

SRI LANKA

Sri Lanka litigation guide

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At the time of gaining its independence from colonial rule in 1948, Sri Lanka had inherited a peculiar mix of English law and Roman-Dutch law. Despite a number of attempts of law reform and the introduction of modern legislation in a number of areas, the Roman-Dutch law still remains the 'common law' of the country. The English law governs those laws in areas such as the sale of goods, banking, and administrative law.

Unlike in England, there is no division of the legal professions, with attorneys-at-law functioning as either instructing attorneys or counsel.

Procedure applicable to civil litigation is governed by the *Civil Procedure Code* No.02 of 1889, a piece of legislation from the colonial

appellate courts are functioning in each province, expediting the appeal process.

Sri Lanka enacted the *Arbitration Act* No.11 of 1995, fulfilling a long felt need governing arbitrations in Sri Lanka. The Act applies to all arbitration proceedings in Sri Lanka. A party to an arbitration agreement pursuant to which an arbitral award is made may apply to the High Court to enforce the award.

Apart from a few instances enumerated in the Arbitration Act the Court would issue judgment and decree enforcing the award. The few instances include: invalidity of arbitration agreement; improper notice given as to appointment of an arbitrator; the arbitral tribunal acting outside its jurisdiction; improper procedure followed by the arbitral tribunal; subject matter not being capable of being settled by arbitration; and, the award being contrary to public policy.

Foreign Arbitral awards are enforceable under the Act through the High Court but are subject to almost the same exceptions as set out above. This is irrespective of the country in which it was made. Thus, the Act gives effect to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

Another widely used ADR method in Sri Lanka is mediation. The *Mediation Boards Act* No.72 of 1988 established mediation boards, which institutionalised the mediation process and linked it with the judicial process. Under said Act, the referral of certain disputes enumerated in the Act to a mediation board established in the dispute area is mandatory. Financial disputes in which the value is less than LKR25,000 (US\$220) must be referred to a mediation board. Only if the matter cannot be settled by mediation shall it be referred to the District Court. Mediation Boards have become a successful avenue in settling minor disputes.

Sri Lanka has not ratified or acceded to the Hague Convention of 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial matters. Law relating to such enforcement is based on an old piece of legislation named The Reciprocal Enforcement of Foreign Judgments Ordinance No.41 of 1921. The Ordinance is applicable for judgments obtained in a superior court in the UK, and other parts of Her Majesty's Realms and Territories outside the UK – as the minister may make order for the Ordinance to be applicable.

Given the significantly different political map of the world today, a safe conclusion is that judgments obtained in the High Court of England, Northern Ireland and the Court in Session in Scotland may be enforced in Sri Lanka.

Mediation boards have become a successful avenue in settling minor disputes

era that has been amended numerous times to keep abreast with modern needs. The main procedural legislation regarding criminal matters is the *Criminal Procedure Code Act* No. 15 of 1979.

District courts function as the primary civil courts and the magistrate's courts are the primary criminal courts. The high courts function as the main criminal courts, to which cases are transferred after a non-summery inquiry at the magistrate's courts. The Court of Appeal and the Supreme Court function as the appellate courts. In addition, the Court of Appeal exercises writ jurisdiction and reversionary jurisdiction. The Supreme Court exercises the 'fundamental rights' jurisdiction where breaches of fundamental rights by the Executive are adjudicated. 'Fundamental rights' law has become a popular avenue against Executive actions, which has also given rise to a fair number of public interest litigation.

The more recent additions to the courts system are the provincial high courts. Exercising civil jurisdiction (commercial high courts), these have jurisdiction over matters that arise out of 'commercial transactions' in which the debt, damage or demand exceeds LKR3 million (US\$26,000).

A Commercial High Court is established only in the Western Province of Sri Lanka, where the commercial capital Colombo is situated. In 2006, the provincial high courts (civil appellate courts) were vested with appellate and reversionary jurisdiction in respect of judgments, decrees and orders made by a district court. Civil

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FJ&G de Saram

The venerable FJ&G de Saram was established in 1841 and is one of the country's oldest firms. It houses Sri Lanka's largest team with 10 partners and over 20 other fee-earners. This full-service firm has first-rate banking and finance, and corporate practices, with top practitioners Ayomi Aluwihare-Gunawardene, Tudor Jayasuriya, and Udaya Kadurugamuwa leading the teams. The firm services major domestic and international corporates and financial institutions including an impressive array of banks like NDB, Standard Chartered, DFCC, Citibank, State Bank of India, Habib Bank, Deutsche Bank, ICICI Bank, HSBC,

and Wachovia. The firm has been busy this year acting on a number of manufacturing sector M&As, and representative clients of its corporate practice include Continental Holdings AG, Global Communications and MAS Capital.

Two highlights for the firm recently were representing Citibank in relation to oil hedging transactions entered into with Ceylon Petroleum, and advising IFC and Sojitz on the sale and purchase of shares in Asia Power valued at US\$3.8 million. Additionally, the team served as counsel to People's Leasing Company on the US\$4.5 million acquisition of a majority of shares in a Colombo Stock Exchange-listed finance company.

Julius & Creasy

Founded in 1879, Julius & Creasy remains one of the top firms in Sri Lanka with established and well-regarded banking and finance and corporate practices. The firm offers a varied range of advice and has a strong track record of acting on complex and market-leading deals. The firm's banking and finance group advises domestic and international institutions on derivatives, bank lending, credit facilities, securities and funds. The capital markets team advises on a spread of financial products and structures, including options, futures and derivatives, debt and equity offerings as well as securitisation and structured finance. Clients include financiers, originators, issuers and trustees. The M&A side of the firm remains active in the market, advising on corporate restructurings, public and private M&As, demergers and disposals, LBOs, MBOs, takeovers, venture capital and private equity matters.

The firm also represented Al Futtaim Group on its US\$90 million purchase of a publicly listed Sri Lankan company, and advised HSBC on the local law aspects of a US\$100 million syndicated loan it arranged to Bank of Ceylon. Partners Janaki Kamaraguru and R Senathi Rajah are two respected names in the legal market.

The firm's IP practice is just as respected as its financial and corporate groups. Its clients include Pfizer, Coca Cola, Starwood Hotels & Resorts and Nestlé, and the firm has been engaged in IP work since it was established over a century ago. The practice advises on contentious and non-contentious matters, from trade mark applications and overseas trade mark registrations to litigious cases and patent portfolio management. One highlight case had the firm advising Unilever Sri Lanka on the assignment of trade marks and designs owned by Wonderlight Consumer Products Company. Another had its team working for Virgin Enterprises on the infringement of the trade mark 'Virgin' by Virgin Mineral Water Company.

DL&F de Saram

With seven partners and at least 13 other lawyers staffed at DL&F de Saram, the respected firm marks its 108th anniversary this year and offers clients a broad range of financial and corporate services. It provides quality advice on various loan types, numerous bonds, credit instruments, BOO, BOT and BOO agreements, public listings, company law, corporate finance, delistings, privatisations, corporate governance, corporate restructurings, joint ventures, public and private M&As, IPOs, derivatives, and debt and equity products.

Michael Sproule, Nivi Abeyratne and Dijen de Saram are the firm's three noted senior partners and the market has commended its four more junior partners. Key recent clients include ICICI Lombard General Insurance

Company, HSBC and Handicap International. In a current highlight, the firm is representing a German entity on its US\$2.7 million acquisition of a majority shareholding in Capital AEI, and recently completed its role acting for a Dutch bank on its US\$55 million loan to a Sri Lankan hydropower project.

John Wilson & Partners

John Wilson & Partners is a modestly-sized dual-partnership firm run by eponymous John Wilson, a well-known figure in the Sri Lankan legal market. The practice covers a range of financial and corporate areas, but excels in intellectual property. Other areas include security documentation, syndicated loans, project finance, M&A, restructuring, foreign direct investment and other corporate and commercial issues.

With IP as one of the firm's core areas, its practice offers advice on all matters related to trade marks, patents, industrial designs, domain names, and litigations. The contentious side of the practice is led by John Wilson, and the non-contentious matters by Deanne Wilson. In looking to find a way to handle its work volume, the firm has developed an in-house customised trade mark docketing, filing and management software. Clients include Laboratoires Garniers, the Polo/Lauren manufacturing company and Galderma. For the latter, the team advises on market research issues and the prosecution of its trade mark portfolio.

A recent noteworthy case for the team was in counselling a well-known Mexican producer of Corona beer in relation to protecting its trade marks in Sri Lanka, and on issues arising out of the refusal by a certain party which has had business dealings with the client to respect those rights.

Nithya Partners

The relatively young Nithya Partners was formed in 1997 and is made up of 10 specialist lawyers that include five partners. It runs a highly-specialised banking and finance practice led by three top experts Naomal Goonewardena, Ariththa Wickramanayake and Chanaka de Silva. The firms handles a broad range of financing and capital market matters including loan syndications, bank restructurings, derivatives, equity, debt, structured finance, securitisation, due diligence and capital-raising for acquisitions. Clients include a long roster of banking institutions such as Standard Chartered Bank, HSBC, Asian Development Bank, Citibank Japan, Commercial Bank of Ceylon, Sampath Bank and National Savings Bank. Wickramanayake is a former director-general of the Securities and Exchange Commission of Sri Lanka.

Recent examples of the firm's work had it advising

ABN Amro on a US\$20 million syndicated loan facility granted to Celltell Lanka, and working for the arrangers on 11 securitisation transactions that amounted to over LKR1.8 billion.

The firm additionally has a solid corporate M&A practice with strong experience on domestic and cross-border deals. Major clients of this team include the Government of Sri Lanka, Dialog Telekom, Brandix, Mas Holdings, TUI Group, Shing Kwan Group and Sri Lanka Telecom among other corporations, investment houses, and market intermediaries. Last year, the team acted for Lanka Orix Leasing Company on its acquisition of Commercial Leasing Company.

Lawyers in the firm's disputes group recently advised Shell Gas Lanka on an arbitration between its client and the Ceylon Petroleum Corporation in relation to a claim by the latter for a sum of approximately LKR371,000. The firm's highly specialised dispute resolution practice is respected in the market and largely focuses on commercial, banking, financial, consumer protection and customs issues. Clients consist of leading corporate and banking institutions such as Universal Cables Berhad, Staseens Group, John Keells Holdings and Mireka Capital Lands.

Murugesu & Neelakandan

Murugesu & Neelakandan has an established and well-regarded practice that was founded in 1962. It houses the country's most senior practicing lawyer, the noted Velupillai Murugesu, who works alongside other leading lawyer Kandiah Neelakandan. The firm is full-service and offers a broad range of advice on all financial and corporate matters to diverse clients including leading financial institutions

and corporates. These include Standard Chartered, Citibank, HSBC, Philip Morris and Renuka City Hotels. Key areas of its practices are banking, syndicate loans, company and commercial law, foreign direct investment, privatisation, M&A and project finance.

Paul Ratnayeke Associates

Paul Ratnayeke Associates offers a full-service finance and corporate M&A practice that services clients such as the Central Bank of Sri Lanka, Hammer International, HSBC and the Commercial Bank of Ceylon. The firm is staffed by five partners and 10 associates.

Tiruchelvam Associates

Tiruchelvam Associates was established in 1982 and provides clients with quality counsel on all domestic and cross-border banking and corporate legal matters. The practice has three partners and its clients include banks, foreign investors, and corporates seeking advice on banking laws, regulatory advice, M&As, joint ventures, and general corporate and commercial issues. Clients include Bloomberg and NTT Communications.

Varners

Varners has a full-service financial and corporate offering. The firm is staffed with 30 lawyers, which include 10 partners. Retaining a solid presence in the market since the late 1950s, the firm advises on secured and unsecured syndicated and non-syndicated loans, equity and debt public offerings, domestic and cross-border M&As, takeovers, restructurings, credit bonds, regulatory issues, and compliance.

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