

INVEST IN SRI LANKA

LEGAL ASPECTS



Legal Department
Board of Investment of Sri Lanka
www.investsrilanka.com



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Introduction

The purpose of this Guide is to provide general information on the prevailing Laws and Regulations applicable to foreign investors who wish to invest in Sri Lanka.

The Board of Investment of Sri Lanka (BOI) is the sole Government Agency responsible for facilitating Foreign Direct Investment (FDI) to the country. The BOI's Legal Department provides:

- Legal services and advice on matters arising from all aspects of the BOI's operations.
- Providing legal inputs and support which include;
 - (i) negotiating, drafting and reviewing relevant agreements and joint ventures;
 - (ii) Memorandum of Understanding and relevant other documentations;
 - (iii) liaising with external line agencies, authorities, legal counsels, foreign arbitral tribunals, foreign legal counsels, Attorney General's Department; and
 - (iv) managing all legal proceedings with regard to FDI.

What are the initial steps to be taken by a foreign investor to invest in Sri Lanka?

- (i) Identify the business activity and submit an Application to BOI with a Project Proposal (applications available at www.investsrilanka.lk)
- (ii) Incorporate a local company in Sri Lanka in terms of the Companies Act No. 7 of 2007

The following Acts and the Regulations framed thereunder mainly apply to and govern the foreign investment in Sri Lanka

1. BOI Act No. 4 of 1978 as amended and its Regulations
2. Companies Act No. 7 of 2007
3. Exchange Control Act No. 24 of 1953 and its Regulations
4. Strategic Development Projects Act No. 14 of 2008 as amended
5. Finance Act No. 12 of 2012 Part (iv) as amended (Hub Operation Regulations)

BOARD OF INVESTMENT OF SRI LANKA ACT NO. 4 OF 1978 AS AMENDED

Under the BOI Act No. 4 of 1978 as amended any local or foreign investor may submit an application to the BOI in respect of the approved business/project activities.

There are two types of investment approvals –

- i. Approvals under Section 16 of the BOI Act No. 4 of 1978 - permits foreign investment entry to operate only under the 'normal laws' of the country. For such Enterprises the provisions of the Inland Revenue, Customs and Exchange Control laws shall apply; and
- ii. Approvals under Section 17 of the BOI Act No. 4 of 1978 - specifies that the BOI shall have the power to enter into Agreements with any enterprise and mandated to grant exemptions from any law referred to in Schedule B thereof or to modify or vary the application of any such laws to such enterprises in accordance with such Regulations as may be made by the Minister under Section 24 of the BOI Act.

The Laws referred under Schedule B are as follows:-

- The Inland Revenue Act, No. 10 of 2006 as amended
- The Customs Ordinance (Chapter 235)
- The Exchange Control Act (Chapter 423)
- The Companies Act No. 7 of 2007
- The Merchant Shipping Act, No. 52 of 1971
- The Finance Act, No. 65 of 1961 as amended
- The Air Navigation Act (Chapter 365)
- The National Film Corporation of Sri Lanka Act No. 47 of 1971

The safety of Foreign Investment is guaranteed under Article 157 of the Constitution of Sri Lanka.



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1. COMPANIES ACT NO. 7 OF 2007

To incorporate a company in Sri Lanka, the provisions of the Companies Act shall apply. Equal treatment for local/foreign nationals is guaranteed under this Act.

Incorporation Procedure:-

- Check availability of the name of the proposed company with the Registrar of Companies
- Submission of application to the Registrar of Companies for the registration of the proposed company with the following documents :-
 - o Articles of Association which laid down the rules relating to the internal administration of the company;
 - o Statutory declaration signed by the shareholders applying for registration for the proposed company;
 - o registered address of the office that should be a physical address;
 - o the details of initial Directors (at least one director in the case of private company and at least 02 directors in the case of the public company); and
 - o details of initial secretaries.

- Signatures of the applicants should be obtained prior to submission of the papers to the company's registry

Summary:-

- Incorporation of a Company limited by shares – Form 1, 18 and 19
- Incorporation of a Company limited by Guarantee/Association – Form 5, 18 and 19
- Allotment of shares immediately after incorporation – Form 6

Provided that BOI approved projects under section 17 or 16 are required to get the prior approval to the Articles of Association of the company from the Legal Department of the BOI before submitting papers to the Registrar of Companies.

3. STRATEGIC DEVELOPMENT PROJECTS ACT NO. 14 OF 2008

In terms of the said Act if any project which is in the national interest and which is likely to bring economic and social benefit to the country and which is also likely to change the land scape of the country primarily through -

- that project will be of benefit to the public;
- substantial inflow of foreign exchange to the country;
- provide substantial employment which will be generated and the enhancement of the income earning opportunities; and
- the envisaged transformation in terms of technology.

Such a project is required to identify as a Strategic Development Project by the BOI in consultation with the relevant line Ministries.

Under the said Act where the SDP project is identified, exemptions will be granted for such project from the applicability of the provisions of the enactments specified in the Schedule to this Act.

SCHEDULE

1. The Inland Revenue Act, No. 10 of 2006
2. The Value Added Tax Act, No. 14 of 2002
3. The Finance Act, No. 11 of 2002
4. The Finance Act, No. 5 of 2005
5. The Excise (Special Provision) Act, No. 13 of 1989
6. The Economic Service Charge Act, No. 13 of 2006
7. Customs Ordinance (Chapter 235)
8. The nation Building Tax Act, No. 9 of 2009
9. The Ports and Airports Development Levy Act, No. 18 of 2011
10. The Sri Lanka Export Development Act No. 40 of 1979
11. The Betting and Gaming Levy Act No. 40 of 1988

The relevant information with regard to the project and concessions granted to the project shall be placed before the Parliament for approval after obtaining the approval from the Cabinet of Ministers and become operative immediately upon approval by resolution of Parliament.

2. EXCHANGE CONTROL ACT NO. 24 OF 1953 AND ITS REGULATIONS

Provisions of Parts I, IA, II, III, IV, V and VI of the Exchange Control Act shall not apply in relation to the Enterprise which approved under section 17 of the BOI Law:-

- Borrowing from Foreign Sources;
- Conversion of Foreign Currency into Local Currency;
- Make payment in Sri Lanka in Foreign Currency to Foreign Authorities;
- Make legitimate International Payments to a party outside to Sri Lanka on account of imports, loan interest, loan installments, technology purchases, royalty payments, capital proceeds of liquidation attributed to foreign shareholders;
- Dividends attributed to non-resident shareholders, which transactions may occur in the normal course of the business referred to in the Agreement;
- Issuance and allotment of transfer of shares of the Enterprise for non-resident persons;
- Engages in the Export of Goods permissible under the Agreement;
- Import goods to Sri Lanka permissible under the Government and open and operate FCBU Account; and
- Local mandate given to BOI under Section 24 read with Section 17 of the BOI Law to exempt, modify or vary the Application of laws under Schedule B including Exchange Control Act for its Section 17 projects and the projects under Strategic Development Projects Act No. 14 of 2008 as amended.

4. FINANCE ACT NO. 12 OF 2012 PART (IV) AS AMENDED (COMMERCIAL HUB REGULATIONS)

In terms of Part (iv) of Finance Act No. 12 of 2012 as amended and Commercial Hub Regulation No. 1 of 2013 a new Enterprise which is established or incorporated in Sri Lanka and engaged in any one or more business activities referred below under (a) (b) (c) (d) and (e) subject to:-

- A minimum 65% of total investment has to be from foreign sources which includes transfers from Foreign Banking Units in Sri Lanka.
- Total turnover shall be achieved from export of goods and services rendered to foreign clients for which payments is received in foreign currency. However, in the case of Logistic Services, Warehousing Services can be provided to domestic exporters for payment in foreign currency and entered into an agreement with the Board of Investment of Sri Lanka.
- The Enterprise shall be approved by the Board of Investment of Sri Lanka under the provisions of the Commercial Hub Regulation.
- The Enterprise shall bring the required minimum investment as stipulated in the Commercial Hub Regulation within the given period.

(a) Entrepot Trade in involving import, minor processing and re-export.-

- i. import of merchandise for minor processing and re-export only; and
- ii. import of inputs for export processing with a minimum of 10 % value addition.
 - minimum investment requirement is US\$ 5Mn. in fixed assets within a period of 06 months from the date of the related agreement signed between the Enterprise and the BOI;
 - an annual re-export turnover of not less than US\$ 20Mn. shall be achieved by the Enterprise over a period of 05 years from the date of commencement of commercial operations of such business; and
 - locate within Freeport or any bonded area.

(b) off-shore business where goods can be procured from one country or manufactured in one country and shipped to another country without bringing the same into Sri Lanka.

i. procurement, order management and supply chain management, delivery and invoicing; and

ii. facilitate financial, documentation and supply chain aspects for movement of cargos from the manufacturing countries to buyers destination.

- minimum investment requirement is US\$ 1Mn. in fixed assets within a period of 06 months from the date of the related agreement signed between the Enterprise and the BOI;
- an annual re-export turnover of not less than US\$ 10Mn. shall be achieved by the Enterprise over a period of 05 years from the date of commencement of commercial operations of such business; and
- may be located outside Freeport or bonded area.

(c) providing front end services to clients abroad.-

i. marketing sales and business development related services;

ii. product design and development;

iii. supply chain management including financing;

iv. sampling, testing quality checking related services; and

v. logistic and related services;

- minimum investment requirement is US\$ 1Mn. in fixed assets within a period of 06 months from the date of the related agreement signed between the Enterprise and the BOI;
- an annual re-export turnover of not less than US\$ 10Mn. shall be achieved by the Enterprise over a period of 05 years from the date of commencement of commercial Operations of such business; and
- may be located outside Freeport or bonded area

d) operations of the Headquarters of leading buyers for the management of the finance, supply chain and billing operations.

- I. international billing;
- ii. quality control;
- iii. financial services;
- iv. administrative and backend services; and
- v. supply chain management;
 - minimum investment requirement is US\$ 1Mn. in fixed assets within a period of 06 months from the date of the related agreement signed between the Enterprise and the BOI;
 - an annual re-export turnover of not less than US\$ 10Mn. shall be achieved by the Enterprise over a period of 05 years from the date of commencement of commercial Operations of such business; and
 - may be located outside Freeport or bonded area.

e) logistic services such as a bonded warehouse or multi-country consolidation in Sri Lanka.

- i. receive/handle and re-export MCC cargo including Pick & Pack Cargo;
- ii. warehousing, inventory management and logistics value addition for international clients;
- iii. warehousing for temporary storage of inputs or finished goods for local exporters;
- iv. freight forwarding for clients abroad;
- v. transshipment activities; and
- vi. regional trading bonds including supply to Sri Lankan exporters
 - minimum investment requirement is US\$ 3Mn. in fixed assets within a period of 06 months from the date of the related agreement signed between the Enterprise and the BOI;
 - an annual re-export turnover of not less than US\$ 15Mn. shall be achieved by the Enterprise over a period of 05 years from the date of commencement of commercial Operations of such business; and
 - locate within Freeport or any bonded area

A new Enterprise engaged in any business activities referred to above may also be considered in terms of the Strategic Development Projects Act with the minimum investment requirement of US\$ 10Mn.

- “Free Port” means the area declared in terms of Sri Lanka Ports Authority Act No. 51 of 1979 and declared in terms of the Air Navigation Regulation of 1955.
- “Bonded Area” means the area declared in terms of the Board of Investment of Sri Lanka Law No. 4 of 1978 and declared in terms of Section 111 of the Customs Ordinance (Chapter 235)



LAND POLICY OF THE COUNTRY

1. The outright purchase of land (state owned or privately owned) to the following is prohibited in terms of land "restrictions on alienation" act
 - A foreign national;
 - A foreign company; and
 - A company incorporated in Sri Lanka of which 50% or more of its shareholding is held by a foreign national or a foreign company.
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2. The prohibition will not apply for the following:
 - The transfer is to a Diplomatic Mission or an Inter-Governmental or International Multilateral or Bilateral Mission recognized in terms of the Diplomatic Privileges Act No. 9 of 1996;
 - The transfer is that of a Condominium Parcel situated on the 4th floor (excluding the ground floor) or above of a building coming under the provisions of Apartment Ownership Law No. 11 of 1973;
 - A company incorporated in Sri Lanka of which 50% or more of its shareholding is held by a foreign national or a foreign company which is in operation for at least a consecutive period of 10 years at the time of land is registered; and
 - The Minister-in-Charge of the Finance in consultation with the Minister-in-Charge of the Land can get the Cabinet of Ministers' prior approval if the project is in the interest of the national economy and there is a substantial foreign remittance for the purpose of purchase of land exempt a foreign national/foreign company.
3. Lease of land State Owned or Private owned
 - A foreigner/foreign company can lease a land subject to a maximum period of 99 years subject to payment of land tax for the consideration of total lease value.
 - If the land is situated within the BOI Zone, Industrial Zone or Tourism Zone, concessionary rate of land tax shall be paid 7.5% of the total value of the lease. Outside the Zones, land tax 15% of the total lease value shall be paid in addition to the stamp duty.
 - If the company in operation continuously in Sri Lanka more than 10 years will not be liable to pay the above land tax.

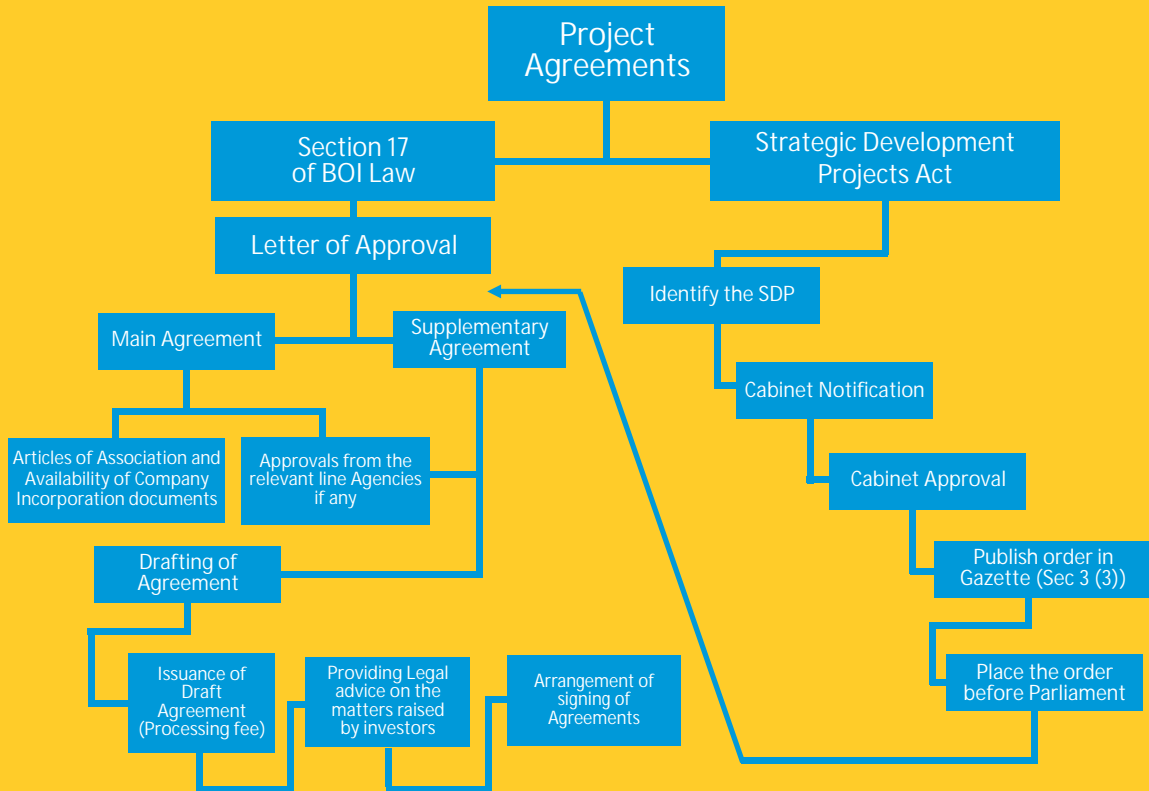
DISPUTE RESOLUTION

Country law will be applied.

- Any dispute relating to the interpretation of the provisions of the Agreement or to the rights of the parties under the Agreement shall be referred for settlement by one or more arbitrators in terms of the Arbitration Act No. 11 of 1995.
- The venue of the said arbitration proceedings shall be at Colombo.
- Any award made by the said arbitrator or arbitrators shall be binding on the parties to the agreement and it may be enforced by either of the parties to the Agreement in terms of the Arbitration Act No. 11 of 1995 and subject to the provisions relating to the enforcement of such awards in the said Act.
- Further, for any violations/misrepresentations/or any matter arising out of the Companies Act can be referred to the Commercial High Court in Colombo.



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OTHER SIGNIFICANT AREAS IN FOREIGN INVESTMENT

In terms of the Gazette Notifications No. 1232/14 of 19th April 2002, 1248/19 of 8th August 2002, 1685/2 of 21st December 2012 and 1737/9 of 20th December 2011 which published under the Exchange Control Act, permission has been granted for the issue and transfer of shares in a company upto 100% of the issued capital of such Company, to approved country funds, approved regional funds, corporate bodies incorporated outside Sri Lanka and individuals resident outside Sri Lanka (inclusive of Sri Lankan's resident outside Sri Lanka) subject to the exclusions and restrictions and conditions hereinafter set out.

Restrictions:

- Money Lending
- Pawn Brokering
- Retail Trade with a capital less than US\$ 1 Mn.
- Coastal Fishing
- Provision of Security Services including Security, Consultancy to individuals or Private Organizations

LIMITATIONS

Foreign Investments are also subjected to certain limitation set out in the said Gazette Notifications published under the Exchange Control Act No. 24 of 1953.

(a) In respect of shares in a company carrying on or proposing to carry on any of the following businesses only up to 40% of the issued capital of such company, or if approval has been granted by the BOI for a higher percentage of foreign investment in any company only up to such percentage.

- Production of goods where Sri Lanka exports are subject to internationally determined quota restrictions;
- Growing and primary processing of tea, rubber, coconut, cocoa, rice, sugar and spices;
- Mining and primary processing of non-renewable national resources;
- Timber based industries using local timber;
- Fishing (Deep Sea fishing);
- Mass Communication;-Education;
 - Freight Forwarding;
 - Travel Agencies; and
 - Shipping Agencies.

(b) The permission hereby granted shall apply in respect of the shares of a company carrying on or proposing to carry on any of the businesses set out below only upto the percentage of the issued capital of the company to which percentage either general or special approval has been granted by the Government of Sri Lanka or any legal or administrative authority set up for the approval of foreign investment in such businesses.

(i) Air transportation;

(ii) Coastal shipping;

(iii) Industrial undertraining in the Second Schedule of the Industrial Promotion Act, No. 46 of 1990

- Any industry manufacturing arms, ammunitions, explosives, military vehicles and equipment aircraft and other military hardware;
- Any industry manufacturing poisons, narcotics, alcohols, dangerous drugs and toxic, hazardous or carcinogenic materials; and
- Any industry producing currency, coins or security documents.

(iv) Large Scale mechanized mining of gems; and

(v) Lotteries.

Contact Details of Legal Department of the BOI

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Sectors

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- Housing

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- Education
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- Business Processing Outsourcing (BPO)
- Other Services
- Hub Operation

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- Apparel & Textiles
- Hub Operation

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- Other Manufacturing
(Boats, Mineral, Pharmaceuticals, Ceramic, Leather,
paper, Furniture, Cosmetics, Rubber based product etc.)
Hub Operation

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- Agriculture
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* Information given above are as per the prevailing laws of the Country



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