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The Gazette of the Democratic Socialist Republic of Sri Lanka EXTRAORDINARY

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PART I : SECTION (I) — GENERAL

Government Notifications

LDB 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 (Classes of Capital Transactions Undertaken Outside Sri Lanka by a Person Resident in Sri Lanka) Regulations No. 1 of 2021 and shall come into operation with effect from March 22, 2021.

2. The capital transactions undertaken outside Sri Lanka by a person resident in Sri Lanka as 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. 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 is hereby rescinded, without prejudice to anything done thereunder:

Provided however, notwithstanding the rescission of the aforesaid Regulations, 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;

“Colombo Stock Exchange” means the Colombo Stock Exchange formed and registered under the Companies Act, No. 7 of 2007 and licensed by the Securities and Exchange Commission of Sri Lanka under the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987, to operate as a stock exchange;

“companies limited by guarantee” shall have the same meaning as in the Companies Act, No. 7 of 2007;

“eligible resident investor” means an eligible resident investor as specified in column I of Table 1 of paragraph 2 of Part I of the Schedule to these regulations other than those referred to in paragraph 3 of Part I of the Schedule to these regulations;

“emigrant” shall have the same meaning as in the Foreign Exchange (Remittance of Funds by Emigrants) Regulations, No. 3 of 2021 published in the *Gazette* extraordinary No. 2213/36 of February 03, 2021 as may be amended from time to time;

“Employee Share Ownership Plan or Employee Share Option Scheme” means a plan or a scheme under which a company incorporated outside Sri Lanka offers an opportunity to acquire its shares or shares of the group of companies, to employees of its branch or subsidiary in Sri Lanka;

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

“Insurance Regulatory Commission of Sri Lanka” means the Insurance Regulatory Commission of Sri Lanka established under the Regulation of Insurance Industry Act, No. 43 of 2000;

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

“licensed specialised bank” 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;

“overseas company” shall have the same meaning as in the Companies Act, No. 7 of 2007;

“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;

“Securities and Exchange Commission of Sri Lanka” means the Securities and Exchange Commission of Sri Lanka established under the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987;

“Voluntary Social Services Organisations” shall have the same meaning as in the Voluntary Social Services Organisations (Registration and Supervision) Act, No. 31 of 1980.

(Regulation 2)

SCHEDULE

PART 1

CAPITAL TRANSACTIONS UNDERTAKEN OUTSIDE SRI LANKA BY A PERSON RESIDENT IN SRILANKA

1. Any eligible resident investor is permitted -

- (a) to acquire, hold or dispose of ordinary shares or preference shares or debentures or corporate bonds issued by companies incorporated outside Sri Lanka, units in regulated unit trusts or mutual funds and sovereign bonds issued by foreign governments rated at or above the sovereign credit rating of Sri Lanka at the time of the investment,
- (b) to set up and maintain a branch, liaison, marketing, agency, project, representative or other similar office (overseas office) in a foreign country (other than by an individual).

2. (1) The outward remittances in respect to the capital transactions specified in paragraph 1 above shall be made through an Outward Investment Account opened and maintained by the eligible resident investor with an authorised dealer or a restricted dealer, subject to the limits specified in Table 1 below and provisions of these regulations:

Table 1 – Limits for Outward Investments

<i>Column I Eligible Resident Investor</i>	<i>Column II Permitted Limits</i>	<i>Column III Type of Investment</i>
(i) Companies listed in the Colombo Stock Exchange	United States Dollars (USD) 2,000,000 or an equivalent amount in any other designated foreign currency, per calendar year.	Ordinary Shares, Units, Preference Shares, Corporate Bonds, Debentures and Sovereign Bonds
(ii) A company not listed in the Colombo Stock Exchange	USD 500,000 or an equivalent amount in any other designated foreign currency, per calendar year	
(iii) Regulated or licensed entities (excluding the eligible investors under (i) and (ii) above), under the Central Bank or the Securities and Exchange Commission of Sri Lanka or the Insurance Regulatory Commission of Sri Lanka	USD 500,000 or an equivalent amount in any other designated foreign currency, per calendar year	
(iv) Employees' Provident Fund established under the Employees' Provident Fund Act, No. 15 of 1958 or any other provident fund approved by the Commissioner General of Labour.	USD 500,000 or an equivalent amount in any other designated foreign currency, per calendar year	

Table 1 – Limits for Outward Investments

<i>Column I</i> <i>Eligible Resident Investor</i>	<i>Column II</i> <i>Permitted Limits</i>	<i>Column III</i> <i>Type of Investment</i>
(v) A partnership registered in Sri Lanka	USD 300,000 or an equivalent amount in any other designated foreign currency, for life time.	Ordinary Shares, Units, Preference Shares, Corporate Bonds, Debentures and Sovereign Bonds
(vi) An individual or sole proprietorship of such individual (in aggregate)	USD 200,000 or an equivalent amount in any other designated foreign currency, for life time.	
(vii) A company or a partnership	USD 300,000 or an equivalent amount in any other designated foreign currency, per calendar year.	Overseas offices
(viii) licensed commercial banks and licensed specialised banks	USD 500,000 or an equivalent amount in any other designated foreign currency, per calendar year.	Branch offices
Permitted investments without being subject to any limitations		
(ix) An individual	Up to the amount in the prospectus of Employee Share Ownership Plan or Employee Share Option Scheme.	Invest in shares of an Employee Share Ownership Plan or Employee Share Option Scheme
(x) licensed commercial banks and licensed specialised banks (only if the investment is in banking operation in overseas)	Up to the limit imposed by the regulator in the investee country	Invest in shares of a subsidiary or invest in a branch office

- (2) The aggregate limits for investments specified in Table 1 above shall consist of the aggregate investments made under these regulations and any outward payment previously made in terms of the general permission granted under the Order published in the *Gazette* extraordinary No. 1686/50 and the Notices published in the *Gazettes* extraordinary No. 1686/52 and 1686/53 of January 1, 2011 issued in terms of the repealed Exchange Control Act and by the Foreign Exchange (Classes of Capital Transactions in Foreign Exchange Carried On by Authorised Dealers) Regulations No. 1 of 2017 published in the *Gazette* extraordinary No. 2045/56 of November 17, 2017.
3. Voluntary social services organizations, a company limited by guarantee and a person resident in Sri Lanka against whom any suit, action or proceeding under the provisions of the repealed Exchange Control Act or prosecution, investigations or any recovery action in terms of the provisions of the Act are pending shall not be eligible to carry out capital transactions for purposes permitted under this Part of the Schedule.
4. Any eligible resident investor who invested under paragraph 1 of this Part of the Schedule, is permitted to acquire and hold shares devolving on such investor by virtue of a corporate action by the issuer or by way of conversion of preference shares or debentures or corporate bonds acquired under these regulations, shares received in terms of the mergers or amalgamations of companies incorporated in or outside Sri Lanka, irrespective of the limits specified in Table 1 of paragraph 2 of this Part of the Schedule.

5. Acquisitions of assets or investments in overseas for no consideration

- (1) Any person resident in Sri Lanka is permitted to acquire and hold any asset or investment in overseas, where no consideration has to be paid in foreign exchange or in Sri Lanka Rupees or in the form of assets or in exchange of any receivable due from a company incorporated outside Sri Lanka or any person resident in or outside Sri Lanka.
- (2) The above may include shares received for no consideration under an Employee Share Ownership Plan or an Employee Share Option Scheme, by way of inheritance or gifts to an individual investor by a person resident in or outside Sri Lanka, as promoter shares or golden shares and subsequent shares devolving on such investors by virtue of a corporate action by the issuer or in terms of the mergers or amalgamations of companies incorporated in or outside Sri Lanka.
- (3) Such acquisitions shall not be subject to the limits specified in Table 1 of paragraph 2 of this Part of the Schedule.

6. Investments in Employee Share Ownership Plan or Employee Share Option Schemes

- (1) If there is any requirement to make an outward remittance by way of consideration to such overseas company on the basis of a lump-sum remittance from the subsidiary or branch established in Sri Lanka on behalf of its employees, such fund transfers may be effected from an account of such subsidiary or branch established in Sri Lanka, through an authorised dealer or a restricted dealer, upon satisfying with the *bona fide* of the transaction.
- (2) The subsidiary or branch established in Sri Lanka who intends to make such lump-sum remittance or remittances on behalf of its employees, shall obtain a clearance letter on behalf of each employee from the Head of the Department of Foreign Exchange prior to remitting funds under these regulations and shall provide details of such remittance to the Department of Foreign Exchange, within one week from the date of effecting such remittance.

7. Repatriation of income or disposal or liquidation proceeds of investments into Sri Lanka

- (1) Any income and any capital proceeds of such investments permitted under paragraphs 1, 2 and 4 of this Part of the Schedule, shall be brought into Sri Lanka through the same Outward Investment Account through which the initial investment was made, within three months from the date of such receipts.
- (2) In terms of Employee Share Option Scheme or Employee Share Ownership Plan, the requirement of repatriation of the dividends may be subject to any mandatory or optional requirement whereby the dividends are reinvested in shares under such Employee Share Option Scheme or Employee Share Ownership Plan. In the case of a company or branch incorporated in Sri Lanka has remitted funds being a lump-sum remittance on behalf of its employees for the investment under Employee Share Option Scheme or Employee Share Ownership Plan as permitted under subparagraph (1) of paragraph 6 of this Part of the Schedule, such individual employees shall bring any income and proceeds of disposal of such investments into Sri Lanka through an Outward Investment Account opened by such individual investor with an authorised dealer or a restricted dealer.
- (3) In case of receipt of any income and any proceeds of disposal of any asset or investment in overseas which was acquired as permitted under paragraph 5 of this Part of the Schedule, as applicable, shall be brought into Sri Lanka through an Outward Investment Account or Personal Foreign Currency Account or existing Business Foreign Currency Account of such resident investor opened with an authorised dealer or a restricted dealer subject to the subparagraph (1) of paragraph 8 of this Part of the Schedule and other conditions specified in this Part of the Schedule, within three months from the date of such receipts.

8. Inheritance of investments made through an Outward Investment Account;

- (1) In case of the investment which was made through an Outward Investment Account by an individual person resident in Sri Lanka, has been inherited by or gifted to a person resident in Sri Lanka being a heir or beneficiary, as permitted under paragraph 5 of this Part of the Schedule, any income or capital proceeds of such investments shall be brought into Sri Lanka through an Outward Investment Account opened by such heir or beneficiary.
- (2) An investment made by an individual resident in Sri Lanka through an Outward Investment Account may be transferred to a person resident outside Sri Lanka subject to the applicable laws of inheritance and succession.

9. In the case of a resident individual investor who becomes an emigrant, the total value of any investment made by such emigrant while being a resident in Sri Lanka through an Outward Investment Account in the country where the said individual has obtained Permanent Residency, shall be deducted from the eligible migration allowance of such individual.

10. Incentives for the resident investors;

An eligible resident investor may be permitted to make investments for purposes permitted under this Part of the Schedule by utilizing funds up to fifty percent of the value of capital gains of previous outward investments credited to the Outward Investment Account, without being subject to the permitted limits specified in the Table 1 of paragraph 2 of this Part of the Schedule.

11. Corporate guarantee and pledging of shares;

- (1) In the event where a company incorporated in Sri Lanka (i.e investor) is required to provide a corporate guarantee on behalf of a company incorporated outside Sri Lanka (i.e. investee) in which the said investor is a shareholder to enable the investee to raise facilities from a financial institution or to facilitate a contract undertaken by the investee, a corporate guarantee may be issued subject to the maximum limit of USD 1,000,000 if the investment in said investee has been made in compliance with the provisions of the repealed Exchange Control Act or this Act and the financial strength of the company is sufficient to bear the liability of the corporate guarantee. The Board of Directors of the company shall ensure that the company has financial strength to meet any contingent liability arising out of the corporate guarantee. The guarantee value shall be proportionate to the percentage shareholding of the investor in the said investee at any given time, the investor is required to furnish the details of each such corporate guarantee (including the copies of the corporate guarantee and the relevant board resolutions) issued under the above permission to the Head of the Department of Foreign Exchange of the Central Bank within 14 days from the effective date of the said guarantee;
- (2) An authorised dealer or a restricted dealer is also permitted to make outward remittances arising from valid claims in respect of the corporate guarantees referred to in subparagraph (1) above, subject to the directions issued by the Central Bank under the provisions of the Act.
- (3) Shares acquired by a resident investor in investee as permitted in these regulations or provisions of the repealed Exchange Control Act may be set as a lien, to secure facilities to be obtained by the investee from a financial institution or to facilitate a contract undertaken by the investee. The lien shall be proportionate to the stake of the shareholding held by the resident investor in the investee.
- (4) Following conditions are also effected to the guarantee or lien permitted under subparagraphs (1) and (3) above-
 - (a) a resident investor shall make appropriate legal agreement with investee to recover the value of the claim (in the event of a default) prior to issuing the corporate guarantee or entering into the lien;

- (b) in the event of a valid claim, the maximum limit of the claim shall be proportionate or lower to the outstanding obligations of the facility;
- (c) such recoveries as stated in item (a) above shall be brought into the same Outward Investment Account through which the investment was made.

12. Other terms and conditions;

- (1) An eligible resident investor shall obtain a clearance letter from the Head of the Department of Foreign Exchange prior to each outward remittance for investments specified under Table 1 of this Part of the Schedule through an authorised dealer or a restricted dealer. Any eligible resident investor who intends to make subsequent foreign investments, shall provide a certificate obtained from a Fellow member of the Institute of Chartered Accountants of Sri Lanka or Charter holder of Chartered Financial Analyst (CFA Institute), on the progress and status of the previous investments made by such eligible investor under these regulations or in terms of general permission granted under the repealed Exchange Control Act together with supporting documents, to the Head of the Department of Foreign Exchange. The Head of Department of Foreign Exchange shall issue the said clearance letter upon being satisfied on the progress of said previous investments made by such eligible investor and subject to paragraph 3 of this Part of the Schedule.
- (2) The Board of Directors of the investor company which has made a permitted investment in an unlisted company outside Sri Lanka under these regulations or the repealed Exchange Control Act, shall evaluate the progress of such investment annually and forward a report on the same including the details on profit or loss of the investee, dividend declared by the investee or receipt of dividends by the investor, to the Head of the Department of Foreign Exchange with a copy to the respective authorised dealer or restricted dealer, on or before March 31, of the following year or such other date as may be determined by the Head of the Department of Foreign Exchange in respect of a specific investment.
- (3) The eligible investor (excluding individuals) shall maintain a sound financial position and performance for the last three years, to be eligible to make the permitted investment under these regulations. The eligible investor shall provide a recommendation as may be specified in the directions issued by the Central Bank, from a Fellow member of the Institute of Chartered Accountants or a Charter holder of the Chartered Financial Analyst Institute and the feasibility of the proposed investment, excluding permitted investments in a regulated stock exchange in overseas, to an authorised dealer or a restricted dealer, subject to the directions issued by the Central Bank under the provisions of the Act.

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

AUTHORITY TO OPEN AND MAINTAIN ACCOUNTS

1. Outward Investment Accounts

An authorised dealer or a restricted dealer shall have the authority to open and maintain Outward Investment Accounts, in the name of following eligible persons to deal in capital transactions specified under these regulations, subject to the directions issued by the Central Bank under the provisions of the Act:-

- (a) companies incorporated in Sri Lanka under the Companies Act, No. 7 of 2007 other than a company limited by guarantee;
- (b) a licensed commercial bank or licensed specialised bank;
- (c) regulated or licensed entities (excluding the eligible investors under (a) and (b) above), under the Central Bank, Securities Exchange Commission of Sri Lanka or Insurance Regulatory Commission of Sri Lanka;
- (d) Employees' Provident Fund established under the Employees' Provident Fund Act, No. 15 of 1958 or any other provident fund approved by the Commissioner General of Labour;
- (e) a partnership registered in Sri Lanka; and
- (f) an individual resident in Sri Lanka or/with a sole proprietorship registered in Sri Lanka by such individual (as may be applicable).

2. Other terms and conditions

- (1) The criteria for opening and maintenance of Outward Investment Accounts, permitted debits and credits for such account, shall be as specified in the relevant directions issued by the Central Bank, under the provisions of the Act.
- (2) An authorised dealer or a restricted dealer shall exercise due diligence and reasonable care to ascertain whether the persons seeking to open and maintain the Outward Investment Accounts specified in paragraph 1 of this Part are eligible to open and maintain such account under the criteria specified in the relevant directions issued by the Central Bank under the provisions of the Act. 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.

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