

LAND (RESTRICTIONS ON ALIENATION)

AN ACT TO MAKE PROVISIONS TO STIPULATE RESTRICTIONS ON THE ALIENATION OF LANDS IN SRI LANKA TO FOREIGNERS, FOREIGN COMPANIES AND CERTAIN INSTITUTIONS WITH FOREIGN SHAREHOLDING; TO SPECIFY THE CIRCUMSTANCES WHERE THE EXEMPTIONS ARE GRANTED ; TO IMPOSE A LAND LEASE TAX FOR LEASING OF LANDS TO FOREIGNERS , FOREIGN COMPANIES AND CERTAIN INSTITUTIONS WITH FOREIGN SHAREHOLDING; FOR THE GRANTING OF CONCESSIONS TO CERTAIN DEVELOPMENT PROJECTS; FOR THE REPEAL OF PARTVI OF THE FINANCE ACT, NO. 11 OF 1963; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS in furtherance of the development policies being promoted by the Government in the backdrop of a globally integrated environment, it is deemed expedient and necessary to ensure the prudent use of land which is a limited resource, in a manner that preserves the national interest:

AND WHEREAS it is the National Policy to regulate the use of lands, in a sustainable manner, having imposed restrictions on the alienation of lands to foreigners, foreign companies and certain institutions with foreign shareholding and having granted concessions to citizens of Sri Lanka for certain development projects, as specified in this Act:

NOW THEREFORE be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Act Nos,
3 of 2017
21 of 2018

Short title and date of operation. 1.(1) This Act may be cited as the Land (Restrictions on Alienation) Act, No. 38 of 2014.

(2) The provisions of this Act shall be deemed to have come into

operation with effect from January 1, 2013.

Restriction on
transfer of land.

2.(1) Notwithstanding any provision to the contrary in any other written law, the transfer of title of any land situated in Sri Lanka, shall be prohibited if such transfer is-

(a) to a foreigner; or

(b) to a company incorporated in Sri Lanka under the Companies Act where any foreign shareholding in such company, either direct or indirect, is fifty per cent or above; or

(c) to a foreign company,

unless exempted as provided in section 3.

(2)

(a) For the purpose of maintaining the legal validity of a transfer of land to a company incorporated in Sri Lanka under the Companies Act, with less than fifty per cent of foreign shareholding, the foreign shareholding of such company shall remain less than fifty per cent, for a minimum period of consecutive twenty (20) years from the date of such transfer.

(b) Where the foreign shareholding of a company referred to in paragraph (a) reaches or exceeds fifty per cent, contrary to the provisions of paragraph (a), in consequent to-

(i) the change of ownership of shares directly or indirectly; or

(ii) the death of a shareholder of such company and the shares of the deceased shareholder devolving, in accordance with the applicable laws of succession of Sri Lanka, on his next of kin who is a foreigner, the transfer of land referred to therein shall be void and shall have no effect in law, with effect from the date of increase of the foreign shareholding:

Provided however, where a company referred to in paragraph (a),-

(i) listed in the Colombo Stock Exchange (with a minimum number of two hundred shareholders in the case of a Diri Savi Board and one thousand shareholders in the case of a Main Board), takes steps to reduce its foreign shareholding to less than fifty per cent, within a period of twelve months from the date of increase of its foreign shareholding; or

(ii) other than a company referred to in sub-paragraph (i), takes steps to

reduce its foreign shareholding to less than fifty per cent, within a period of six months from the date of increase of its foreign shareholding,

in compliance with the provisions of that paragraph, the transfer of land referred to in paragraph (a), shall be deemed to be legally valid, with effect from the date of restoring the foreign shareholding of such company to less than fifty per cent.

(c) For the purposes of this section the expressions 'Diri Savi Board' and 'Main Board' shall be read and construed in accordance with the provisions of the Listing Rules of the Colombo Stock Exchange issued under its listing requirements, in terms of the Securities and Exchange Commission of Sri Lanka Rules, 2001, made under section 53 of the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987 and published in Gazette Extraordinary No. 1215/2 of December 18, 2001.

Exemption from
the application of
the provisions of
section 2.
[2, 21 of 2018]

3.(1) The provisions of section 2 shall not apply to-

(a) any land the title of which is transferred to a Diplomatic Mission of another State within the meaning of the Diplomatic Privileges Act or to an International, Multilateral or Bilateral Organization recognized in terms of that Act;

(b) a condominium parcel specified under the Apartment Ownership Law: Provided that, the entire value shall be paid upfront through an inward foreign remittance prior to the execution of the relevant deed of transfer;

(c) any land the title of which is transferred to a foreign investor in consequence to a decision of the Cabinet of Ministers taken prior to January 1, 2013, involving direct investment of foreign currency, as per the related agreements on such investment structured on the basis of any written law governing the tax regime prior to January 1, 2013, and has ensured compliance by making inward remittances to Sri Lanka;

(d) any land the title of which is transferred by intestacy, gift or testamentary disposition to a next of kin (who is a foreigner) of the

owner of such land, in accordance with the applicable law of succession of Sri Lanka;

(e) any land the title of which is transferred to a dual citizen of Sri Lanka within the meaning of the Citizenship Act;

(f) any land the title of which is transferred to any bank licensed under the Banking Act, in which any foreign shareholding is fifty per cent or above-

(i) at an auction conducted by such Bank in terms of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990 or Mortgage Act (Chapter 89), in the discharge of a mortgage of such land to such Bank;

(ii) in execution of a decree of court to enforce the recovery of a loan given by such bank;

(g) any land the title of which is transferred to any Finance Leasing Institution in which any foreign shareholding is fifty per cent or above-

(i) where such land has been mortgaged to such Finance Leasing Institution as a security for a lease;

(ii) in order to execute a lease and an agreement to sell or a loan and an agreement to sell;

(iii) in execution of a decree of court to enforce the recovery of a loan given by such Institution;

(h) any land, the title of which was transferred to a company referred to in section 2(1)(b), during the period commencing from January 1, 2013 and ending on the date on which the certificate of the speaker is endorsed in respect of this Act, provided such company has been in active operation in Sri Lanka for a period of not less than ten (10) consecutive years prior to the date of transfer of such land; and

(i) any land, the title of which is transferred on or after April 1, 2018, to a company referred to in paragraph (b) of subsection (1) of section 2, listed in the Colombo Stock Exchange.

(2) The Minister may in consultation with the Minister to whom the subject of lands has been assigned and with the prior written approval of the Cabinet of Ministers, by Order published in the Gazette, exempt any foreign entity engaged in the banking, financial, insurance, maritime, aviation, advanced technology or infrastructure development project identified as a Strategic Development Project, in terms of the provisions of the Strategic Development Projects Act, No. 14 of 2008, from the application of the provisions of section 2.

(3) The Minister may in consultation with the Minister to whom the subject of Lands has been assigned and with the prior written approval of the Cabinet of Ministers, by Order published in the Gazette, exempt any foreign company engaged in international commercial operations, from the application of the provisions of section 2, where the land is purchased to locate or relocate its global or regional operations or to set up a branch office.

(4) Where the transfer of title of a land is effected in terms of this section, the provisions of this Act shall also apply to every subsequent transfer of title of such land or part thereof.

Conditions for the registration of instruments relating to the transfer of title of lands.

4.(1) The Registrar of Lands shall not register an instrument effecting any transfer of title referred to in section 2, under the provisions of the Registration of Documents Ordinance, unless such registrar of lands is satisfied that such transfer is in compliance with the provisions of this Act.

(2)

(a) Notwithstanding the provisions of subsection (1), an instrument effecting the transfer of title of a land to a next of kin (who is a foreigner) of an owner of such land, shall be registered by the Registrar of Lands, where the notary public attesting such instrument of transfer certifies in his attestation that the transferee is the next of kin of the owner of the land transferred, as recognized by the applicable laws of

succession of Sri Lanka.

(b) Where any question arises whether a person is the next of kin of the owner of the land or which law is applicable to the succession, the Registrar of Lands shall refer the matter to the District Court having jurisdiction over the area in which the relevant land is situated, for a determination through summary proceeding.

(3) Where the title of a land is transferred to a company incorporated in Sri Lanka under the Companies Act, with less than fifty per cent of foreign shareholding, it shall be the duty of the Registrar of Lands to confirm himself whether the foreign shareholding of such company is less than fifty per cent, by requiring the secretary of such company to submit documentary proof to the effect that the foreign shareholding of such company is less than fifty per cent of the total number of shares issued for the time being.

(4)

(a) The secretary to the relevant company shall inform the Registrar of Lands in writing in every six months period commencing from the date of the registration of the relevant deed of transfer, that the foreign shareholding of such company has not exceeded fifty per cent of the total number of shares issued by such company, during the said period of six months.

(b) Where the foreign shareholding of a company referred to in paragraph (a) reaches or exceeds fifty per cent the relevant Registrar of Land shall make a note to that effect in the relevant folio.

(5) For the purposes of this section 'Registrar of Lands' means the respective Registrar of Lands of the land registry, to whom the instrument of transfer is presented for registration.

Restrictions on the leasing of lands to foreigners. 5.(1) Notwithstanding any provision to the contrary in any other written law, the leasing of a land-

(a) to a foreigner; or

(b) to a company incorporated in Sri Lanka under the Companies Act, where any foreign shareholding in such company, either direct or indirect, is fifty per cent or above; or

(c) to a foreign company,

shall be effected subject to the payment of the Land Lease Tax imposed

under section 6:

Provided however, the maximum tenure of any such lease shall not exceed ninety nine years.

(2) Any State land so leased shall be re-vested on the State free of encumbrances upon the lapse of the period of lease.

(3) Any state land so leased shall not be sub-let or subleased violating the provisions of relevant indenture of lease or without obtaining the prior written approval from the Minister to whom the subject of lands has been assigned.

Land Lease Tax not to be levied with effect from January 1, 2016. [3, 21 of 2018] [2, 3 of 2017]

5A. Notwithstanding anything to the contrary in any of the provisions of this Act, the provisions relating to the Land Lease Tax shall not apply to a lease of any land-

(a) to a foreigner; or

(b) to a company incorporated in Sri Lanka under the Companies Act, where any foreign shareholding in such company, either direct or indirect, is fifty per cent or above; or

(c) to a foreign company,

under and indenture of lease executed on or after January 1, 2016, and accordingly the Land Lease Tax shall not be charged, levied or collected from any such person or company on or after such date.

Tax on the lands leased out to foreigners.

6.(1) There shall be a Land Lease Tax payable up-front by the Lessee, for every lease of land, in terms of section 5(1), at the execution of the indenture of lease or prior to such execution unless exempted under section 7.

(2) The rate of such Land Lease Tax shall be fifteen per cent of the total rental payable for the entire duration of the lease.

(3) Notwithstanding the provisions of subsection (2), the Land Lease Tax shall be 7.5 per cent of the total rental payable for the entire duration of the lease in respect of -

(a) any land leased to a company referred to in section 5(1)(b), provided that such company has been in active operation in Sri Lanka for a consecutive period of not less than ten years, immediately prior to the date of the indenture of lease;

(b) any land leased to a subsidiary of a holding company incorporated in Sri Lanka under the Companies Act, in which the shareholding of the holding company in such subsidiary is fifty per cent or above and any foreign shareholding in the holding company is fifty per cent or above, provided that such holding company has been in active operation in Sri Lanka for a period of not less than ten (10) consecutive years, immediately prior to the date of indenture of lease:

Provided however, where the shareholding of the holding company in the subsidiary, becomes less than fifty per cent the Land Lease Tax applicable in respect of such lease shall be fifteen per cent for the balance period of lease, with effect from the date of reduction of the shareholding;

(c) a condominium parcel situated on or above the fourth floor of a building specified under the provisions of the Apartment Ownership Law, where the period of lease is less than thirty five years;

(d) a condominium parcel situated below the fourth floor of a building specified under the provisions of the Apartment Ownership Law, where the period of lease is not more than ninety nine years;

(e) the lease of any land in terms of section 5, situated within-

(i) a Licensed Zone declared under the Board of Investment of Sri Lanka Law, No. 4 of 1978; or

(ii) a Tourist Development Area declared under the Tourism Act, No. 38 of 2005 or Tourist Development Act, No. 14 of 1968; or

(iii) an Industrial Estate established under the Industrial Development Act, No. 36 of 1969; or

(iv) an area declared by the Minister by regulations as an area, for which the reduced tax rate is applicable;

(f) any land leased to a company referred to in section 5(1)(b), where the Cabinet of Ministers decides having taken into consideration that a substantial foreign investment has already been realized by such

company into the related sector that such reduced tax rate is justifiable in order to ensure level playing field among its competitors in the related sector.

(4) The Lessee referred to in subsection (1) shall be liable in addition to the Land Lease Tax, to pay the applicable stamp duty under the Stamp Duty Act, No. 43 of 1982 and any other tax or charge payable in respect of any such transaction under any applicable written law in force for the time being.

(5) The Land Lease Tax shall be paid in a manner as may be prescribed.

Exemption from
the Land Lease
Tax.

7.(1) The Land Lease Tax payable under section 6, shall not be applicable on the lease of-

- (a) any land a Diplomatic Mission of another State within the meaning of the Diplomatic Privileges Act or to an International, Multilateral or Bilateral Organization recognized in terms of that Act;
- (b) a condominium parcel situated on or above the fourth floor of a building specified under the provisions of the Apartment Ownership Law (excluding the ground level floor and floors which accommodate any common element or elements within the meaning of Apartment Ownership Law) where the period of lease is thirty five years or above and the lease rental for the full period of lease is paid through inward remittance of foreign currency on or prior to the date of the execution of the relevant indenture of lease;
- (c) any land to a dual citizen of Sri Lanka within the meaning of the Citizenship Act;
- (d) any land to a foreign investor in consequent to a decision of the Cabinet of Ministers taken prior to January 1, 2013, involving direct investment of foreign currency as per the related agreements on such investment, and structured on the basis of any written law governing the tax regime prior to January 1, 2013, and has ensured compliance by making inward foreign remittances to Sri Lanka;
- (e) any land situated within a Bonded Area or a Free Port declared under the Finance Act, No. 12 of 2012.

(2) The Minister may in consultation with the Minister to whom the subject of lands has been assigned and with the prior written approval of the Cabinet of Ministers, by Order published in the Gazette, exempt any foreign entity engaged in the banking, financial, insurance, maritime, aviation, advanced technology or infrastructure development project identified as a Strategic Development Project, in terms of the provisions of the Strategic Development Projects Act, No.14 of 2008, from the application of the provisions of section 6.

(3) The Minister may in consultation with the Minister to whom the subject of Lands has been assigned and with the prior written approval of the Cabinet of Ministers, by Order published in the Gazette, exempt any foreign company engaged in international commercial operations, from the application of the provisions of section 6, where the land is leased to locate or relocate its global or regional operations or to set up a branch office.

Conditions on the registration of instruments of lease.

8.(1) An indenture of lease effecting a lease of any land to a person or a company referred to in section 5(1), shall not be registered under the provisions of the Registration of Documents Ordinance, unless the Registrar of Lands is satisfied that the Land Lease Tax in respect of the lease has been paid in accordance with the provisions of this Act.

(2) For the purposes of this section 'Registrar of Lands' means the respective Registrar of Lands of the land registry, to which the indenture of lease is presented for registration.

Enforcement

9.(1) The Commissioner General of Inland Revenue shall charge, levy and collect the Land Lease Tax imposed under section 6.

(2) The provisions of Inland Revenue Act, shall mutatis mutandis apply to and in relation to the enforcement of the Land Lease Tax payable under this Act.

Land Lease Tax to be credited to the Consolidated Fund. 10. The Land Lease Tax charged, levied or collected under section 9, by the Commissioner General of Inland Revenue shall be credited to the Consolidated Fund.

Restrictions on mortgaging lands of which title has passed or has been leased to a foreign national. 11.(1) Any land transferred or leased to a person or a company referred to in section 2(1) or 5(1), after the date on which the certificate of the speaker is endorsed in respect of this Act, shall not for any purpose be mortgaged or pledged to any bank licensed under the Banking Act, for a period of five years with effect from the execution of the relevant instrument of transfer or lease.

(2) Any mortgage or pledge executed in contravention of subsection (1), shall be void.

Land Reform Act to apply in respect of exempted transfers and leases. 12. The provisions of the Land Reform Law, No. 1 of 1972, on the maximum extent of land that can be owned by any person, shall continue to apply in respect of any transfer of title or lease of a land exempted from the application of the provisions of this Act.

Valuation. 13.(1) For the purposes of this Act, the land value-
(a) of any State land, shall be as determined by the Government chief valuer; and
(b) of any private land, shall be as determined by a licensed valuer.

(2) The total lease rental, pertaining to a lease referred to in section 5, shall be calculated based on the valuation of the land made under subsection (1).

Offences and punishment. 14.(1) Where any person liable to pay the Land Lease Tax under this Act, fails to pay such tax, as provided for in this Act, shall be deemed to be a defaulter of tax under this Act.

(2) Any such defaulter commits an offence under this Act, and the provisions of the Inland Revenue Act shall mutatis mutandis, be applicable to and in relation to the prosecution against any such defaulter and for the recovery of such tax and to the punishment thereof.

Offences by bodies 15. Where an offence under this Act is committed by a body of persons, if of persons.

that body of persons is-

(a) a body corporate, every director and officer of that body corporate;
or

(b) a firm, every partner of that firm; or

(c) a body unincorporated other than a firm, every officer of that body responsible for its management and control,

shall be deemed to be guilty of such offence:

Provided that, no such person shall be deemed to be guilty of such offence, if he proves that such offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

Concessions for
Development
Projects.

16. Where a State land is transferred or leased to a project approved by the Cabinet of Ministers as a Development Project to which freehold right or leasehold right of the State land to be transferred, such project shall be granted a deduction amounting to twenty-five per cent of the land value or total lease rental, determined under section 13:

Provided that, any such Development Project shall be implemented by-

(a) a citizen of Sri Lanka; or

(b) a company incorporated in Sri Lanka under the Companies Act, where fifty per cent or above of its shareholding is held by citizens of Sri Lanka.

Regulations

17.(1) The Minister may make regulations for the matters required by this Act to be prescribed and for matters in respect of which regulations are authorized to be made.

(2) Every such regulation shall be published in the Gazette and shall come into operation on the date of such publication or on such later

date as may be specified in such regulation.

(3) Every such regulation shall, as soon as convenient after its publication in the Gazette, be brought before Parliament for approval. Any such regulation that is not so approved shall be deemed to be rescinded as from the date of disapproval, but without prejudice to anything previously done thereunder.

(4) Notification of the date on which a regulation is deemed to be rescinded shall be published in the Gazette.

Alienation of land in contravention of this Act to be void. 18. Any alienation of land effected in contravention of the provisions of this Act, shall be void and shall have no effect in law.

Repeal of Part VI of Act No. 11 of 1963. 19. Part VI (Imposition of tax on transfers of property under certain conditions) of the Finance Act, No. 11 of 1963, is hereby repealed.

Avoidance of doubts. 20. For the avoidance of doubts, it is hereby declared that-

(a) any instrument effecting a transfer of ownership of a land in Sri Lanka to a person or a company referred to in section 2(1), which was executed prior to January 1, 2013 and pending registration in accordance with the provisions of Registration of Documents Ordinance shall, notwithstanding the repeal of Part VI of the Finance Act, No. 11 of 1963, be registered subject to the provisions of repealed Part VI of that Act;

(b) any instrument effecting alienation of land in Sri Lanka, to a person or a company referred to in section 2(1) or 5(1), executed within the period commencing from January 1, 2013 and ending on the date on which the certificate of the Speaker is endorsed in respect of this Act, shall be registered by the relevant Registrar of Lands in accordance with the provisions of the Registration of Documents Ordinance, subject to the provisions of this Act.

Validation. 21. The Commissioner General of Inland Revenue who charges or collects the Land Lease Tax as provided for in this Act, for the period

commencing from January 1, 2013 and ending on the date on which the certificate of the Speaker is endorsed in respect of this Act, shall be deemed, to have acted and to be acting with due authority and such charge or collection shall be deemed, to have been and to be validly made. The Commissioner General of Inland Revenue is hereby indemnified from any action civil or criminal, in respect of the charge or collection of the Land Lease Tax for the aforesaid period.

Recovery of any difference between the actual amount and the amount paid as the Land Lease Tax. 22. Where the amount of the Land Lease Tax charged or collected by the Commissioner General of Inland Revenue under section 21, is less than the actual amount of the Land Lease Tax payable by a Lessee under section 6, the Commissioner General shall by notice in writing require such Lessee, to pay not later than six months from the date of the notice, the difference between the actual amount payable as the Land Lease Tax and the sum already collected or charged, to the Commissioner-General.

Refund of excess amount paid as Land Lease Tax. 23.(1) Where the amount of the Land Lease Tax charged or collected by the Commissioner General of Inland Revenue under section 21, is in excess of the actual amount of the Land Lease Tax payable by a Lessee under section 6, the Commissioner General shall on a written application made by the person who has paid the excess amount, refund the excess amount so paid to that person.

(2) The excess amount referred to in subsection (1) shall be paid to the applicant within six months of the receipt of the application.

Sinhala text to prevail in case of inconsistency. 24. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Interpretation. 25. In this Act unless the context otherwise requires-
'alienation' means transfer, lease or mortgage of lands situated within Sri Lanka;

'Apartment Ownership Law' means the Apartment Ownership Law, No. 11 of 1973;

'Banking Act' means the Banking Act, No. 30 of 1988;

'Citizenship Act' means Citizenship Act (Chapter 349);

'citizen of Sri Lanka' means a citizen of Sri Lanka in terms of Citizenship Act;

'Companies Act' means the Companies Act, No. 7 of 2007;

'Commissioner General of Inland Revenue' means the Commissioner General of Inland Revenue appointed or deemed to be appointed under the Inland Revenue Act;

'Diplomatic Privileges Act' means the Diplomatic Privileges Act, No. 9 of 1996;

'foreigner' means a person who is not a citizen of Sri Lanka;

'foreign company' means a company or a body of persons incorporated under the laws of any country other than Sri Lanka;

'Finance Leasing Act' means the Finance Leasing Act, No. 56 of 2000;

'Finance Leasing Institution' means a Finance Leasing Establishment registered under the Finance Leasing Act;

'holding company' has the same meaning assigned to such expression under the Companies Act;

'Inland Revenue Act' means the Inland Revenue Act, No. 10 of 2006;

'land' means any State or private land and includes-

- (a) any interest in the land;
- (b) any land covered with water; and
- (c) any house or building stands on that land;

'Minister' means the Minister to whom the subject of Finance has been assigned;

'transfer' means any sale, donation, gift or any conveyance by or under which the title of such land passes to another person;

'person' includes a body of persons incorporate or unincorporated;

'Registration of Documents Ordinance' means the Registration of Documents Ordinance (Chapter 117);

'subsidiary' has the same meaning assigned to such expression under the Companies Act.