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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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PART I : SECTION (I) — GENERAL

Government Notifications

PUBLIC UTILITIES COMMISSION OF SRI LANKA

Exemption Order

UNDER SECTION 10 OF THE SRI LANKA ELECTRICITY ACT, No. 20 OF 2009

1. Grant of the Exemption

THE Public Utilities Commission of Sri Lanka (hereinafter referred to as the “Commission”) in exercise of the powers conferred by Section 10(1) of the Sri Lanka Electricity Act, No. 20 of 2009 (hereinafter referred to as the “Act”) hereby grants to Tokyo Cement (Power) Lanka Limited of the registered address No.469/1/1, Galle Road, Colombo - 03. (hereinafter referred to as the “Exempted Person”) an exemption from the requirement to obtain a licence to:

For the limited purpose of generating electricity within the premises Tokyo Cement (Power) Lanka Limited, Cod Bay, China Bay, Trincomalee morefully described in the Schedule 1 attached subject to the Conditions contained in this Order.

2. Approvals

The Exempted Person shall obtain all the approvals required under applicable Laws, Regulations and Rules necessary to carry out the generation of electricity, including and not limited to the provisions of the Sri Lanka Electricity Act, No. 20 of 2009.

3. Term of the Exemption

The Exemption hereby granted shall come into force on 21/05/2011 and, unless revoked or withdrawn subject to the provisions of Revocation and Withdrawal of the Exemption in the Exemption Order below, shall continue in full force and effect for a period of five [05] years from 21/05/2011.

4. Revocation and Withdrawal of the Exemption

This Exemption may be revoked or withdrawn at the discretion of the Commission in accordance with Section 22 of the Act.

Dr. JAYATISSA DE COSTA,
Chairman,
Public Utilities Commission of Sri Lanka.

PART II : CONDITIONS OF THE EXEMPTION

Condition 1: Interpretation and construction

1. Unless the contrary intention appears-

- (a) words and expressions used in the Conditions or the Schedules shall be construed as if they were in an enactment and the Interpretation Acts applied to them ; and
- (b) references to an enactment shall include primary and subordinate legislation and, in both cases, any modification or re-enactment thereof after the date when this Exemption comes into force.

2. Any word or expression defined in the Act for the purposes of any provision of the Act shall, unless the contrary intention appears, have the same meaning when used in the Conditions or in the Schedules.

3. In the Conditions and in the Schedules, unless otherwise specified or the context otherwise requires-

“Affiliate”	in relation to the Exempted Person, means any Holding Company of the Exempted Person or any Subsidiary of the Exempted Person or any Subsidiary of a Holding Company of the Exempted Person, in each case within the meaning of the Companies Act, No .7 of 2007;
“Approved”	for the purposes of Conditions 9 and 20 means approved by the Commission and “Approval” shall have a corresponding meaning;
“Licensee”	a person holding a valid Licence under the section 13 of the Sri Lanka Electricity Act, No: 20 of 2009.
“Exempted Person”	means a person exempted from obtaining licence to generate electricity under Section 10 of the Act;
“Electricity Undertaking”	means any person engaged in the generation, transmission, distribution and supply of electricity;
“Holding Company”	means a holding company within the meaning of the Companies Act, No 7 of 2007;
“Modification”	includes addition, omission, amendment and substitution and cognate expressions shall be construed accordingly;
“PUCSL Act”	means the Public Utilities Commission of Sri Lanka Act, No.35 of 2002;
“Related Undertaking”	means any related undertaking within the meaning of the Companies Act, No. 7 of 2007;
“Representation”	includes any objection or any other proposal made in writing;
“Subsidiary”	has the meaning given in the Companies Act, No. 7 of 2007 and “Subsidiaries” shall be defined accordingly;

“Transmission Licensee”	means the holder of a licence to transmit electricity under Section 13(1)(c)(i)(b) of the Act ;
“Generation Business”	means the licenced business of the licensee and any subsidiary or related undertaking of the licensee ;
“Distribution Licensee”	means the holder of a licence to distribute and supply or distribute electricity under Section 13(1)(c)(i)(c) of the Act ;
“Generation Licensee”	means a licence granted under Section 13(1) ©(i)(a) of the Act ;
“Generation Plant”	means any plant, equipment, apparatus or appliance used for or for purpose connected with the generation of electricity.

4. Unless otherwise specified :

- (a) any reference to a numbered Condition or to a numbered Schedule is respectively a reference to the Condition or the Schedule bearing that number in this Exemption Order;
- (b) any reference to a numbered clause is a reference to the clause bearing that number in the Schedule in which the reference occurs;
- (c) any reference to a numbered paragraph is a reference to the paragraph bearing that number in the condition or clause in which the reference occurs; and

without prejudice to any provision which restricts such variation, supplement or replacement any reference to any agreement, Exemption Order (other than this Exemption Order), code or other instrument shall include a reference to such agreement, Exemption Order, code or other instrument as varied, supplemented or replaced from time to time.

5. The heading or title of any Part, Condition, Schedule or Paragraph shall not affect the construction thereof.
6. Where any obligation of the Exemption Order is expressed to require performance within a specified time limit, that obligation shall continue to be binding and enforceable after that time limit if the Exempted Person fails to perform that obligation within that time limit (but without prejudice to all rights and remedies available against the Exempted Person by reason of the Exempted Person’s failure to perform within the time limit).
7. If there is any inconsistency between this Exemption Order and the Act, the Act shall prevail to the extent of any such inconsistency. Conditions set out in the Act shall form an integral part of the Exemption Order in addition to Conditions set out herein.

Condition 2: Authorised Business Activities

1. The Exempted Person shall conduct the Generation Business using the generation plants identified in the Schedule and may subject to approval by the Commission and the conditions which may be imposed by the Commission in granting such approval, conduct business activities that-
 - (a) use an existing competency of the Exempted Person ; and
 - (b) are compatible and integrate with the Generation Business.

2. This condition shall not prevent the Exempted Person from engaging in any business undertaking or activity -
 - (a) That is approved by the commission pursuant in paragraph 1 ; or
 - (b) That was already conducted by the Exempted Person before the date on which this Exemption order comes into force.
3. The commission may, upon application by the exempted, relieve the Exempted Person from its obligations under this Condition in relation to any particular case to such extent and subject to such terms and conditions as the Commission may specify in writing.

Condition 3 : Provision of Information to the Commission

1. The Exempted Person shall furnish to the Commission, in such manner and at such times as the Commission may require, such Information and shall procure and furnish to it such reports as the Commission may consider necessary in the light of the Conditions or as it may require for the purpose of performing the functions assigned or transferred to it by or under the Act or the PUCSL Act.
2. Without prejudice to the generality of paragraph 1, the Commission may call for the furnishing of accounting Information which is more extensive than, or differs from, that required to be prepared and supplied to the Commission.
3. The power of the Commission to call for Information under paragraph 1 is without prejudice to the power of the Commission to call for Information under or pursuant to any other Condition of this Exemption Order or under or pursuant to the Act, the PUCSL Act or any other enactment.
4. The Exempted Person within one month of obtaining the exemption shall appoint a person in its organisation, who is responsible for its Generation Business.
5. In this Condition:

“Information” shall include any books, documents, records, accounts, estimates, returns or reports (whether or not prepared specifically at the request of the Commission) of any description and in any format specified by the Commission.

Condition 4: Decisions, Orders, Directions and Determinations of the Commission

1. The Exempted Person shall comply with any decisions, orders, directions and determinations made by the Commission pursuant to the Exemption Order.
2. The reasonable costs associated with compliance with such decisions, orders, directions and determinations shall be the responsibility of the Exempted Person.
3. In order to comply with any order or direction made by the Commission the Exempted Person shall allow the Commission, any other authority or person specified in the order of the Commission such access to or control of its property as the Commission requires.

Condition 5: Compliance with technical and operational codes

1. At the request of the Commission the Exempted Person shall, in consultation with any Electricity Undertaking the Commission consider appropriate, develop and implement, such technical and operational codes as the Commission may, direct from time to time.

2. Any technical and operational codes developed pursuant to paragraph 1 shall be submitted to the Commission for Approval before they may be implemented.
3. The Exempted Person may propose modifications to a code that is in force at the relevant time by notifying the Commission of its proposal in accordance with the code modification process set out in the relevant code.
4. The Exempted Person shall give or send a copy of all approved technical and operational codes (and any revisions thereto) developed and implemented by the Exempted Person pursuant to this Condition to:
 - (a) the Commission ; and
 - (b) any person requesting the same.
5. The Exempted Person may make a charge for any copy of any code given or sent pursuant to paragraph 4(b) of an amount which shall not exceed any amount specified for the time being for the purposes of this Condition in directions issued from time to time by the Commission. The Exempted Person shall comply with the provisions of any approved technical and operational codes which are specified therein as applicable to it.
6. The Commission may, following consultation in relevant circumstances with any Electricity Undertakings the Commission shall consider appropriate, issue directions relieving the Exempted Person of its obligation under paragraph 6 in respect of such part or parts of any approved technical and operational codes to such extent as may be specified in those directions and subject to such terms and conditions as the Commission may determine.

The Exempted Person shall comply with the existing technical and operational codes in respect of all activities, until such time Commission Approved technical and operational codes are available.

Condition 6: Assignment of the Exemption Order and transfer of the Generation Business

1. The Exempted Person shall not, without the prior written consent of the Commission, assign this Exemption Order either in whole or in part.
2. The Exempted Person shall not, without the prior written consent of the Commission, transfer to another person (the "Transferee") all or any part of the Generation Business carried out under this Exemption Order.
3. Any consent of the Commission to any assignment of this Exemption Order or transfer of the Generation Business shall be subject to the Commission being satisfied that the assignee or Transferee, as the case may be, will have the technical and financial capability to comply with the Conditions of this Exemption Order and, in the case of a transfer only, the Transferee being granted an Exemption Order, and may be subject to compliance by the assignee or Transferee, as the case may be, with any other matters determined by the Commission to be necessary, including the modification of this Exemption Order in accordance with the Act where deemed necessary by the Commission.
4. Nothing in this Condition shall prevent the Exempted Person transferring the Generation Business to an assignee where the Commission consented to such assignment, provided that such transfer is effected as soon as practicable after such consent has been given.

Condition 7: Revocation or Withdrawal of the Exemption Order

1. The Commission may revoke this Exemption Order in accordance with the Section 22 of the Sri Lanka Electricity Act, No. 20 of 2009 in the following circumstances :-
 - (a) if the Exempted Person agrees in writing with the Commission that this Exemption Order should be revoked;

- (b) if the Exempted Person fails to comply with an order or direction issued by the Commission under Condition 2 of this order or direction within 60 days from the date of its issue or such longer period as the Commission may specify in the order or direction;
- (c) if:
 - (i) there is a Change In Control of the Exempted Person ; and
 - (ii) the Commission is satisfied that neither the new shareholder nor the entity appointed by the new shareholder (if any) to operate the Generation Business has adequate technical, financial or managerial strength, taking into account the size of its shareholding in the Exempted Person, to carry out the Generation Business; and
 - (iii) the Commission serves notice on the Exempted Person stating that the Commission proposes to revoke this Exemption Order in pursuance of this paragraph unless such further Change In Control of the Exempted Person as is specified in the notice takes place within the period of three months beginning with the date of service of the notice; and
 - (iv) further change does not take place within that period.
- (d) if the Exempted Person fails to notify the Commission as soon as practicable thereafter that a Change In Control of the Exempted Person shall have occurred;
- (e) if the Exempted Person ceases to carry on the Generation Business for a continuous period of 3 months except where the Commission is satisfied that this has occurred as a result of events beyond the reasonable control of the Exempted Person, in which case the Commission shall substitute such longer period as it, in its sole discretion, considers reasonable in all the circumstances;
- (f) if it is found that the issue of this Exempted Person had been based on information provided by the Exempted Person which is materially inaccurate or incorrect.

Condition 8: Environment

1. The Exempted Person shall comply with all applicable Environmental Laws in Sri Lanka, subject to any exemptions or grace periods which may be granted to the Exempted Person under such Environmental Laws for compliance.
2. The Exempted Person shall, not later than such date as the Commission may specify and in consultation with the Commission, prepare and, from time to time, modify a written policy setting out the manner in which the Exempted Person proposes to comply with its duties and obligations under all applicable Environmental Laws.
3. The Exempted Person shall report annually to the Commission on its environmental performance in such form and at such times as the Commission may specify.
4. For the purposes of this Exempted Person, “Environmental Laws” means those laws which are, from time to time, in force whose purpose is the protection of the environment, including the protection of human health, flora, fauna and the eco-systems on which they depend and, for the avoidance of doubt, shall include, but shall not be limited to, the National Environment Act, No. 47 of 1980 and all relevant legislation relating to the assessment of environmental impacts and the protection of air, land and water.

Condition 9: Health and safety

1. The Exempted Person shall take all reasonable steps to protect persons, plant, property and equipment from injury and damage that may be caused by the Exempted Person when carrying out the Generation Business, including preparing a safety and technical management plan as set out in paragraph 2 below.
2. The Exempted Person shall-
 - (a) not later than such date as the Commission may specify and in consultation with the Commission, prepare a safety and technical management plan and submit the plan to the Commission for approval;
 - (b) annually review, and if necessary update, the plan to ensure its efficient operation and submit the updated plan to the Commission for approval;
 - (c) comply with the plan (as updated from time to time) as approved by the Commission ;
 - (d) not amend the plan without the approval of the Commission ; and
 - (e) ensure that an annual audit of its compliance with its obligations under the plan is conducted by an independent expert approved by the Commission and in accordance with the plan ;
 - (f) compile health and safety statistics and indices specified by the Commission; and
 - (g) promptly report the results of those audits, statistics and indices to the Commission.

Condition 10: Insurance

1. The Exempted Person shall adopt and implement reasonable and prudent policies in relation to the management and insurance of risks associated with the Generation Business.

Condition 11: Provision of Information to the Transmission Licensee

1. The Exempted Person shall maintain sufficient records to predict its future generation of power and energy to the Transmission Licensee.

Condition 12 : Power Purchase Agreement(s)

1. The Exempted Person shall provide only 50% of electricity generation from its Generation Plants to the Transmission Licensee under a Standard Power Purchase Agreement with the Transmission Licensee.
2. The standard Power Purchase Agreements between Exempted Person and Transmission Licensee shall be enforced by the Commission in accordance with the relevant regulations.
3. The Commission may grant permission to the Exempted Person to sell electricity and Ancillary Services to the Transmission Licensee based on tariff rates determined in accordance with the methodology approved by the Commission.
4. The permission under Paragraph 3 shall be granted for a specific period of time as determined by the Commission.

Condition 13: Confidential information

1. The Exempted Person shall take reasonable measures to ensure that all information received by it relating to the Generation Business:
 - (a) is kept confidential by the Exempted Person except as otherwise permitted by the Commission, this Exempted Order or any code of practice, and that access to such confidential information is provided only, and as is necessary for the due performance of their lawful functions, to directors, officers and employees of the Exempted Person, or to an agent of the Exempted Person that has agreed in writing to observe this requirement of confidentiality;
 - (b) is not used by the Exempted Person for any purpose other than that for which it was provided or for a purpose permitted by this Exempted Order or a code of practice; and
 - (c) is not used by the Exempted Person for any commercial advantage in the provision of any service other than a service comprised in the Generation Business.

Condition 14 : Dispute resolution

1. The Exempted Person may-
 - (a) in respect of a dispute between itself and the Transmission Licensee which it is unable to resolve - refer the dispute to the Commission for mediation and resolution in accordance with the rules made by the Commission under the PUCSL Act;
 - (b) in respect of a dispute (other than a dispute referred to in paragraph 1(a) in accordance with the rules made by the Commission under the PUCSL Act refer the dispute to the Commission for resolution in accordance with such rules or, where directed to do so by the Commission refer the dispute to court or arbitration body in accordance with the Arbitration Act, No.11 of 1995.

PART III SPECIFIC CONDITIONS FOR THE GENERATION

- (a) The supply of electricity shall not result in the wheeling of electricity in the networks of Transmission Licensees or Distribution Licensees.
- (b) The energy supplied to the networks of the Distribution Licensees and Transmission Licensees shall not exceed fifty percent (50%) of the energy generated by the identified Generation Plants.
- (c) Electricity shall only be supplied to a Related Undertaking located at the same premises.
- (d) The plants shall be electrically isolated from any other power plants licensed or exempted.

Schedule I

Generation of electricity by 10 MW Bio mass power plant of Tokyo Cement (Power) Lanka Limited situated in Cod Bay, China Bay, Trincomalee.