005 featuring provisions with investment incentives. Fiscal incentives such as tax exemptions are the most popular. Furthermore, incentives targeting specific policy objectives ranging from technology and innovation, export development, promotion of green sectors and women and youth employment are on the rise.

Chapter 11 of the ETA is dedicated to incentives. Notably, there is no specification of the incentives regime in this Chapter itself, and follows from the policy changes made since around 2015 of embedding fiscal incentives directly in the country's income tax legislation and removing the dichotomy of fiscal incentives being offered under the BOI. These shifts occurred alongside IMF recommendations to the country's tax statutes, as part of revenue-based fiscal consolidation efforts.

The sole provision in Chapter 11 of the ETA stipulates that with the recommendation of the Economic Commission, the relevant subject minister can grant investment incentives including exemptions from 12 laws specified in the schedule to Part II (Section 45). Such incentives should be prescribed through regulations made under Part II. The incentives will be in force from the moment the regulation is published in the Gazette subject to the ratification of the Parliament within 3 months.

The approaches taken by other countries vary with examples such as [Madagascar](#) providing only the overall

criteria for incentives and [Cambodia](#) specifying sectors and activities qualifying for investment incentives.

Preliminary considerations raised regarding the treatment of investment incentives in the ETA include the [possibility of ad-hoc prescription of incentives](#) and [a historical lack of dynamism](#) in granting incentives through regulations. The [2024 World Bank Development Update](#) highlights Sri Lanka's extensive use of discretionary incentives with issues such as a lack of cost-benefit analysis and sunset clauses, and limited transparency.

Observation 6: The ETA emphasizes investment facilitation, mirroring the global trend

The UNCTAD review categorises investment facilitation provisions into three types: streamlining, transparency, and facilitation services. Streamlining includes provisions simplifying bureaucracy, establishing one-stop-shops, promoting digitalization and imposing timelines for government procedures. Transparency-related provisions can focus on publishing relevant laws and regulations, detailing investment procedures and the disclosure of specified investment-related information. Facilitation services stipulated in investment laws range from dispute prevention mechanisms (mediation and conciliation), grievance mechanisms (investment ombudsmen) and investment support services such as counselling, visa facilitation, and assisting approvals.

Amidst an increasing international focus, there is a rise in investment facilitation provisions with 60 percent of investment laws enacted in the last decade featuring such provisions.

The ETA features a range of investment facilitation provisions. The creation and maintenance of a robust investment climate and increasing investors' ease of doing business feature prominently in the objectives, powers, and duties of the Economic Commission (Sections 12 (a), 12 (c), 12 (f), 12 (g), 12 (b), 14 (b)).

Streamlining and digitization are included as duties of the Economic Commission and Invest SL is mandated to build collaboration among public and private investment stakeholders. The timeliness of government procedures is a key focus of the ETA. All government institutions must respond to any investment-related inquiry or approval request within 15 days (Section 46 (1) and (2)).

When reviewing the ETA at the bill stage, [a Supreme Court Special Determination](#) recommended that if appropriate, non-responses to such inquiries and requests should be escalated to the Cabinet of Ministers within a specific timeframe to minimize unnecessary delays. The specified timeframe is now two weeks (Section 46 (5)).

Some investment facilitation functions of the Board of Investment are now divided between Zones SL for investments within zones and the Economic Commission for all other investments. There are [mixed reactions](#) regarding the implication of this division on the continued existence of a one-stop shop, which itself is a [contested mechanism](#).

For example, [some point out](#) that provisions in the ETA may be unclear on situations such as investment projects which simultaneously have components within and outside investment zones.

The Supreme Court Special Determination interprets the facilitation of a single window for investment approvals being a special power of the Economic Commission (Section 46).

Several sections emphasize the transparency of regulations, procedures and processes and stipulate such information to be available in one website (Sections 14 (c); 42 (1) (a); 50 (c)). However, there is less emphasis on public disclosure of investment-related information. Some countries in the UNCTAD review mandate disclosing reports on the implementation of investment activities, signed investment agreements, and state-in-kind grants on official websites.

Facilitation services mandated by the ETA include a grievance committee for investors (Section 43), opportunity to make representations regarding proposed regulations affecting investor rights (Sections 42 and 44), and assistance for administrative procedures such as approvals through the Economic Commission, Invest SL, and Zones SL (Sections 46; 50 (d); Chapter 12).

The grievance committee is exclusively for foreign investors. It is unclear if domestic investors will have access to a similar mechanism.

Amidst an increasing international focus, there is a rise in investment facilitation provisions with 60 percent of investment laws enacted in the last decade featuring such provisions. Some countries mandate publishing reports on the implementation of investment activities.

Observation 7: The ETA does not prioritize domestic-centric dispute settlement

While most investment laws include dispute settlement provisions, the UNCTAD review observes two trends in newer laws: a decrease in consent to arbitration and an increase in references to domestic courts. They note that this trend may be linked to changing global sentiments regarding international arbitration including concerns such as high costs, delays, lack of transparency, and unpredictability.

Global sentiments on arbitration do not appear as material considerations in the ETA.

Section 44 contains the provisions on Dispute Settlement. It recognizes the right for both domestic and foreign investors to use all remedies available in Sri Lankan law if an amicable solution cannot be reached (Section 44 (2)).

The ETA does not refer to the International Commercial Dispute Resolution that was established by the Colombo Port City Economic Commission Act No. 11 of 2011 to offer alternate dispute resolution services.

The ETA does not mirror the two trends seen in the UNCTAD review as it provides explicit consent to ad hoc and institutional arbitration without specifying domestic courts as the forum for dispute resolution (Section 44). The Supreme Court's Special Determination emphasizes that the norms set out in Section 44 are essential for creating a conducive investment environment. The global sentiments on arbitration noted by the UNCTAD review do not appear as material considerations in the ETA.

Considerations for Sri Lanka

The new Sri Lankan government has a stated goal of revising the ETA. As it embarks on this effort, this Policy Brief provides useful reference points from the comparative analysis to help inform these revisions. Sri Lankan policymakers and private sector stakeholders would need to carefully consider the global trends alongside Sri Lanka's own investment climate realities and government policy imperatives.

For instance, on the question of incentives (Observation 5), there would need to be a critical relook at the policy framework for incentives, including asking the question whether the ETA provides too much room for a Minister to determine incentives, even with the technical inputs of an Economic Commission. Alongside this, the consideration that there is a stark dichotomy between offshore investments (governed under the port city legislation) and onshore economic activity (governing investments everywhere else in Sri Lanka).

The inclusion of quantitative targets for FDI has also been shown to be in stark contrast to most other comparative investment laws (Observation 1) but perhaps is reflective of the broader policy intentions when the ETA was promulgated. If these are being retained, then a strong accountability and oversight mechanism in Parliament is needed to make targets meaningful, and their achievement taken seriously.

The government should seek to engage expert domestic and external stakeholders when revising the ETA, to ensure that changes to the investment sections of the law are sensible, in sync with global market realities, and truly advances Sri Lanka's competitive position in the FDI landscape.

Annex 1: Overview of the ETA and selected functions related to investment

Part and Chapter	Feature
Part I	Contains the National Policy on Economic Transformation
Part II – Chapter I-VII	Establishes the Economic Commission, with a mandate over national investment and administration of investments outside investment zones.
Part II – Chapter VIII	Eligibility, prohibitions and restrictions of foreign investors and entitlements afforded to registered domestic and foreign investments.
Part II – Chapter IX	Investor rights and obligations
Part II – Chapter VII	Transparency and dispute settlement of investments
Part II – Chapter XI	Investment incentives
Part II – Chapter XIII	Establishes Invest Sri Lanka, a private company with a mandate for investment promotion and facilitation
Part III	Establishes Zones SL, with a mandate over the management and facilitation of investment zones.
Parts IV, V, and VI	Establishes three new public institutions: the Office of International Trade, National Productivity Commission, and Sri Lanka Institute of Economics and International Trade respectively.

Source: Authors' Compilation

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