

BUSINESS OPERATIONS IN SRI LANKA OF AN OVERSEAS COMPANY

1. **AN OVERSEAS COMPANY**

An “**Overseas Company**” is defined in Section 488 of the Companies Act No. 7 of 2007 (hereinafter referred to as “the Act”), to mean any company or body corporate incorporated outside Sri Lanka which-

- (a) after the appointed date (viz: 3rd May 2007) establishes a place of business within Sri Lanka; or
- (b) had, before the said appointed date, established a place of business within Sri Lanka and continues to have an established place of business within Sri Lanka on the appointed date

“**Registered Overseas Company**” is defined to mean an overseas company which has delivered or is deemed to have delivered to the Registrar the documents and particulars required under Section 489.

(All sections referred to in this article are those of the Companies Act No. 7 of 2007, unless specifically mentioned otherwise).

2. **DOCUMENTS AND PARTICULARS TO BE DELIVERED** **(AS REQUIRED BY SECTION 489 (1))**

Every Company **incorporated outside Sri Lanka** which, after the appointed date (viz: 3rd May 2007) establishes a place of business within Sri Lanka, should **within one month** from the date of establishment of its place of business deliver to the Registrar for purpose of registration –

- (a) **a certified copy of the charter, statutes or memorandum and articles of the company, or other instrument** constituting or defining the constitution of the company, and, where that instrument is **not in an official language** of Sri Lanka or in **English**, a **translation** of that instrument in such language as may be specified by the Registrar;
- (b) **a list of the directors** of the company (in the prescribed form 45) containing such particulars with respect to the directors as are by the Act, required to be contained with respect to directors, in the register of the directors of a company;

- (c) the names and addresses (in the prescribed form 46) of one or more **persons resident in Sri Lanka, authorized to accept** on behalf of the company **service of documents** and of any notices required to be served on the company;
- (d) a **statement** (in the prescribed form 44) containing the **full address** of –
 - (i) the **registered or principal office** of the **company**; and
 - (ii) the principal place of business of the company **within Sri Lanka**.
- (e) A **certified** copy, certified of recent date, of any document effecting or **evidencing the incorporation of the company**.

3. **REGISTRATION BY OVERSEAS COMPANIES WHICH HAVE ESTABLISHED PLACES OF BUSINESS BEFORE 3RD MAY 2007**

- 3.1 Where an overseas company has established a place of business within Sri Lanka **before** the appointed date (viz: 3rd May 2007) and has complied with the requirements of Part XIII of the Companies Act No 17 of 1982 in relation to the delivery to the Registrar of documents and particulars-
- (a) such company will be deemed to have complied with subsection (3); and
 - (b) the Registrar should enter on the register of overseas companies, the documents and particulars delivered under Part XIII of the companies Act, No 17 of 1982 (as required for Sec. 489 (4)).
- 3.2 Every company incorporated outside Sri Lanka which, on or before the appointed date (viz: 3rd May 2007) has established a place of business within Sri Lanka is also given time for a period of one month from that date to deliver to the Registrar for registration, the said documents (as required by Section 489 (3))
- 3.3 The Registrar is empowered to extend the period of one month referred to in paragraphs 2 (upon sufficient cause being shown) and 3 (if expedient to do so having regard to the circumstances of any particular cause) *vide* Sections 489 (2) and 489 (6).
- 3.4 The Registrar upon receipt of the documents referred to in paragraph 2 or 3.1 may register the company as a registered overseas company and issue a Certificate of Registration in the prescribed form 42.

4. **REGISTRATION OF ALTERATIONS**

Where in the case of a registered overseas company, any alteration is made in –

- (a) the charter, statutes, or memorandum and articles of the company or any other instrument constituting or defining the constitution of the company;
- (b) the directors of the company or the particulars contained in the list of the directors;
- (c) the names and addresses of the persons authorized to accept services on behalf of the company; or
- (d) the address of –
 - (i) the registered or principal office of the company; or
 - (ii) the principal place of business of the company within Sri Lanka

the company should within the prescribed time of 30 days deliver to the Registrar for registration Form 35 containing the prescribed particulars of the alteration (as required by the Section 491).

5. **FINANCIAL STATEMENTS**

Every registered overseas company shall in every calendar year, prepare financial statements, and where the company is a holding company, group financial statements, in such form and containing such particulars and including such documents, as under the provisions of the Act (subject however to any prescribed exceptions) it would, if it had been a company of the same description within the meaning of the Act, have been required to prepare, and deliver certified copies of those documents to the Registrar for registration as required by Section 492. Where such a document is not in an official language of Sri Lanka or in English, there should be annexed to it a translation in a language specified by the Registrar and certified in the prescribed manner.

6. **SERVICE ON OVERSEAS COMPANY**

As provided for by Section 495 any document or notice required to be served on a registered overseas company, will be sufficiently served if addressed to any person whose name has been delivered to the Registrar under Part XVIII, and left at or sent by post to the address which has been so delivered. However where –

- (a) any registered overseas company has failed to deliver to the Registrar the name and address of a person resident in Sri Lanka who is authorized to accept on behalf of the company service of documents or notices; or
- (b) at any time all the persons whose names and addresses have been so delivered, are dead or have ceased to reside in Sri Lanka, or refuse to accept service on behalf of the company, or for any reason cannot be served

a document may be served on the company by leaving it at or sending it by post to any place of business established by the company in Sri Lanka.

7. **NOTICE OF CESSATION OF BUSINESS IN SRI LANKA**

Where any registered overseas company **ceases to have a place of business** in Sri Lanka, it should forthwith give **notice on form 38 of the fact** to the Registrar. As from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease (vide Section 496).

8. **LIQUIDATION OF ASSETS IN SRI LANKA**

An application may be made to the court for the winding up of the assets in Sri Lanka of an overseas company in accordance with Part XII subject to the modifications and exclusions set out in the Thirteenth Schedule, to the court and such an application may be made whether or not the overseas company –

- (a) is a registered overseas company; or
- (b) has given notice of cessation referred to in paragraph 7 above; or
- (c) has been dissolved, or otherwise ceased to exist as a company, under or by virtue of the laws of any other country.

9. **COMPLIANCE WITH EXCHANGE CONTROL ACT**

Section 489(7) of the Act stipulates that a company incorporated outside Sri Lanka shall not establish a place of business within Sri Lanka or be registered as an overseas company, **where the business being carried on by that company does not conform** to the stipulations made by or under the Exchange Control Act.

10. **PERMISSION UNDER EXCHANGE CONTROL ACT**

In exercise of powers conferred by Section 29C and subsection (5) of Section 30 read with Section 48 of the Exchange Control Act amended by Law No 13 of 1977 permission has been granted by the Controller of Exchange by a notice published in Gazette Extraordinary Number 1681/10 dated 22/11/2010 as amended by Gazette Extraordinary Numbers 1792/28 dated 10.01.2013 and 1970/50 dated 10/06/2016 for a company incorporated outside Sri Lanka and registered as an “overseas company” under the Companies Act No. 7 of 2007, to carry on business in Sri Lanka subject to terms and conditions as specified therein (as set out in the following paragraphs below).

Nothing contained in the abovementioned notice can be construed as affecting or having a bearing on the provisions of any other written law.

11. **ACTIVITIES WHICH MAY BE CARRIED ON BY AN OVERSEAS COMPANY IN SRI LANKA**

11.1 **Activities**

An Overseas company registered under the Companies Act may carry on in Sri Lanka:

- (i) Any commercial, trading, or industrial activity other than those specified in Schedule I, provided prior permission has been obtained from the Controller of Exchange for any such activity specified in Schedule II (*Schedule I and II are reproduced in paragraphs 11.2 and 11.3 below*).
- (ii) Any non-commercial, non-trading or non- industrial activity such as the activities undertaken or carried on by a liaison office, representative office, regional office or other similar office, provided such activities do not provide any income directly or indirectly to the company.

11.2 **Commercial, Trading, Industrial, Activities That Are Not Permitted For Overseas Companies (Schedule I)**

- (i) Money lending
- (ii) Pawn Broking
- (iii) Retail trade with a capital of less than two million US Dollars(*please see paragraph 11.4 below*)

- (iv) Coastal fishing
- (v) Growing and primary processing of tea, rubber, coconut and rice
- (vi) Mining and primary processing of non-renewable national resources
- (vii) Freight Forwarding
- (viii) Shipping Agency Business
- (ix) Mechanized mining of gems
- (x) Lotteries

11.3 Activities Which Require Prior Permission of the Controller Of Exchange (Schedule II)

- (i) Production of goods where Sri Lanka's exports are subject to internationally determined quota restrictions
- (ii) Growing and primary processing of sugar, cocoas and spices
- (iii) Timber based industries using local timber
- (iv) Deep sea fishing
- (v) Mass communication
- (vi) Education
- (vii) Outbound travel agency business
- (viii) Local air transportation
- (ix) Coastal shipping
- (x) Any industry manufacturing or producing-
 - (a) Arms, ammunitions, explosives, military vehicles and equipment, aircraft and other military hardware;
 - (b) Poisons, narcotics, alcohols, dangerous drugs and toxic, hazardous or carcinogenic materials;
 - (c) Currency, coins or security documents.

11.4 Interpretation of “Retail Trade”

If the relevant goods are not intended to be sold to ultimate customer by the overseas company (in other words if the goods are imported in large quantities and sold to distributors and stockists) such business of the overseas company does not fall within the meaning of “Retail Trade”.

12. **FINANCING OF ACTIVITIES CARRIED ON BY AN OVERSEAS COMPANY**

12.1 An overseas company registered under the Companies Act to undertake or carry on any activity specified in subparagraph (i) of paragraph 11.1 above through a place of business in Sri Lanka such as branch office, project office or other similar office should—

- (a) Invest a minimum of United States Dollars (USD) 200,000 or equivalent amount in other designated foreign currencies, out of remittances received from abroad and channeled through a special rupee account designated as “Securities Investment Account (SIA) opened in a commercial bank in Sri Lanka in accordance with directions given by the Controller of Exchange in that regard to commercial bank;
- (b) Provide evidence of remittance of a minimum total of USD 200,000 or equivalent amount in other designated foreign currencies to the Registrar of Companies, within 30 days of registration; and
- (c) Record the funds remitted as per (a) above in the Company’s books as an investment and maintain such record in the company until the company ceases its business in Sri Lanka.

12.2 A place of business such as liaison office, representative office or other similar office shall remit the funds required for the maintenance of such place of business from abroad in designated foreign currency via Securities Investment Account (SIA).

13. **REMITTANCE OF PROFITS, SURPLUS FUNDS, ROYALTY, FRANCHISE OR OTHER SIMILAR PAYMENTS BY AN OVERSEAS COMPANY**

13.1 An overseas company registered under the Companies Act may remit out of Sri Lanka, their profit, royalty, franchise or other similar payments or surplus funds

net of tax through SIA on production of the below mentioned documents to the Authorized Dealer.

13.2 In the case of remitting profit:

- (a) A certified copy of the audited balance sheet and profit and loss account for the relevant year prepared as per the Sri Lanka Accounting Standards.
- (b) A confirmation by the company's auditors in Sri Lanka that the profit has been earned by carrying on the permitted activities.

13.3 In the case of remitting royalty, franchise or other similar payments:

- (a) A certified copy of the agreement and commercial invoice; and
- (b) A certificate from the company's auditors in Sri Lanka certifying the manner of arriving at the remittable amount.

13.4 In the case of remitting surplus funds, before a termination of the registration:

- (a) A certificate from the company's auditors in Sri Lanka certifying the manner of arriving at the remittable surplus, and
- (b) A confirmation by the company's auditors in Sri Lanka that sufficient funds have been set aside by the company in order to meet all income tax and other statutory obligations.

13.5 In the case of remitting surplus funds at the time of termination of the registration:

- (a) A certified copy of the final audited financial statements;
- (b) A tax clearance certificate issued by the Department of Inland Revenue confirming the settlement of all income and other applicable taxes;
- (c) A certificate from the company's auditors in Sri Lanka certifying the manner of arriving at the remittable surplus; and
- (d) A certificate from the company's auditors in Sri Lanka confirming that there are no statutory liabilities outstanding in respect of the activities undertaken and that all known liabilities have been settled.

14. **INTERPRETATION**

For the purpose of said notices referred to in paragraph 10 above:

- (a) “Overseas company” is defined to have the meaning as given in the Companies Act No. 7 of 2007
- (b) “Branch Office” is defined to mean any establishment described as a branch of a foreign company or establishment carrying on the same business or substantially the same business as that carried on by the parent or Head Office.
- (c) “Project Office” is defined to mean a place of business established in Sri Lanka to represent the interest of a foreign company to execute a project in Sri Lanka
- (d) “Liaison Office” is defined to mean an office of a foreign company established in Sri Lanka to act as a channel of communication between the foreign company or its Head Office or Group.
- (e) “Representative Office” is defined to means an office established in Sri Lanka by a foreign company engaged in international trading of goods or providing international services to report on business movements in Sri Lanka to the Head Office or to provide advice, information etc. to clients in Sri Lanka concerning goods or services sold in Sri Lanka.

15. **CONCLUSION**

Thus an overseas company should comply with the relevant provisions of the Companies Act No. 7 of 2007 and the Exchange Control Act. Of course, the overseas company should also comply with the relevant provisions of Revenue Laws and Land (Restrictions on Alienation) Act too.

Kandiah Neelakandan
Attorney-at-Law
Precedent Partner
Neelakandan & Neelakandan