

TIRUCHELVAM ASSOCIATES
COLOMBO, SRI LANKA

CORPORATE DIVISION UPDATE IN THE CONTEXT OF THE COVID-19 CRISIS

No doubt, over the next few weeks and months, most companies will face many operational and financial obstacles. In addition to companies already incorporated and fully functional, promoters who intended on incorporating companies may also be in limbo wondering how to proceed with their plans or whether proceeding at this point in time is even an option at all.

In light of this, we understand that many clients may have various practical questions on operational matters relating to companies. Our Corporate Division has prepared a note that may be of assistance to our Clients.

This note includes the current status of operations on government offices/regulators, an outline of the current regulatory framework in Sri Lanka that would have an impact on corporate law affairs including foreign investments and some key client concerns addressed.

1. CURRENT LEGAL SITUATION IN SRI LANKA

Sri Lanka has not enacted any new laws specifically to address the impact of the COVID-19 (“C-19”) and as such, there are no updates to the laws as a result of the current situation. However, there are certain key notices/regulations which have been issued by the Government of Sri Lanka (“GOSL”).

In specific, various steps have been taken by the Central Bank of Sri Lanka (“CBSL”) to control the impact on the economy. For example, on 31st March 2020, CBSL announced a debt moratorium and encouraged banks to issue working capital loans for COVID-19 hit businesses and individuals. Further, the Monetary Board of CBSL has decided to introduce a number of measures to provide flexibility to Licensed Finance Companies and Specialised Leasing Companies facilitating them to support businesses and individuals affected by the outbreak of COVID-19.¹ *Refer our note on Banking and Finance for more details.*

¹ Press Release dated 31st March 2020 issued by the Department of Supervision of the Non-Bank Financial Institutions of the Central Bank of Sri Lanka

Foreign Exchange

From a Foreign Exchange law perspective –

- i. A regulation² has been issued imposing restrictions on the outflow of Foreign Exchange.

All payments through Outward Investment Accounts (“OIA”) for overseas investments by persons resident in Sri Lanka are suspended for 3 months with effect from 2nd April 2020 except in the following instances to the satisfaction of the Head of Department of Foreign Exchange:

- a) investments to be financed out of a foreign currency loan obtained by the investor from a person resident outside Sri Lanka under the provisions of the Foreign Exchange Act³ (“FEA”); or
- b) investments to be made to fulfill the regulatory requirement in that country.

The said Regulation further provides the following:

- a. that any outward remittances through Business Foreign Currency Accounts (“BFCA”) or Personal Foreign Currency Accounts (“PFCA”) held by persons resident in Sri Lanka - other than the remittances on current transactions - are suspended.
- b. That the repatriation of funds under the migration allowance through Capital Transactions Rupee Accounts by the emigrants who have already claimed migration allowance under the general permission previously granted (i.e: annual migration allowance) are suspended.
- c. That the eligible migration allowance for the emigrants who are claiming the migration allowance for the first time (i.e: initial migration allowance) is limited to a maximum of USD 30,000.
- ii. A Regulation⁴ issued permits any Sri Lankan individual⁵ and any person resident outside Sri Lanka including funds, corporate bodies, association and other well-wishers, to open and maintain a “Special Deposit Account” (“SDA”) in the form of Term Deposits with an authorized dealer in Sri Lanka, out of inward remittances from abroad routed through the banking system favoring the account holder during the period of six months from 8th April 2020.

² Extraordinary Gazette No.2169/3 dated 2nd April 2020 issued by the Minister of Finance, Economic and Policy Development

³ No.12 of 2017

⁴ Extraordinary Gazette No.2170/4 dated 8th April 2020 issued by the Minister of Finance, Economic and Policy Development

⁵ including Dual Citizens, Citizens of other States with Sri Lankan origin

Key features of the SDA being that –

- i. Must be for a minimum tenure of 6 months;
- ii. Interest payable is 1 percentage point and 2 percentage points per annum for SDAs with a tenure of 6 months and 12 months, respectively, payable at maturity of the deposit, more than the deposit interest rates applicable for normal deposits of similar maturities by the respective bank.
- iii. Funds are freely convertible and repatriable outside Sri Lanka on maturity.

2. GOVERNMENT OFFICES/REGULATORS/STOCK MARKET

Currently there is no mechanism to facilitate “work from home” for non-essential services. Thus, most Government bodies ceased to operate.

Having stated the above, a circular has been issued by the Presidential Secretariat⁶ regarding delivering government services via Work from Home (“WFH”) arrangements, in an attempt to ensure smooth functioning of government services. We will keep you updated as and when we receive updates in this regard.

Registry of Companies (“ROC”)

General filings/submissions/payments cannot be made at ROC during this period. It is unlikely that ROC will issue penalties for late submissions. ROC has however not confirmed this position and has informed that a decision is yet to be taken on this.

The ROC incorporation division is however working remotely and as such company incorporation applications submitted via the eROC portal are being reviewed and approved by ROC.

Board of Investment (“BOI”)

Officials will be working remotely as far as practicable, including accepting new applications to register with the BOI via email.

CBSL

Will be open with minimum number of staff members and others working from home.⁷

⁶ Circular No.PS/CSA/Circular/18/2020 dated 30th March 2020 by the Secretary to the President

⁷ The President declared the CBSL to be an essential service too and as such has been required to remain open with minimum number of staff.

COLOMBO STOCK EXCHANGE

Based on the Directive issued by the Securities and Exchange Commission of Sri Lanka, the Colombo Stock Exchange (“CSE”) is and will remain closed for trading from 1st April 2020 until curfew is lifted.

However, the CSE based on its Business Continuity Management Plan has issued a Notice⁸ to Listed Companies to ensure the smooth functioning of the listed company including in relation to:

- a) Submission of corporate disclosures to the CSE
- b) Submission of annual reports and interim financial statements
- c) Issues of shares by listed entities

3. KEY LEGAL CONCERNS

A few of the key concerns clients may presently have are briefly addressed below:

1. Am I/are we still able to incorporate a Company?

Yes, ROC accepts applications for name approval and thereafter for incorporation via the eROC portal. Unless there are any issues to be resolved after holding face to face discussions with the Registrar, a company may be incorporated in the usual manner. However, there may be a slight delay in the approval process compared to usual.

2. Are there any restrictions for foreigners to invest in companies in Sri Lanka in light of the current crisis?

There has not been any specific restrictions imposed on foreign investment in Sri Lanka given the current crisis. The Normal foreign exchange laws and regulations shall apply. Subject to exclusions and restrictions, foreigners/non-residents are permitted to invest upto 100% in companies in Sri Lanka.

Investments must still be made via an Inward Investment Account.

3. Can share issuances/changes in directors or any other changes be made during this period?

⁸ <https://cdn.cse.lk/pdf/index-gallery-pdf/notice-to-listed-companies.pdf>

Yes. However, in terms of the Companies Act⁹ notification of changes are required to be notified to the ROC within a prescribed time frame. Failure of such notification would usually attract a penalty imposed at the Registrar's discretion.

Refer Section 2 - Government Offices/Regulators/Stock Market. ROC has been unable to confirm as to their stance on late filings in respect of any transactions/changes during this period. However, if there are any changes made during this period, the requisite form/s should be filed at ROC as soon as it re-opens and it would be advisable to make a written request to waive off any penalty which may be imposed on the company given the practical impossibility to have made such filings any earlier.

4. Am I still able to pay my company's Annual Registration Levy which was due by the 31st of March 2020?

Whilst ROC will not have the mandate to collect these payments when it re-opens once the curfew has been lifted, it is advisable that the Company Secretaries make a written request to the Registrar requesting for further time to be granted for the payment of such Levy.

5. Is it possible for any details of a third party company to be obtained during this period?

There is currently no mechanism for company searches to be conducted online. As such, until the curfew has been lifted it will not be possible for details on a third party entity to be obtained from ROC.

6. Am I allowed to invest in foreign companies if I am a resident in Sri Lanka?

Refer details on the Regulation issued on 2nd April 2020 (under section 1 – Current Legal situation in Sri Lanka).

However, the Monetary Board shall have the authority to grant permission for the investments on case by case basis which exceeds the limits specified in the general permission granted, provided that,

- a) the proposed investment is to be financed out of a foreign currency loan obtained by the investor from a person resident outside Sri Lanka under the provisions of the FEA, or
- b) the proposed investment is to be made to fulfill the regulatory requirement in that country.

⁹ No.07 of 2007 (as amended)

7. Given the impact of the current crisis on my business, should I consider restructuring my business? Is this an option?

There is no restriction to do so. The manner in which this can be done and the most feasible options available will depend on various company specific factors and is advisable to seek legal assistance in relation to same.

8. Is it possible for a company to be closed down/liquidated as a result of there being no business? What are the implications?

There are various matters which need to be considered prior to making such decision. For example, how will the assets and liabilities be managed? How will the employees be managed? A company considering this will need to be specifically advised.

NOTE:

1. *Any reference to any laws and regulations/directives/circulars/government press releases etc are as at the date of the issue of this document.*
2. *Only references which may have a bearing on strictly company law or foreign exchange law related matters have been referred to herein.*
3. *The contents of this document should not be considered as legal advice. If you require legal advice on any specific matter or for purposes of decision making, do feel free to contact us.*

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