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PART I : SECTION (I) — GENERAL Government Notifications

L.D.B.-10/2017(III)

FOREIGN EXCHANGE ACT, No. 12 OF 2017

REGULATIONS made by the Minister of Finance under section 29 read with section 7 of the Foreign Exchange Act, No. 12 of 2017.

MAHINDA RAJAPAKSA,
Minister of Finance.

Colombo,
03rd February, 2021.

Regulations

1. These regulations may be cited as the Foreign Exchange (Remittance of Funds by Emigrants) Regulations No. 3 of 2021 and shall come into operation with effect from March 22, 2021.

2. The remittance of funds by emigrants relating to transactions specified in the Schedule hereto shall be authorised classes of capital transactions in foreign exchange permitted to be carried out by an authorised dealer or restricted dealer to the extent specified in section 4 of the Act, subject to such limits, terms and conditions specified in these regulations and the Schedule hereto.



3. In executing capital transactions in foreign exchange under these regulations, every authorised dealer or restricted dealer shall comply with the directions issued in that behalf by the Central Bank, from time to time, under section 9 of the Act.

4. (1) Every authorised dealer or restricted dealer engaged in capital transactions in foreign exchange under these regulations shall ascertain-

(a) the *bona fide* of the person who carries out the transaction; and

(b) that such transaction is in compliance with these regulations,

by obtaining documentary evidence in that behalf.

(2) Every person engaged in capital transactions under these regulations shall provide all necessary documentary evidence to such authorised dealer or restricted dealer for the purpose of paragraph (1).

(3) Every authorised dealer or restricted dealer shall exercise all due diligence in executing such capital transactions in foreign exchange under these regulations.

5. The Central Bank may take such action as it may deem necessary under the provisions of the Act, in respect of any authorised dealer, restricted dealer or any other person not being an authorised dealer or restricted dealer, who fails to comply with these regulations.

6. (1) For the purpose of these regulations “designated foreign currency” means-

(a) United States Dollars (USD);

(b) Euro;

(c) Sterling Pound;

(d) Australian Dollars;

(e) Singapore Dollars;

(f) Swedish Kroner;

(g) Swiss Franc;

(h) Canadian Dollars;

(i) Hong Kong Dollars;

(j) Japanese Yen;

(k) Danish Kroner;

(l) Norwegian Kroner;

(m) Chinese Renminbi; and

(n) New Zealand Dollars.

(2) The Central Bank may, from time to time amend, alter or make additions to the designated foreign currencies specified in paragraph (1), by the directions issued in that behalf under section 9 of the Act.

7. Notwithstanding the rescission of the Foreign Exchange (Classes of Capital Transactions in Foreign Exchange Carried On by Authorized Dealers) Regulations No. 1 of 2017 made under the Foreign Exchange Act, No. 12 of 2017, published in the *Gazette* Extraordinary No. 2045/56 of November 17, 2017, the Order made under section 22 of the Foreign Exchange Act, No. 12 of 2017, and published in the *Gazette* Extraordinary No. 2182/37 of July 2, 2020 of which the period of validity was extended by the Order published in the *Gazette* Extraordinary No. 2206/25 of December 18, 2020, shall have effect during the period so extended.

8. For the purpose of these regulations-

“Act” means the Foreign Exchange Act, No. 12 of 2017;

“authorised dealer” shall have the same meaning as in the Foreign Exchange Act, No. 12 of 2017;

“capital transaction” shall have the same meaning as in the Foreign Exchange Act, No. 12 of 2017;

“Central Bank” shall have the same meaning as in the Foreign Exchange Act, No. 12 of 2017;

“emigrant” means-

(a) a Sri Lankan who has obtained permanent residency status or citizenship in another country;

(b) a dual citizen of Sri Lanka whose mother or father was born in Sri Lanka; or

(c) a non-Sri Lankan citizen-

(i) whose mother or father was born in Sri Lanka; and

(ii) whose birth has been registered in Sri Lanka,

and includes the minors of persons referred to in paragraphs (a), (b) and (c);

“Employees Provident Fund” means the Employees Provident Fund established by the Employees Provident Fund Act, No. 15 of 1958;

“Employees Trust Fund” means the Employees Trust Fund established by the Employees Trust Fund Act, No. 46 of 1980;

“immediate family members” means parents, grandparents, siblings and spouse of the relevant person;

“licensed commercial bank” shall have the same meaning as in the Foreign Exchange Act, No. 12 of 2017;

“Minister” shall have the same meaning as in the Foreign Exchange Act, No. 12 of 2017;

“Monetary Board” shall have the same meaning as in the Foreign Exchange Act, No. 12 of 2017;

“Parent Migration Scheme” means a scheme operated by a foreign country enabling Sri Lankan parents of a person who has obtained permanent residency status or citizenship in that country, to obtain permanent residency status in such foreign country;

“repealed Exchange Control Act” means the Exchange Control Act (Chapter 423);

“restricted dealer” shall have the same meaning as in the Foreign Exchange Act, No. 12 of 2017;

“temporary resident visa” means a visa obtained by a citizen of Sri Lanka which falls into a category of visa that entitles the individual to obtain permanent residency status or citizenship in that country at a future date subject to fulfilling specified conditions.

(Regulation 2)

SCHEDULE

PART I

REMITTANCE OF FUNDS BY EMIGRANTS

1. An emigrant who is aged 18 years or above is eligible to claim the migration allowance, which involves the conversion of Sri Lanka Rupees to foreign currency, subject to the limits, terms and conditions set out in these regulations.
2. The migration allowance shall be claimed out of-
 - (1) any proceeds realised from any asset in Sri Lanka (including movable, immovable, tangible and intangible assets) owned by the emigrant while being a resident in Sri Lanka or acquired by utilizing funds through such person's Sri Lanka rupee accounts prior to these regulations coming into effect or acquired as permitted under paragraph 8 of this Part of the Schedule;
 - (2) any proceeds realized from any asset in Sri Lanka (including movable, immovable, tangible and intangible assets, excluding funds held in the Personal Foreign Currency Accounts or Inward Investment Accounts) that are inherited by an emigrant, from person resident in Sri Lanka;
 - (3) any proceeds realized from any asset in Sri Lanka (including movable, immovable, tangible and intangible assets, excluding funds held in the Personal Foreign Currency Accounts or Inward Investment Accounts) that are received as a gift by an emigrant, from an immediate family member who is a person resident in Sri Lanka;
 - (4) any proceeds realized from any asset in Sri Lanka (including movable, immovable, tangible and intangible assets, excluding funds held in the Personal Foreign Currency Accounts or Inward Investment Accounts) that are inherited or received by way of a gift to or by the emigrant from another emigrant who is an immediate family member (i.e. transferor) out of the investments, made while being a resident in Sri Lanka or made through his or her Sri Lanka rupee accounts prior to these regulations coming into effect or inherited by the transferor or received as a gift by the transferor or made as permitted under paragraph 8 of this Part of the Schedule; or
 - (5) monetary gifts received by the emigrant from an immediate family member, being funds realized from any asset in Sri Lanka (including movable, immovable, tangible and intangible assets).
3. The following limits shall be applicable for the migration allowance specified in this Schedule-
 - (1) an initial migration allowance of USD 200,000 per emigrant;
 - (2) an annual migration allowance of USD 30,000; first such annual allowance is transferable after lapse of a minimum of 12 months after the full utilisation of the initial migration allowance. With the exception of the first annual allowance, subsequent allowances shall be transferable per calendar year and can be transferred in accumulation (if the funds have been credited and maintained in a bank account subject to the directions issued by the Central Bank under the provisions of the Act, for such period);
 - (3) for an emigrant who has claimed a part of the initial migration allowance before November 20, 2017, the balance out of USD 150,000 and subsequent annual allowance of USD 30,000 as referred to in subparagraph (2) of paragraph 3 of this Part of the Schedule;
 - (4) for an emigrant who has fully utilized the initial migration allowance before November 20, 2017, any accumulated annual allowance of USD 20,000 per calendar year for the years 2013, 2014, 2015 and 2016 and subsequent annual allowance of USD 30,000 as referred to in subparagraph (2) of paragraph 3 of this Part of the Schedule.

4. The total value of the investments made by an emigrant while being a resident in Sri Lanka through an Outward Investment Account, in the country where the said individual has obtained permanent residency or citizenship, shall be deducted from the eligible migration allowance, at the time of claiming the eligible migration allowance.
5. In the event of “Parent Migration Schemes” operated by foreign countries, the funds for the payments to be made to overseas authorities by such individuals for obtaining visa, shall be remitted through the Capital Transaction Rupee Account opened by such individuals subject to the directions issued by the Central Bank under the provisions of the Act. Upon receiving permanent residency in the country to which such payment was made, total amount of such payments shall be deducted from the eligible migration allowance of such individuals at the time of claiming the eligible migration allowance.
6. A Sri Lankan individual who resides in or outside Sri Lanka and has obtained a temporary resident visa in another country, aged 18 years or above, may claim a maximum of USD 30,000 subject to the directions issued by the Central Bank under the provisions of the Act. Such persons may claim the said allowance through a Capital Transaction Rupee Account opened by such persons. The amounts so claimed shall be deducted from the eligible migration allowance at the time of claiming the migration allowance.

7. Method of Repatriation

- (1) Emigrants or persons specified under the paragraphs 5 and 6 of this Part of the Schedule shall open and maintain only one Capital Transaction Rupee Account in the banking system, subject to the direction issued by the Central Bank, for the purpose of repatriating the eligible allowances.
- (2) If an emigrant is required to open and maintain a separate account for the purpose of repatriating his or her income referred to in subparagraph 7(4) of this Part of the Schedule, such person may open and maintain only one Emigrants’ Remittable Income Account with an authorised dealer or a restricted dealer, for the same purpose, subject to the directions issued by the Central Bank under the provisions of the Act. However, both Capital Transaction Rupee Account and Emigrants’ Remittable Income Account shall be opened and maintained with the same authorised dealer or restricted dealer.
- (3) The migration allowance may be transferred from Capital Transaction Rupee Account to, applicant’s Personal Foreign Currency Account or Inward Investment Account or an account at the Offshore Banking Unit in a licensed commercial bank in Sri Lanka or an account outside Sri Lanka, of the emigrant.
- (4) Any income derived from, any assets referred in paragraph 2 of this Part of the Schedule and superannuation benefits (including Employees Provident Fund (EPF), Employees Trust Fund (ETF), gratuity and pensions or any other retirement benefits) may be credited to respective Capital Transaction Rupee Account or Emigrants’ Remittable Income Account or Non Resident Rupee Account, as the case may be, and shall be repatriated only through the Capital Transaction Rupee Account or Emigrants’ Remittable Income Account of the emigrant, without being subject to the eligible migration allowance. Such funds may be transferred from the Capital Transaction Rupee Account or Emigrants’ Remittable Income Account to a Personal Foreign Currency Account or Inward Investment Account or an account at an Offshore Banking Unit in a licensed commercial bank in Sri Lanka or an account outside Sri Lanka, of the emigrant.

8. Investments by emigrants out of funds held in Sri Lanka

- (1) An emigrant is permitted to make investments in Sri Lanka as permitted under the Foreign Exchange (Classes of Capital Transactions Undertaken in Sri Lanka by a Person Resident Outside Sri Lanka) Regulations No. 2 of 2021 published in the *Gazette* extraordinary No. 2213/35 of February 03, 2021, out of the funds held in Non Resident Rupee Accounts, of such emigrant.
- (2) All income and capital proceeds of such investments shall be credited to respective Non Resident Rupee Accounts, through which the investment was made.

- (3) All income of such investments shall be repatriated only through respective Capital Transaction Rupee Account or Emigrants' Remittable Income Account of the emigrant, as the case may be, without being subject to the eligible migration allowance, as per the directions issued by the Central Bank under the provisions of the Act.
 - (4) Any capital proceeds of such investments may be repatriated only through the Capital Transaction Rupee Account, subject to the eligible migration allowance as may be specified in the directions issued by the Central Bank under the provisions of the Act.
9. In the event an emigrant sells an immovable property which was inherited or purchased by such emigrant utilising Sri Lanka Rupees held in Sri Lanka by such emigrant, to any person resident in or outside Sri Lanka, the payment of consideration with respect to sale of such property shall be paid in Sri Lanka Rupees and credited only to a Non Resident Rupee Account or a Capital Transaction Rupee Account of the emigrant.
10. Other terms and conditions
- (1) An emigrant who expects to leave Sri Lanka for the purpose of permanently settling in the country in which he or she has obtained permanent residency status shall inform the authorised dealers with whom he or she is maintaining Sri Lanka Rupee Accounts with regard to his or her migration, in order to re-designate such Rupee accounts of such individual as Non Resident Rupee Accounts. An individual who is already an emigrant shall be required to do so within 6 months of these regulations coming into effect.
 - (2) The migration allowance shall be claimed only at the time of leaving Sri Lanka (initially or subsequently) or at the time during which the emigrant is residing outside Sri Lanka.

PART II

All existing capital transactions undertaken under any approval (general or special) that had been granted prior to coming into operation of the Act and that are substantially similar to the capital transactions specified in these regulations may be continued subject to the terms and conditions specified for such transactions under such approval unless specifically varied by these regulations or any subsequent regulations.

PART III

RE-DESIGNATION OF ACCOUNTS & C.

1. All Capital Transaction Rupee Accounts except the accounts for which a Registration Number has been issued by the Central Bank, shall be re-designated and continued to be operated as Non Resident Rupee Accounts, within three months from the date of publication of these regulations in the *Gazette*, subject to the directions issued by the Central Bank under the provisions of the Act.
2. All existing Capital Transaction Rupee Accounts maintained by foreign firms and companies registered outside Sri Lanka and Sri Lankans employed abroad who are residing outside Sri Lanka shall be re-designated and continued to be operated as Non Resident Rupee Accounts and Sri Lanka Rupee Accounts, respectively, within three months from the date of publication of these regulations in the *Gazette*, subject to the directions issued by the Central Bank under the provisions of the Act.
3. All Sri Lanka Rupee Accounts maintained by an emigrant who expect to leave Sri Lanka for the purpose of permanently settling in the country in which he or she has obtained permanent residency status, shall be re-designated and continued to be operated as Non Resident Rupee Accounts with immediate effect from the time which the authorised dealer or a restricted dealer became aware of such emigrant's migration, subject to any direction issued by the Central Bank under the provisions of the Act.

4. An authorised dealer or a restricted dealer is permitted to open and maintain Emigrants' Remittable Income Accounts in the names of emigrants who have already opened the Capital Transaction Rupee Accounts with the registration number issued by the Head of the Department of Foreign Exchange, subject to any direction issued by the Central Bank under the provisions of the Act.

PART IV

AUTHORITY TO OPEN AND MAINTAIN ACCOUNTS

1. Capital Transaction Rupee Accounts

An authorised dealer or a restricted dealer shall have the authority to open and maintain Capital Transaction Rupee Accounts, in the name of the following eligible persons to deal in capital transactions specified under these regulations-

- (1) an emigrant, resident in or outside Sri Lanka;
- (2) a non- national resident in or outside Sri Lanka including a minor;
- (3) an individual Sri Lankan who intends to depart under temporary resident visa in another country, aged 18 or above;
- (4) an individual Sri Lankan who is a prospective migrant under a Parent Migration Scheme;
- (5) An administrator or executor of the estate of a deceased person referred to in subparagraphs (1) and (2) above, until the completion of the administration of the estate of such deceased person; or
- (6) any other person or category of persons who may be authorised by the Central Bank from time to time.

2. Emigrants' Remittable Income Accounts

An authorised dealer or a restricted dealer shall have the authority to open and maintain Emigrants' Remittable Income Accounts, in the name of the following eligible persons for the purpose of repatriation of his or her current income derived in Sri Lanka referred to in subparagraph 7(4) of Part I of this Schedule, only if there is a regulatory requirement in the country where the emigrant is residing permanently to identify the current income globally derived by such emigrant-

- (a) an emigrant;
- (b) any other person or category of persons who may be authorised by the Central Bank from time to time.

3. Non Resident Rupee Accounts

An authorised dealer or a restricted dealer is permitted to open and maintain Non Resident Rupee Accounts for emigrants as per the Foreign Exchange (Opening and Maintenance of Accounts for the purpose of engaging in Foreign Exchange Transactions) Regulations No. 5 of 2021 published in the *Gazette* extraordinary No. 2213/38 of February 03, 2021, as may be amended from time to time, to facilitate local transactions and permitted investments in Sri Lanka stipulated in paragraph 8 of Part I of this Schedule to these regulations.

4. Other terms and conditions

- (1) Any eligible person as specified under paragraph 1 of this Part of the Schedule shall open only one Capital Transaction Rupee Account in the banking system in Sri Lanka.

- (2) Any eligible person as specified under paragraph 2 of this Part of the Schedule shall open only one Emigrants' Remittable Income Account in the banking system in Sri Lanka.
- (3) Both Capital Transaction Rupee Account and Emigrants' Remittable Income Account shall be opened and maintained with the same authorised dealer or restricted dealer.
- (4) The criteria for opening and maintenance of Capital Transaction Rupee Accounts or Emigrants' Remittable Income Account, permitted debits, credits for such account, shall be as specified in the relevant directions issued by the Central Bank under the provisions of the Act.
- (5) An authorised dealer or a restricted dealer shall exercise due diligence and reasonable care to ascertain that persons seeking to open and maintain the accounts specified under this Part of the Schedule are eligible to open and maintain such accounts in terms of these Regulations and directions issued by the Central Bank under the provisions of the Act from time to time. Every authorised dealer or restricted dealer shall maintain, information and documentary evidence relating to the account holders as a proof of their eligibility during the maintenance of the account and for a period not less than six years after the closure of such accounts.