

Foreign Investment Review 2021

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Published by

Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

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First published 2012
Tenth edition
ISBN 978-1-83862-662-4

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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Oliver Borgers
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Lexology Getting The Deal Through is delighted to publish the tenth edition of *Foreign Investment Review*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on the European Union, France, Italy, Pakistan, Spain, Sri Lanka and Uzbekistan.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Oliver Borgers of McCarthy Tétrault LLP, for his continued assistance with this volume.



London
January 2021

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This article was first published in January 2021
For further information please contact editorial@gettingthedealthrough.com

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LAW AND POLICY

Policies and practices

1 | What, in general terms, are your government's policies and practices regarding oversight and review of foreign investment?

Promoting itself as a hub for foreign direct investment (FDI) in South Asia, Sri Lanka welcomes businesses with 100 per cent foreign ownership in most sectors and grants them equal status with local investments. National interest testing is not mandated in most instances. Some areas of business including tea, rubber, coconut, cocoa, rice, sugar and spices, timber-based industries, deep sea fishing, mass communication and education require some level of Sri Lankan participation. The reservations are based on the promotion of local industries and national security. Long-term leases are unrestricted, although transfer of land to foreigners is not permitted.

The Board of Investment (BOI) facilitates medium-scale investments with assistance for regulatory approvals and concessionary taxes. Provision is made for large-scale 'strategic development projects' (SDP), which are granted special concessions. Smaller investors set up directly with the Registry of Companies (ROC).

Sri Lanka has liberalised much of the currency controls. One hundred per cent outward remittance of the proceeds of investment is freely permitted. Inflow and outflow are monitored by the Central Bank of Sri Lanka's Department of Foreign Exchange (DFE) through designated bank accounts. Residence visas are available for workers and dependents, but are subject to labour market testing.

Some key industry segments encouraging investments are IT, pharmaceuticals, export-oriented manufacturing, agriculture, construction, tourism and travel. Special tax benefits and other concessions are offered for these sectors. The government of Sri Lanka (GOSL) announced there will be further concessions in the future.

Sri Lanka is a founding member of the Multilateral Investment Guarantee Agency and long-term member of the WTO, United Nations Conference on Trade and Development and World Intellectual Property Organization. The country was among the first to ratify the General Agreement on Tariffs and Trade, General Agreement on Trade in Services and Agreement on Trade-Related Aspects of Intellectual Property Rights. Sri Lanka is a party to 28 bilateral investment promotion and protection treaties and 44 double taxation treaties. The country also enjoys preferential access to foreign markets under its free trade agreements with several countries, including Singapore and all of the members of the South Asian Association for Regional Cooperation. Sri Lanka is also one of the few beneficiaries to the EU's Generalised Scheme of Preferences.

Main laws

2 | What are the main laws that directly or indirectly regulate acquisitions and investments by foreign nationals and investors on the basis of the national interest?

- The Constitution of Sri Lanka;
- the Foreign Exchange Act No. 12 of 2017 and Foreign Exchange (Classes of Capital Transactions in foreign exchange carried on by authorised dealers) Regulations No. 1 of 2017 (the FEA and the Regulations);
- the Companies Act No. 7 of 2007 (the Companies Act);
- the Board of Investment Law No. 4 of 1978 (the BOI Law);
- the Strategic Development Projects Act No. 14 of 2008 (SDPA);
- the Land (Restrictions on Alienation) Act No. 38 of 2014 (LRA);
- the Inland Revenue Act No. 24 of 2017;
- the Customs Ordinance;
- the Intellectual Property Act No. 36 of 2003;
- the Immigrants and Emigrants Act No. 20 of 1948; and
- the Commercial Hub Regulations No. 1 of 2019 issued under the Finance Act No. 12 of 2012 (as amended) (the Commercial Hub Regulations).

Scope of application

3 | Outline the scope of application of these laws, including what kinds of investments or transactions are caught. Are minority interests caught? Are there specific sectors over which the authorities have a power to oversee and prevent foreign investment or sectors that are the subject of special scrutiny?

The Constitution guarantees equal treatment for foreign investors.

The FEA and the Regulations set out all matters relating to foreign exchange. In relation to inward investments, the law addresses:

- the types of capital transactions foreigners can engage in, such as equity investments in Sri Lankan companies and foreign companies listed on the Colombo Stock Exchange; investment in debt securities; units in unit trusts or mutual funds; government securities; Sri Lanka Development Bonds; immovable property; and deposits in licensed financial institutions;
- permitted areas of investment;
- routing of investment and repatriation of proceeds; and
- types of bank accounts.

The Companies Act addresses incorporations, shares and minority rights. This includes minority shareholders' rights to requisition meetings, major transactions requiring approval of 85 per cent of shareholders and minority buy-out rights. Additional rights for minority shareholders in a joint venture agreement and the articles of association of the company are often upheld by courts.

The BOI Law provides for two types of registrations of companies:

- section 16 approvals: routine incorporations with visa assistance; or
- section 17 approvals: concessions and exemptions from the customs law depending on the level of investment and visa assistance and regulatory approvals.

BOI registration is not mandatory and is open to foreigners and locals alike.

The SDPA covers the process of identifying and approving large-scale equity investments that are of national interest and likely to bring economic and social benefit to the country. The SDPA lists the laws that SDPs may be exempt from. The maximum period of exemption is up to 25 years.

The LRA strictly regulates investment by foreigners in immovable property. The law restricts the outright transfer of land to foreign individuals, foreign companies and Sri Lankan companies with over 49 per cent foreign ownership, unless otherwise exempted. However, long-terms leases are not restricted and transferring condominium property is permitted.

The Commercial Hub Regulations set out how the BOI may exempt hub operators from the general laws of the country where 65 per cent of the investment is from foreign sources (including the FEA and customs and import and export laws) if the total turnover is from exporting goods or services, or both. These operations should be: entrepôt trading; offshore trade relating to the procurement or manufacturing of goods from one country and shipping to another; front-end services to overseas clients; operating headquarters (for the management of the finance supply chain and billing operations) of leading buyers; and logistic services such as a bonded warehouse.

With regard to sectoral matters, certain sectors have been identified under the FEA as prohibited or limited areas for investment by foreigners, while investment in some highly regulated sectors can only be with the special permission of the GOSL. All authorities strictly review and oversee investments with reference to this. The table below provides a summary.

Under sectoral restrictions, 51 per cent local participation is required for licences to be granted under the National Medicines (Registration and Licensing of Medicine) Regulations 2019 and for registrations under the Construction Industry Development (Registration of Qualified Persons) Regulation of 2017 for construction contractors. The Banking Act No. 30 of 1988 requires Monetary Board approval for foreign participation in licensed commercial banks, although foreign banks are permitted to conduct business in Sri Lanka.

Definitions

4 | How is a foreign investor or foreign investment defined in the applicable law?

There is no definition of 'foreign investor' or 'foreign investment'. But FEA refers to 'persons resident outside Sri Lanka'.

Persons resident outside Sri Lanka are:

- foreign entities (including country funds, regional funds, investment funds and mutual funds) established outside Sri Lanka;
- foreign citizens residing outside Sri Lanka;
- foreign citizens in Sri Lanka not covered by a residence visa; and
- Sri Lankan citizens residing outside Sri Lanka on a permanent basis.

'Foreign investments' are not specifically defined in the FEA. However, the law defines 'capital transactions' to be any transactions excluding current transactions (which are as referred to in article XXX of the International Monetary Fund Articles). Therefore, foreign investments come within the ambit of 'capital transactions'.

The LRA defines 'foreigner' as a non-citizen of Sri Lanka, and a 'foreign company' to mean a company or a body of persons incorporated under the laws of any country other than Sri Lanka. As investments under the LRA are in relation to immoveable property, 'land' has been defined and means any state or private land including any interest in land, any land covered with water and any house or building standing on the land.

Special rules for SOEs and SWFs

5 | Are there special rules for investments made by foreign state-owned enterprises (SOEs) and sovereign wealth funds (SWFs)? How is an SOE or SWF defined?

There are no special rules for SOEs and SWFs, and investments are not restricted.

Relevant authorities

6 | Which officials or bodies are the competent authorities to review mergers or acquisitions on national interest grounds?

Mergers and acquisitions are not routinely subject to national interest review. Instead, Sri Lanka relaxes restrictions on foreign investments based on the needs of the economy.

The BOI is permitted to grant approval for foreign investments to exceed the 40 per cent ceiling in restricted areas based on economic interest. Similarly, commercial hub operators meeting certain criteria

	Prohibited areas	Limited areas	Areas requiring special approval
Description	FDI in shares of companies engaging in these areas of business is completely restricted.	FDI is allowed up to 40 per cent of stated capital unless the BOI approves a higher percentage.	FDI permitted only if special approval is obtained.
Sectors	<ul style="list-style-type: none"> • Pawnbroking; • coastal fishing; and • retail trade where the foreign investment is less than US\$5 million. 	<ul style="list-style-type: none"> • The production of export goods that are subject to internationally determined quota restrictions; • the growing and primary processing of tea, rubber, coconut, cocoa, rice, sugar and spices; • the mining and primary processing of non-renewable national resources; • timber-based industries using local timber; • deep sea fishing; • mass communication; • education; • freight forwarding; • travel agencies; and • shipping agencies. 	<ul style="list-style-type: none"> • Transportation; • coastal shipping; • manufacturing arms, ammunition, explosives, military vehicles and equipment, aircrafts, and other military hardware; • manufacturing poisons, narcotics, alcohol, dangerous drugs and toxic, hazardous or carcinogenic materials; • producing currency, coins or security documents; • the large-scale mechanised mining of gems; and • lotteries.

may be authorised to offer goods to the local market in the interest of the national economy, if the domestic demand for these goods are met primarily through imports.

The Cabinet can refer special dispensation under the SDPA to Parliament for approval for projects in the national interest and projects that are likely to bring economic and social benefits to the country.

Aside from the above, all mergers and acquisitions in publicly quoted companies are subject to approval by the Securities and Exchange Commission of Sri Lanka under the Company Takeovers and Mergers Code.

The ROC routinely screens objects of proposed incorporations involving foreign shareholdings for conformity with the FEA or existing government policy. Sometimes the ROC refers matters to the DFE or the relevant ministry for comments or non-objections, but mergers and acquisitions are not scrutinised by ROC in this manner.

7 | Notwithstanding the above-mentioned laws and policies, how much discretion do the authorities have to approve or reject transactions on national interest grounds?

This is not applicable as transactions being for the national interest is not a mandatory requirement. However, the authorities have absolute discretion in deciding whether to grant concessions to investors.

PROCEDURE

Jurisdictional thresholds

8 | What jurisdictional thresholds trigger a review or application of the law? Is filing mandatory?

The Board of Investment (BOI) specifies the level of investment (and other matters such as job creation) for the basis of special concessions and documentary proof of the investment, and annual reporting to the BOI is necessary.

The Commercial Hub Regulations No. 1 of 2019 issued under the Finance Act No. 12 of 2012 (as amended) stipulate investment and turnover thresholds:

Operation	Minimum investment	Time period for making the investment (from the date of execution of the BOI agreement)	Annual turnover and time period since commencement of operations
Entrepôt trading	US\$5 million of which 50 per cent is required to be invested in fixed assets.	12 months.	Turnover more than US\$20 million over a five-year period.
Logistics services	US\$3 million of which 30 per cent is required to be invested in fixed assets.	12 months.	Turnover more than US\$15 million over a five-year period.
Buying and selling goods offshore and/or front-end services to overseas clients and/or headquarters for leading buyers	US\$1 million of which 40 per cent is required to be invested in fixed assets.	12 months.	Turnover more than US\$10 million over a five-year period.

In the case of land acquisitions by companies after 1 January 2013, the foreign shareholding must be maintained at 49 per cent for a period of 20 years from the date of acquisition. If the foreign shareholding exceeds the threshold for whatever reason, steps must be taken to reduce the shareholding to less than 50 per cent within 12 months (in the case of a listed company where the transfer is prior to 1 April 2018) and within six months (for other companies).

Foreign investment in debt securities that are under three years require special approval from the Department of Foreign Exchange.

National interest clearance

9 | What is the procedure for obtaining national interest clearance of transactions and other investments? Are there any filing fees? Is filing mandatory?

National interest clearance is not mandated. Some investments are given preferential treatment based on national interest by the authorities. The process involved varies depending on the authority and type of approval sought.

Investors seeking BOI approval for a shareholding higher than 40 per cent must state so in the BOI application form. The form should be submitted with the draft articles of association, investor's company profile, project proposal and application fee. The proposal usually details the economic interest to Sri Lanka from the project, including the proposed value of financial and asset investment, local labour opportunities, technological and other advancements, and promotion of the Sri Lankan trade market. The BOI's application review team will consider the investment. It is best to initially meet with the BOI and discuss the project specifics prior to official submission.

For investments that mandate special approval of the government of Sri Lanka (GOSL), a written application must be submitted to the relevant authority (such as ministries and departments depending on the topic).

Approval for a strategic development project (SDP) is also submitted to the BOI. If in consultation with the line ministries the project is identified as an SDP, it is then submitted to the Minister of Investment for publication in the government gazette along with the proposed exemptions. Approval of the Cabinet of Ministers is sought after 30 days from the publication. The Cabinet's approval is then published in the gazette and the matter is thereafter placed before Parliament within three months of the publication.

10 | Which party is responsible for securing approval?

The investor secures the approvals for the BOI and SDP status. For sector-specific matters requiring special approval of the GOSL, the target obtains approval unless it is a new project, in which case the investor will apply.

Review process

11 | How long does the review process take? What factors determine the timelines for clearance? Are there any exemptions, or any expedited or 'fast-track' options?

There are no set timelines, and it can vary on a case-by-case basis. Usually, the Registry of Companies (ROC) takes two weeks to incorporate a company, and the BOI takes one month for approval unless the matter is complex and requires review by other authorities.

The SDP review process takes far longer and is dependent on various factors including the project specifics, the relevant ministry and the types of exemptions sought. It is hoped that the proposed Cabinet subcommittee will reduce the time taken. Within six weeks of Cabinet approval, the project details are published on the gazette. Within three months of this publication, the matter is presented to Parliament.

There are no prescribed fast-track options for any of the review processes above.

- 12** | **Must the review be completed before the parties can close the transaction? What are the penalties or other consequences if the parties implement the transaction before clearance is obtained?**

A transaction that is closed before approval is granted runs the risk of rejection. A fine not exceeding 1 million Sri Lankan rupees is applicable in the event of non-compliance or breach of the Foreign Exchange Act No. 12 of 2017 (FEA).

Involvement of authorities

- 13** | **Can formal or informal guidance from the authorities be obtained prior to a filing being made? Do the authorities expect pre-filing dialogue or meetings?**

This is possible and encouraged in relation to BOI projects and SDPs. The ROC does not entertain pre-incorporation meetings, but informal advice can be sought.

- 14** | **When are government relations, public affairs, lobbying or other specialists made use of to support the review of a transaction by the authorities? Are there any other lawful informal procedures to facilitate or expedite clearance?**

A role for specialists of this nature is not lawfully prescribed. Authorities routinely seek clarification on the law from the Attorney General when reviewing transactions. We also highly recommend that investors rely on professional advisers such as lawyers, financial advisers, accountants and banks rather than rely on informal intermediaries.

- 15** | **What post-closing or retroactive powers do the authorities have to review, challenge or unwind a transaction that was not otherwise subject to pre-merger review?**

All transactions not conforming to the approval can be challenged or unwound after closing. In BOI companies, a breach of the conditions of approval may result in the suspension or automatic cancellation of the BOI status. Investments may also be challenged at a court of law on grounds of it being contrary to public policy.

Investors who fail to invest via an inward investment account route are not able to remit the income from their investments out of the country unless special permission is obtained from the Central Bank of Sri Lanka (CBSL). In addition, the CBSL has the authority to review and challenge transactions in breach of the FEA and impose penalties (not exceeding 1 million Sri Lankan rupees) for non-compliance.

SUBSTANTIVE ASSESSMENT

Substantive test

- 16** | **What is the substantive test for clearance and on whom is the onus for showing the transaction does or does not satisfy the test?**

Standard investments are cleared on the basis of compatibility with laws and policies. In restricted areas or where an investor wishes to obtain special concessions, the generally applicable review standard is 'national interest'.

Under the Strategic Development Projects Act No. 14 of 2008, the basis is 'likely to bring economic and social benefit to the country and likely to change the landscape of the country'. The criteria include the

public benefit of goods and services to be provided; substantial inflow of foreign exchange; employment generation and enhancement of the income-earning opportunities; and technology transformation.

Similarly, the Board of Investment (BOI) considers the test to be satisfied if a project will encourage a steady stream of future foreign investment, diversify sources of foreign exchange earnings, increase export earnings, create and promote a market for industrial and commercial enterprises, and increase the number of employment opportunities and training or qualification opportunities, or both.

For areas restricted under the Foreign Exchange Act No. 12 of 2017 (FEA) on national security grounds such as air transportation, coastal shipping and manufacturing arms or ammunition, there is no specific substantive test and the approval process will be on an ad hoc basis.

The initial onus of satisfying the substantive test is with the investor. However, in some cases the government of Sri Lanka's (GOSL) support is extended to the investor where the GOSL has sought to secure the investment. In strategic development projects, as parliamentary approval is required, the minister in charge of the subject of investment must present the matter for approval.

- 17** | **To what extent will the authorities consult or cooperate with officials in other countries during the substantive assessment?**

This would depend on the subject. Diplomatic missions often intervene with regulators in the introductory phase and sometimes provide required clearances. There is no formal process on this.

Other relevant parties

- 18** | **What other parties may become involved in the review process? What rights and standing do complainants have?**

Competitors and customers do not have a formal role in the review process. However, they may appeal to the Consumer Affairs Authority (CAA) for intervention in anticompetitive or monopolistic proposals. The CAA has yet to intervene in a proposed investment on this basis. Similarly, investments that have an impact on the environment are open to public challenge at environment impact assessment stage with respect to both initial environmental examination report and environmental impact assessment report.

Regulatory authorities and line ministries play a key role in investment approvals and registrations. Both the BOI (in the case of BOI-registered companies) and Registry of Companies (ROC) (in the case of non-BOI companies) at their discretion often refer applications to the relevant regulatory authority or line ministry for their non-objection or comments. The concerns of these ministries or regulators are highly regarded and may have a direct impact on investment approval or registration.

Prohibition and objections to transaction

- 19** | **What powers do the authorities have to prohibit or otherwise interfere with a transaction?**

Where the views of the Department of Foreign Exchange (DFE), a regulatory body or relevant line ministry is sought by the ROC or BOI on a proposed investment, any concerns raised or conditions imposed by these authorities may prohibit or otherwise interfere with the transaction. Once BOI approval is granted and the entity is set up, the BOI will monitor the transaction and if activities are not carried out as per the agreement or permission granted, the BOI can cancel, suspend or alter it.

However, the doctrine of public trust under Sri Lanka's constitution highlights that no discretionary power is absolute or unfettered, and public officers are held to a high standard in the execution of their powers.

The abuse of power is a violation of this trust. Therefore, any ultra vires prohibition or interference can be challenged by judicial review.

20 | Is it possible to remedy or avoid the authorities' objections to a transaction, for example, by giving undertakings or agreeing to other mitigation arrangements?

There are instances where line ministries or regulators may issue their non-objection to the ROC or BOI to approve an investment, upon the receipt of certain project-specific undertakings or confirmation from the investor. Other mitigation arrangements that may be useful is to confirm that the company appoint a majority of local directors.

To avoid the ROC's possible objection to the transaction, a statement can be included in the objects of the articles of association undertaking that all the applicable licences and permits will be received from the relevant regulatory authorities to carry out the objects. This is a commonly used mitigation strategy for company incorporations. There are no other specific remedies to avoid the authorities' objections.

Challenge and appeal

21 | Can a negative decision be challenged or appealed?

There is no restriction on legal challenges, and the decisions of regulators are subject to the writ jurisdiction of Sri Lankan courts.

There is no appeal process under the BOI. However, if an application is rejected, the reasons for rejection will be stated, and a fresh, rectified application may be made. Any decision by the DFE to impose a penalty on an investor for carrying out transactions in contravention of the FEA can be appealed within 30 days of the decision being communicated to the investor. The appeal should be made to the Board of Inquiry (formed under the FEA). The Board will make a determination within 30 days of the appeal and accordingly may confirm, vary or reverse the decision appealed against.

Confidential information

22 | What safeguards are in place to protect confidential information from being disseminated and what are the consequences if confidentiality is breached?

Usually, confidentiality is guaranteed by virtue of the agreements between parties, and non-disclosure clauses are routinely upheld by courts. Although under Sri Lanka's Right to Information Act No. 12 of 2016 the public may request access to information in the possession, custody and control of a public authority, information submitted to these authorities will be excluded from disclosure in several instances including: where information has been supplied in confidence to the public authority and the investor or company does not consent to its disclosure; or the information is of a Cabinet memorandum in relation to which a decision has not been taken.

Sri Lanka is also currently in the process of introducing data protection laws that will strengthen the confidentiality of information disseminated to third parties.

RECENT CASES

Relevant recent case law

23 | Discuss in detail up to three recent cases that reflect how the foregoing laws and policies were applied and the outcome, including, where possible, examples of rejections.

In the landmark case, *Bulankulama and six others v the Ministry of Industrial Development and seven others* [2000] 3 SLR 243 (*Eppawala* case) members of the public petitioned against a proposed mineral

investment agreement for exploration and the mining of phosphate in Eppawala, between the GOSL) and a US-based company, citing both environmental and health concerns. The Supreme Court held with the public, ordering the GOSL to refrain from entering into project agreements until a comprehensive project study is completed and the project proponent obtains the relevant permits. Therefore, it is important for investors to have the required approvals in place prior to proceeding with a project to mitigate risks.

In *Sugathapala Mendis and nine others v Kumaratunge and others* [2008] 2 SLR 339, a public interest litigation was filed, challenging the decision of the Urban Development Authority to acquire the land for public purpose and thereafter sell it to the investor to develop a golf course. The Supreme Court annulled the transaction in its entirety and held that the entire transaction was in violation of the public trust doctrine. This case was annulled despite the transaction being approved by the Cabinet of Ministers and other relevant regulators. The case also made reference to *Vasudeva Nanayakkara v Choksy and others* [2008] 1 SLR 134, a case instituted on public interest grounds on the sale of shares in a subsidiary of Ceylon Petroleum Corporation (an SOE) to John Keells Holding without the relevant approvals or following the due process. The Court had held that the public has sufficient locus standi to institute action on the infringement of fundamental rights guaranteed under article 12 of the Constitution. The GOSL's divestiture was manifestly contrary to the authorised process.

In *W Samararatne v National Gem & Jewellery Authority (NGJA) and others* (Ca (Writ) Application No. 197/2012 (unreported)), courts considered whether the NGJA can issue a gemming licence to a party that is only a lessee of a land for which the licence is being issued. The court held that the lessee does not satisfy the ownership criteria laid down in the relevant sectoral laws. Therefore, investors should be mindful of other circumstances and laws that may directly impact the investment.

UPDATES AND TRENDS

Key developments of the past year

24 | Are there any developments, emerging trends or hot topics in foreign investment review regulation in your jurisdiction? Are there any current proposed changes in the law or policy that will have an impact on foreign investment and national interest review?

The Board of Investment (BOI) and Information and Communication Technology Agency are now under the President's office. A new cabinet subcommittee dedicated to facilitating investments is also proposed.

In April 2020, the government of Sri Lanka (GOSL) issued regulations encouraging foreigners, including foreign corporate bodies, expatriates, dual citizens and other individuals, to place foreign currency deposits in the banking system. The budget proposal for 2021 extends tax holidays on the interest income of these deposits.

Tax benefit schemes were also introduced to attract foreigners. The supply of residential accommodation in the form of condominium housing units has been exempted from VAT. Hotels, guest houses, restaurants and other similar businesses registered with the Sri Lanka Tourism Development Authority and providing similar services were granted tax benefits. The companies engaged in educational services, promotion of tourism, construction services, agro-processing and healthcare services benefitted through reduced income tax.

The 2021 budget proposed the following significant areas of tax relief to encourage investments:

- total income tax exemptions for bonded warehouses and warehouses related to offshore businesses;
- tax holidays for recycling sites and renewable energy projects;

- concessionary rates for exports, dairy, fabric, tourism, agricultural products and IT, and pharmaceutical manufacturing;
- real estate sector;
- exemption from capital gains tax for investments through the Sri Lanka Real Estate Investment Trust, dividends to be free from income tax and stamp duty to be reduced up to 0.75 per cent;
- non-residents purchasing condominium parcels can be via foreign currency earnings made in Sri Lanka, abroad or through a loan obtained from a bank outside Sri Lanka;
- special concessions on investments in the Port City Economic Zone as one of the hubs for investment promotion in the country;
- import tax exemptions for machinery with modern technologies and raw materials, such as cement, premix, iron rods and bitumen, that cannot be produced domestically;
- import tax reductions for vehicle spare parts;
- concessions on custom duties and the extension of credit facilities to acquire cold room facilities and to obtain land and modern equipment on investments adding value to identified local crops; and
- tax exemptions where dividends of foreign companies are reinvested on expansion of their businesses or in the money or stock market or in Sri Lanka international sovereign bonds.

The GOSL intends to meet 50 per cent of the country's pharmaceutical requirements by local production. A pharma manufacturing investment zone of 400 acres is expected to be approved as a strategic development project with major tax relief. The GOSL also recently announced an exchange rate risk-free scheme for foreign investors in government securities.

Coronavirus

25 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In March 2020, the Central Bank of Sri Lanka (CBSL) announced a debt moratorium and encouraged banks to issue working capital loans for businesses and individuals hit by covid-19. In addition, special low-interest loans are being offered to businesses.

From a foreign exchange perspective, the GOSL issued regulations restricting outward investments and repatriation. However, these limitations are not applicable to outward remittances by investors on profits and income from investments via an inward investment account.

Although in March, at the start of the pandemic, investments temporarily stalled, soon after investors in the IT and pharmaceutical field in particular went ahead with their initial investment plans. Several sectors including the tourism industry received a boost of specially targeted loans and relief schemes. Those engaged in IT and enabled services are also eligible for tax exemptions.

From a regulatory authority perspective, the BOI, Registry of Companies and CBSL quickly stepped up their respective systems to enable the online submission of applications and thus curbed the disruption of any potential investment. Although regulations were issued stopping imports, the BOI and Department of Import and Export permitted BOI companies to continue importing essential raw materials so as to ensure that businesses are not drastically interrupted.

The following are best practices advisable for clients:

- set up discussions with the BOI for special dispensations to manage the shortfall in income (such as longer tax holidays, grace period for increased investments or extra time for commencement of production);



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- approach banks for loans where necessary;
- there is no requirement to be present in the country to carry out discussions with authorities in person; special approval requests or negotiations can be submitted in written form to most authorities;
- proceed to enter into agreements electronically as it is recognised under Sri Lanka's Electronic Transactions Act; and
- employers may consider, where possible, to enter into fixed-term contracts as termination of employment in Sri Lanka is strictly controlled and retrenchment at will is not possible.

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