Property Tenure/Ownership

There are two types of property tenure in Sri Lanka:

- Freehold
- Leasehold

The terms of leases granted by the government and/or private individuals may vary and may depend on the purpose for which the land is to be used and the agreement between.

Major Property Legislation

Some of the main legislation is as follows:

- Apartment Ownership Law No. 11 of 1973, as amended;
- Ceiling on Housing and Property Law;
- Finance Act No. 11 of 1963 as amended;
- Prevention of Frauds Ordinance;
- Registration of Documents Ordinance;
- Stamp Duty Act;
- Land Reform Law; and
- Registration of Title Act No. 21 of 1998.

Property can be owned either by the state, by private individuals or by corporate entities. In respect of private land, ownership is obtained by the execution of deeds of transfer in the presence of a notary public and two witnesses, in accordance with the provisions of the Prevention of Frauds Ordinance.

All other transactions in respect of land, such as leases, mortgages and other dispositions, should also comply with the provisions of the Prevention of Frauds Ordinance. Accordingly, such documents would have to be executed before a notary public and two witnesses. The executed instrument would have to be registered under the provisions of the Registration of Documents Ordinance. In Sri Lanka, registration under the Registration of Documents Ordinance is not a prerequisite to confer validity on such deeds, but only provides priority. The document is valid upon execution and notarization.

The government has also enacted the Registration of Title Act No. 21 of 1998, which is not in operation in full throughout the island as yet. Under this Act, registration of title has been introduced such that once the certificate of title has been registered, such registration would be proof of the ownership of the land in respect of which such title has been granted.

In respect of high-rise buildings, there are additional provisions under the Apartment Ownership Law No. 11 of 1973 (as amended from time to time) for the transfer, alienation, mortgage and similar transactions in respect of units of condominium property.

Operational Requirements for Foreign Corporations

Foreign entities can establish a business presence in Sri Lanka by either:

- incorporating a fully owned subsidiary or a company in which it has majority control; or
- registering as an overseas company, subject however to the restrictions imposed by Sri Lanka’s exchange control laws.

The procedure applicable to either of the above cases entails registering relevant statutory forms and constitutional documents with Sri Lanka’s Registrar General of Companies and the payment of stipulated fees.

Sri Lanka’s Exchange Control laws restrict:

- the type of commercial, trading or industrial activities that may be carried out in Sri Lanka by registered overseas companies; and
- foreign ownership of shares (including ordinary shares arising on a conversion of debentures and also preference shares held by foreign investors in companies classified as specified business enterprises) of local companies engaged in protected business activities.

Prevailing exchange control regulations restrict, up to 40%, foreign ownership of shares of local companies engaged in any of the following areas of activities (unless the approval of the Board of Investment of Sri Lanka has been granted for a higher percentage of foreign equity investment):

- production of goods where Sri Lanka’s 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 nonrenewable national resources;
- timber-based industries using local timber;
- fishing (deep sea fishing);
- mass communications;
- education;
- freight forwarding;
- travel agencies; and
- shipping agencies.

The following areas are completely restricted to investment only by Sri Lankans:

- money lending (other than the business of providing credit to investors to purchase securities of a listed company by a company registered as a margin provider in terms of section 19(A) of the Securities and Exchange Commission of Sri Lanka Act No. 36 of 1981 (as amended));
• pawn broking;
• retail trade with a capital of less than LKR 131.15 million (USD 1 million);
• coastal fishing; and
• provision of security services including security management, assessment and consulting to individuals or private organizations.

Foreign entities seeking investment incentives, such as exemptions from exchange control regulations, concessions from customs duty, tax holidays, etc should secure registration under section 17 of the Board of Investment Law No. 4 of 1978 or have their investment identified by the Board of Investment of Sri Lanka as a strategic development project under the Strategic Development Projects Act No. 14 of 2008 (as amended). Eligibility is based on the foreign investment value and the importance of the investment sector to the Sri Lankan economy and other stipulated criteria.

The registration or licensing requirement for any commercial entities in Sri Lanka would depend also on the type of industry and business that the foreign investor would be engaged in.

In relation to foreign employment restrictions in Sri Lanka, foreign nationals are not permitted to be employed unless their expertise is essential to the national economy. All foreigners working in Sri Lanka must obtain valid working visas.

Restrictions on Foreign Property Ownership

In terms of Letters dated 27 March 2013 and 31 May 2013 issued by the Ministry of Finance and Planning to the Registrar-General’s Department the current position with regard to transfer of land to foreigner or foreign companies is as follows:

- Transfer of state or private land is prohibited to the following entities:
  - 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.

However the following exceptions are applicable in respect of transfer of land to the above entities:

- transfer to a diplomatic mission or an intergovernmental or international or multilateral or bilateral mission recognized in terms of the Diplomatic Privileges Act No.9 of 1996 – such a transfer will not carry a land tax;
- transfer of a condominium parcel situated on the fourth floor (excluding the ground floor) or above of a condominium building – such a transfer will not carry a land tax;
- a company incorporated in Sri Lanka of which 50% or more of its shareholding is held by a foreign national or foreign company which is in operation for at least a period of ten consecutive years at the time the land is registered – such a transfer will not carry a land tax; or
- any transfer which the Minister of Finance in consultation with the minister in charge of the subject of land with the prior approval of the cabinet of ministers has determined to exempt a foreign national or foreign company from the application of the prohibition, in the interests of the national economy, provided there is substantial foreign remittance for the purpose of purchase of the land – such transfer will attract a ‘land related tax’, based on considerations as may be prescribed by the Minister by Order published in the related gazette notification.

- Dispossession of state or private land by way of a lease, tenancy or similar arrangement is permitted to:
  - 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, subject to a maximum period of 99 years and subject to a land tax payable on such lease or tenancy or other similar arrangements which will be specified in terms of the proposed law.

The amount of the land tax has not been specified, but a payment of 15% is paid to the Department of Inland Revenue along with the stamp duty.

An exemption from the 15% land tax has now been granted to renewals or extensions of existing lease agreements by foreign companies which are in operation continuously for a period of ten years. However, in practice, the assessor of the Department of Inland Revenue has granted exemptions for a lease (not necessarily a renewal) where the lessee is a company operating for more than ten years in Sri Lanka.

A concession has been also granted in respect of pending leases of lands situated in the BOI zone declared by the Board of Investment of Sri Lanka, any industrial zone declared by the Ministry of Industries or any tourism zone declared by the Sri Lanka Tourism Development Authority. A land tax of 7.5% (instead of 15%) is payable in respect of the aforesaid lands.

The required legislation in respect of the above has not yet been enacted, but the provisions of the letters mentioned above are being adhered to until the relevant laws are passed.

Foreign Investment Incentives

Sri Lanka, a functioning market economy, apart from having ‘Investment Protection Agreements’ and ‘Double Taxation Relief
Agreements with many countries plus ‘Free Trade Agreements’ with India and Pakistan, also offers competitive incentives for foreign investment.

Key incentives are provided to investors who register with the Board of Investment of Sri Lankan (the ‘BOI’) under section 17 of the Board of Investment Law No. 4 of 1978 based on whether the investment constitutes:

- a small, medium, or large scale investment;
- project expansion; or
- strategic import replacement (identified as fabric, pharmaceuticals, milk powder, cement) enterprise/ expansion.

There are also different qualifying criteria and tax incentives for different sectors such as manufacturing, agriculture and services. Incentives that may be provided by the BOI range from the grant of tax holidays; duty free imports for capital goods and raw materials (for export oriented services); exemption from value added tax; customs duty and port & airport development levy (‘PAL’); and exemptions from exchange control restrictions.

Investments identified by the BOI as a strategic development project under the Strategic Development Projects Act No. 14 of 2008 (as amended) would be eligible for full or partial exemptions on income tax; value added tax; etc and other special concessions up to a maximum of 25 years.

Some sectors are not open for foreign investments and may be subject to government approval and/or regulations. Foreign investors are advised to check the website of BOI to see if their businesses fall into these sectors.

Enterprises which, in terms of the agreements entered into with the BOI, engage in the following activities are entitled to considerable tax exemptions under Sri Lanka’s Finance Act of 2013:

- entrepot trade involving import, minor processing and re-export;
- offshore business;
- providing front end services to clients abroad;
- headquarters operations of leading buyers for the management of the finance supply chain and billing operations; and
- logistic services such as bonded warehouse or the operation of multicountry consolidation in Sri Lanka.

Such exemptions are in addition to those pertaining to the Customs Ordinance (subject to specified exceptions), Import and Export Control Act and the Exchange Control Act.

Sri Lanka welcomes foreign investors. Further information relating to foreign investment incentives can be found on the website of BOI – Invest in Sri Lanka.

Exchange Control Regulations

The consent of the Controller of Exchange is required in the event of any transfer of property by a non-resident. Persons who are deemed to be nonresidents are defined in Gazette No.15007, dated 21 April 1972 and published under the provisions of the Exchange Control Act. Consent is required for:

- the parties to proceed with the sale of the property and to make payment to a nonresident; and
- the nonresident who received payment to remit the proceeds out of Sri Lanka.

As a result of recent relaxation in exchange control regulations, general permission has been granted to Sri Lankan resident buyers to make payments to non-residents in respect of the purchase of a real estate. However, non-residents are still required to obtain consent for the remittance of the sale proceeds outside of Sri Lanka.

If a nonresident sells or transfers an immovable property in Sri Lanka, the proceeds of such a sale would not be remittable in full. The nonresident would be permitted to remit the proceeds to the extent of the amount brought into Sri Lanka by way of inward remittances at the time of the nonresident’s purchase of that property.

In the case of Sri Lankan emigrants, in accordance with the current rules and with the consent of the Controller of Exchange, an initial remittance of LKR 19.67 million (USD 150,000) is permitted, followed by a subsequent remittance of LKR 2.62 million (USD 20,000) annually.

Taxes on Acquisition and Transfer of Real Estate

Stamp duty on a deed of transfer is as follows:

- 3% for the first LKR 100,000 (USD 762); and
- 4% for every LKR 100,000 (USD 762) or part thereof.

Stamp duty on a lease agreement is LKR 10 (USD 0.076) for every LKR 1,000 (USD 7.62) or part thereof. Additionally 15% of the total rental is payable by way of land tax in the event of a lease by a foreigner or a foreign company.

Stamp duty is usually payable in the event of a transfer by the purchaser and in the event of a lease agreement by the lessee, unless the lessor and the lessee have an agreement to the contrary.

Taxes on Possession and Operation of Real Estate

Assessment rates are payable to the local authority of the area where the land is situated. This would be calculated on the basis of an annual value given by the local authority after an inspection/valuation of the property. Assessment rates are payable quarterly.

In addition, there are certain charges payable to the Urban Development Authority (‘UDA’). However, UDA charges are not applicable to all premises and would be payable depending on the nature and use of the premises.
**Tax Treaties: Avoidance of Double Taxation**

Sri Lanka has entered into double tax avoidance agreements with several countries, in terms of which tax payers may claim credits with respect to specified taxes. Below is a list of countries that Sri Lanka has entered into double tax avoidance agreements with as at 20 September 2013:

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The information in this guide is current as at 20 September 2013.