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 the parties.

Major property legislation
Some of the main legislations are as follows:
• Land (Restriction on Alienation) Act No.38 of 2014
• Apartment Ownership Law No.11 of 1973, as amended;
• Ceiling on Housing and Property Law;
• Prevention of Frauds Ordinance;
• Registration of Documents Ordinance;
• Stamp Duty Act;
• Land Reform Law; and
• Registration of Title Act No. 21 of 1998.
Subject to the restrictions on the transfer of land under the Land (Restrictions on Alienation) Act (“the Land Act”), 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 or gifts 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 of same.
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 in pursuance of which 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, subject to the restrictions imposed by Sri Lanka’s Exchange Control laws, establish a business presence in Sri Lanka by:
• Incorporating a fully owned subsidiary or a company in which it has majority control or a minority stake; or
• Acquiring shares in an existing Sri Lankan Company; or
• Registering as an overseas company.
Sri Lanka also permits registration of offshore companies with investment concessions provided under regulations governing “commercial hub operations”.
The applicable procedural requirements in the above cases involve registering of relevant statutory forms and constitutional documents with the Department of the Registrar-General of Companies of Sri Lanka on payment of stipulated fees.
In terms of Sri Lanka’s Exchange Control laws, foreign investment in local companies must be remitted into the country via a Securities Investment Account [“SIA”] to be opened with any local commercial bank. Repatriation of 100% of profits arising from business carried out in Sri Lanka is permissible without restriction. However, in compliance with Sri Lanka’s Exchange Control laws such repatriation must be routed via the SIA being the account from which the original investment had been remitted to Sri Lanka by the foreign investor.
Companies incorporated in Sri Lanka and registered overseas companies are, during the course of their corporate existence or registration respectively, subject to continuous public disclosure obligations imposed by way of filings with the Department of the Registrar-General of Companies of Sri Lanka.
The registration or licensing requirements for commercial entities in Sri Lanka would be dependent also on the type of industry and business that the foreign investor would be engaged in.
Sri Lanka’s Exchange Control laws restrict a) 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 Sri Lankan companies engaged in protected business sectors and b) the type of commercial, trading or industrial activities that may be carried out in Sri Lanka by registered overseas companies.
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 non-renewable national resources;
- timber-based industries using local timber;
- fishing (deep sea fishing);
- mass communications;
- education;
- freight forwarding;
- travel agencies; and
- shipping agencies.

Foreign ownership of shares of local companies carrying on or proposing to carry on business in the sectors set out below is permitted only up to the percentages that have been approved by the Sri Lankan Government or any legal or administrative authority set up for approving such investment:

- Air transportation;
- Coastal shipping;
- Industrial Undertaking in the Second schedule of the Industrial Promotion Act No.46 of 1990 namely a) any industry manufacturing arms, ammunitions, explosives, military vehicles and equipment aircraft and other military hardware; b) any industry manufacturing poisons, narcotics, alcohols, dangerous drugs and toxic, hazardous or carcinogenic materials; c) any industry producing currency, coins or security documents;
- Large scale mechanized mining of gems;
- Lotteries.

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

- money lending (other than the business of providing of credits 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 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.

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

Restrictions on foreign property ownership
Transfer of land is prohibited to the following:

A. To a foreign individual
B. A foreign company
C. A company incorporated in Sri Lanka where any foreign shareholding in such company either directly or indirectly is 50% or above.

It is relevant to note that where the foreign shareholding is directly or indirectly above 50% such a company would fall within the definition. Accordingly formation of a subsidiary company by a company where a foreign shareholding is over 50% for the purpose of purchasing immovable property would not be permitted.

Land is defined to mean any State or private land and includes any interest in land covered with water and any house or building which stands on that land.

The following transfers are exempted from the application of the law –

A. Transfer of land to –

- Diplomatic Missions of another State or International, Multilateral or Bilateral Organization recognized within the meaning of the Diplomatic Privileges Act
- A condominium parcel situated on or above the 4th floor (excluding the ground floor and any common floor) of a building provided that the entire value is paid up front, through an inward foreign remittance prior to the execution of the relevant deed of transfer.
- A foreign investor in consequent to a decision of the Cabinet taken prior to January 1, 2013 involving direct investment of foreign currency, as per the related agreements on such investment, and structured on the basis of any written law governing the tax regime prior to January 1 2013 and has ensured compliance by making inward remittances to Sri Lanka.

- A foreign investor in consequent to a decision of the Cabinet taken prior to January 1, 2013 involving direct investment of foreign currency, as per the related agreements on such investment, and structured on the basis of any written law governing the tax regime prior to January 1 2013 and has ensured compliance by making inward remittances to Sri Lanka.
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Where land is transferred to a company which is less than 50% shareholding, the company Secretary should furnish to the Registrar of Lands a certificate to the effect that foreign shareholding is less than 50% and the Secretary should inform every 6 months from the date of registration of the relevant deed that the foreign shareholding has not exceeded 50%.

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; b) Project expansion; or c) 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 upto a maximum of 25 years.

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

Enterprises which, in terms of the Agreements entered into with the BOI engage in a) entrepot trade involving import, minor processing and re-export; b) off shore business; c) providing front end services to clients abroad; d) headquarters operations of leading buyers for the management of the finance supply chain and billing operations; (e) logistic services such as bonded warehouse or the operation of multi – country consolidation in Sri lanka; are entitled to considerable tax exemptions under Sri Lanka’s Finance Act of 2013. 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.
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 10th February 2016:

Australia
Bahrain
Bangladesh
Belarus
Belgium
Canada
Czech Republic
Denmark
Egypt
Federal Republic of Germany
Finland
France
Hong Kong
India
Indonesia
Iran
Italy
Japan
Jordan
Kuwait
Luxembourg
Malaysia
Mauritius
Nepal

The information in this guide is current as at 15th February 2016.
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