

SRI LANKA

Sri Lanka legislation guide



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Foreign investment in Sri Lanka's local equity market is open to approved country funds and regional funds (approval is given by the Ministry of Finance, which is a formality), citizens of foreign states (whether resident in Sri Lanka or outside Sri Lanka) and Sri Lankans resident outside Sri Lanka. Foreign investors may invest up to 100% of the stated capital of a limited company, subject to certain exclusions, limitations and conditions.

Foreign investment is permitted in all sectors of the economy except in the following activities, which are reserved for citizens of Sri Lanka:

- (a) Money lending;
- (b) Pawn broking;
- (c) Retail trade with a capital investment of less than US\$1 million;
- (d) Coastal fishing.

Furthermore, there are certain regulated areas where foreign investment is permitted as specified by the governmental agency or Board of Investment of Sri Lanka (BOI) up to specified percentages of foreign equity as may be prescribed from time to time.

The BOI functions as the central facilitation point for investors, and it is empowered to grant special concessions to enterprises that sign agreements with it under Section 17 of the BOI law and regulations made thereunder.

Foreign investors who are permitted to invest in shares in Sri Lankan companies should open a Securities Investment External Rupee Account (SIERA) and make their investments through SIERAS.

Investment protection

Foreign investment is guaranteed protection by Sri Lanka's Constitution under Article 157. Any treaty or agreement between the Sri Lanka Government and a foreign government for the promotion and protection of foreign investment has the force of law and no executive or administrative action can be taken against such an agreement.

Sri Lanka has entered into a number of Investment Protection Agreements with several countries. Bilateral agreements are valid for 10 years and are extended automatically unless terminated by either party. If the agreements are terminated, investments already made are protected for another 10 years. Article 157 ensures the sanctity of these agreements, which generally provide for:

- (a) Protection against nationalisation;
- (b) Prompt and adequate compensation if required;
- (c) Free remittance of earnings, capital and business fees; and
- (d) Settlement of disputes under the ICSID.

Sri Lanka is also a founder-member of the Multilateral Investment Guarantee Agency (MIGA) of the World Bank, which provides guarantees against non-commercial risks.

IP law

The Code of Intellectual Property Act No. 36 of 2003 embodies legislation relating to copyrights, industrials, designs, patents, trade marks, trade names and unfair competition. Sri Lanka's IP Law, which is based on the WIPO model law for developing countries, has incorporated internationally accepted principles and concepts of IP.

Trade marks, designs and patents can be registered with the director general of IP, while legal protection is also available for copyrights. A patent granted in respect of an invention is valid for a period of 15 years. Registration of a trade mark is valid initially for 10 years and can be renewed for consecutive periods of 10 years.

A comprehensive mechanism for the enforcement of IP rights in Sri Lanka has been established under the Code of Intellectual Property Act.

The Electronic Transmission Act and Computer Crimes Act have also been enacted to protect information and the communication technology industry.

New Companies Act

Sri Lanka enacted a new Companies Act No. 7 of 2007 based on developments in New Zealand, Canada and England. The concepts of par value, mandatory objects clause and ultra vires principles have been abolished.

Tax treaties

Double Tax Relief Agreements signed between Sri Lanka and other countries avoid double taxation by providing for relief on income tax dividends, interest, and royalties. Concluded agreements include special provisions to ensure that foreign investors receive the benefits arising from the various tax incentives.

Transfer tax

In terms of the Finance Act, 100% transfer tax is payable by non-citizens, or Sri Lankan companies in which more than 25% of the issued shares is held by non-citizens, when they acquire immovable property in Sri Lanka. Of course, certain exemptions are available to BOI Enterprises and other specified categories.

Environmental protection

The operation of all enterprises should be carried out ensuring conformity to the provisions of the National Environmental Act and regulations made thereunder. The enforcement of provisions under the Act is carried out by the BOI in respect of all projects established within its Export Processing Zone and by the central Environmental Authority and other governmental agencies in the other areas.

Banking & Finance

RECOMMENDED FIRMS

Tier 1

FJ&G de Saram

Julius & Creasy

Tier 2

DL&F de Saram

Murugesu & Neelakandan

Nithya Partners

Tier 3

John Wilson Partners

Paul Ratnayake Associates

Tiruchelvam Associates

Varners

FJ&G de Saram

The lawyers at legal “powerhouse” FJ&G de Saram are accustomed to receiving high praise from peers and clients, with star partner Ayomi Aluwihare-Gunawardene singled out by peers as an “essential aspect of the firm’s successful development”.

The banking team is in the process of advising Amana Bank as it looks to establish the first Islamic bank in Sri Lanka. A US\$12.8 million transaction headed by Aluwihare-Gunawardene involved providing advice to client International Finance Corporation (IFC) on its proposed risk sharing agreement with National Development Bank, which included matters relating to the legal, regulatory and corporate approvals required for the transaction, and the validity and enforceability of the agreement in Sri Lanka.

Julius & Creasy

Julius & Creasy has one of the longest traditions of excellence in the country, as it sits at the top of the rankings this year again. “The firm is prompt in its service and made sure that its responses were clear and not overly pedantic,” recommends a client.

The firm provides extensive advice to client HSBC in all manner of issues in Sri Lanka. The banking and finance team advised the bank on a US\$500 million bond issue by the government of Sri Lanka in October 2009. Another notable matter for the team was providing advice on a term loan facility of US\$35 million to the government of Sri Lanka by client HSBC in March 2010.

DL&F de Saram

Retaining its solid position in the rankings this year, DL&F de Saram is often praised for its “noteworthy progress” in maintaining its considerable market presence among the historical heavyweights of the country’s legal industry.

The firm provides advice to HSBC on banking, finance and corporate legal matters, and in particular the international call centre HSBC Electronic Data Processing Lanka, which was established in Sri Lanka.

A highlight projects-related transaction for the firm, headed by consultant counsel Suren De Silva, was representing British investors regarding investments in Hydro Power Projects valued at about US\$9 million.

Murugesu & Neelakandan

Marred by the passing of precedent partner Velupillai Murugesu in March 2010, Murugesu & Neelakandan has otherwise been at the forefront of banking and finance activity in the country. Peers maintain that it is yet to be seen whether the firm’s practice and service will be affected by the loss of Murugesu, but most vouch for the depth of quality in the practice, with key partner Kandiah Neelakandan lifted up as an “integral” part of the corporate firm.

With over half a century of experience, the firm provides responsive service to a number of esteemed clients, such as banking entities HSBC, Citibank and Standard Chartered Bank. A highlight banking transaction was its role of local counsel to Korean institution Shinhan Bank with regards to a project loan to a local Sri Lankan interest.

Nithya Partners

Nithya Partners may be regarded as the “new kid on the block” by the traditional powers of the legal industry, but in its brief 12 year history it has already amassed a sizable reputation within the local market for “providing a responsive service, displaying commercial know-how and high integrity with regards to client relations”.

A highlight transaction for the firm this year was advising and preparing relevant documentation for client Sri Lanka Telecom relating to an early redemption of a US\$100 million bond quoted on the Singapore stock exchange. This deal was handled by key partner Naomal Goonewardena, who along with precedent partner Arittha Wickremanayake has been declared by a client as “among the finest lawyers in Sri Lanka”.

Corporate/M&A

RECOMMENDED FIRMS

Tier 1

FJ&G de Saram

Julius & Creasy

Tier 2

DL&F de Saram

Nithya Partners

Tier 3

John Wilson Partners

Murugesu & Neelakandan

Paul Ratnayake Associates

Varners

FJ&G de Saram

Apart from an exemplary banking and finance team, FJ&G de Saram boasts an experienced and highly capable corporate practice. Peers have noted that the firm “is the team to beat” when it comes to corporate work.

The firm acted for UAE client Onyx Heavy Industries and Constructions on the purchase of shares in Ceylon Heavy Industries and Constructions, which is regarded as one of the largest steel manufacturing companies in Sri Lanka. Matters handled by the firm included the carrying out of a legal due diligence study of Ceylon Heavy Industries and Constructions. This US\$12.5 million transaction was completed in September 2009.

Julius & Creasy

One client encapsulates the advantages of working with Julius & Creasy: “The lawyers at the firm are personable and easily approached. The firm is capable of handling any type of case.” Finding itself at the top of the rankings again this year, the firm has been heavily involved in corporate activity in the past 12 months.

The firm represented Emirates Telecommunications Corp. (Etisalat), a UAE telecommunications entity, on its indirect acquisition of Sri Lanka telecom company Tigo. The transaction involved the careful understanding and negotiation of the closely regulated telecom industry in Sri Lanka and was valued at US\$207 million and was completed in October 2009.

DL&F de Saram

The corporate practice at DL&F de Saram has many supporters among its clients and peers. After another busy year in the corporate space, the firm retains its solid position in the rankings.

A sign of the firm’s expertise is its frequent consultation by global legal stalwart Baker & McKenzie for advice on the Sri Lankan legal framework for its many international clients.

Apart from this consultation work, the M&A practice provides advice to its own notable international clients. In one case, the local team recently provided Turner International Broadcasting, the owners of CNN, with advice regarding Sri Lanka legislation and regulations.

Nithya Partners

Corporate boutique Nithya Partners has a unique place in the market, offering its clients superior quality over quantity, and maintaining a steady growth rate tailored to provide maximum efficiency and quality service. While seen as a smaller firm when compared to other firms in the corporate rankings, it maintains its position on the back of sterling work and effusive praise from clients. One client says: “The lawyers at the firm are both professional and turn over quality work. We also appreciate the availability of senior partners.”

A highlight transaction for the firm in July 2009 was advising the selling shareholders of Dutch Lanka Trailers Manufacturers in connection with the sale of their shares to TRF Singapore. This matter was valued at US\$8.7 million.

Dispute Resolution

RECOMMENDED FIRMS

Tier 1

FJ&G de Saram

Julius & Creasy

Tier 2

DL&F de Saram

Murugesu & Neelakandan

Nithya Partners

Sudath Perera Associates

Tier 3

John Wilson Partners

Paul Ratnayake Associates

Varners

FJ&G de Saram

FJ&G de Saram’s litigation department retains its lofty position in the rankings for its well-regarded “quality service”, as vouched for by clients, as well as



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its established reputation in the country. Headed up by Avindra Rodrigo, the firm has further grown its practice in the area of revenue law, with experience challenging sought-for levies and duties imposed on its clients by the revenue authorities.

The team represented Citibank in an application made by an activist alleging that the fundamental rights of the Sri Lankan Citizenry had been infringed. This related to alleged illegal hedging contracts entered into between five commercial banks with the state-owned Ceylon Petroleum Corporation.

Another notable case was acting for the Tourist Hotels Association of Sri Lanka against attempts made by several provisional councils to levy and charge a tax on the turnover generated by the sale of liquor and cigarettes, on the basis that these hotels were engaged in retail or wholesale trade of those items.

Julius & Creasy

One client says: "I would recommend the lawyers at Julius & Creasy for the quality of the advice they rendered and would characterise the firm as having good professionals, being responsive and rigorous, in addition to being very kind people to deal with."

The litigation team is led by R Senathi Rajah, who is acting for Deutsche Bank in an issue regarding Ceylon Petroleum Corporation defaulting in carrying out its obligations and making payments according to the terms of a hedging agreement. The client submitted this dispute to the International Centre for Settlement of Investment Disputes (ICSID) for arbitration. It is reported that the deal at hand is valued at about US\$60 million.

DL&F de Saram

DL&F de Saram is a constant presence on litigious matters, which is reflected by the market-wide approval and positive regard offered by peers and clients when asked about the firm.

The dispute resolution team is involved in various transactions for local interests as well as notable multinationals. A highlight for the firm in the last year was its participation in dispute resolution, and corporate and commercial matters, relating to Nestlé Lanka and Leighton Contractors.

Murugesu & Neelakandan

An otherwise commendable year for Murugesu & Neelakandan was overshadowed by the tragic passing of precedent partner Velupillai Murugesu in early 2010. A recognised and enduring figure in the Sri Lankan legal community and market, his loss will undoubtedly impact the firm.

The litigation practice remains strong despite this upheaval, and under the leadership of Kandiah Neelakandan, whom peers credit as "a very good litigator", looks to build for the future and continue the growth of the firm. Providing advice and service to a diverse array of globally-known clients such as corporate entity Philip Morris, the firm remains on solid ground. A successfully resolved matter was an ICC arbitration between Korean company Heung In Enterprises and Sri Lankan entity The United Ceylon Insurance Company in a corporate issue. The matter was successfully concluded with the assistance of two overseas arbitrators, one from the UK and the other from Singapore.

Nithya Partners

"Nithya Partners maintains the highest standards ethically and professionally and the lawyers there are very well-equipped with both legal and practical aspects, local and international," notes a client. "They pay attention to details at length in every possible manner. The service provided has been quite prompt and to our absolute satisfaction."

The litigation team led by the highly-regarded Chanaka de Silva represented Shell Gas Lanka in a US\$8.9 million-valued claim from the Consumer Affairs Authority (CAA) on the basis that the CAA had caused losses to the client by acting in breach of a pricing agreement between the parties.

The firm acted for Sampath Bank in obtaining injunctions and preventing the sale of shares by a borrower, and in obtaining judgment in favour of outstanding sums.

Sudath Perera Associates

Though more well-known for its intellectual property practice, Sudath Perera Associates' litigation team acts for a range of esteemed clients, among which include HSBC, Standard Chartered Bank, Dilmah Tea, Shell, Fonterra Brands, Qatar Airways, Abercrombie & Fitch, Maharajah Television Networks and ABC Radio.

A client recommends the firm for its lawyers, who are "very efficient and knowledgeable", and the fact that they "act fast and resolve issues by keeping the company's ultimate objectives in mind".

The firm defended Hyundai Engineering and Construction Company in an action brought forth by a local contractor. The contractor sought to prevent the firm's client from extracting metal for the construction of the Colombo Harbour breakwater, which is cited as "the single largest development activity that is presently taking place in Sri Lanka".

Intellectual Property

RECOMMENDED FIRMS

Tier 1

FJ&G de Saram

John Wilson Partners

Julius & Creasy

Tier 2

DL&F de Saram

Murugesu & Neelakandan

Sudath Perera Associates

Varners

FJ&G de Saram

FJ&G de Saram boasts a high quality all-round practice, and its intellectual property group is no different in garnering high praise from clients for being “extremely professional and efficient”.

The firm represented Financial Times of the UK in an appeal by the client to the Commercial High Court against the decision of the Director General of Intellectual Property to accept its mark Financial Times for registration.

The team led by Avindra Rodrigo is acting for Ceylon Brewery in an action filed against Asia Pacific Breweries for trade mark infringement, which depicted a device of a lion on its label. The lion device in varying forms had been registered by the client in Sri Lanka for beer since 1950. The case has been valued at about US\$5 million and is yet to be resolved.

John Wilson Partners

“John Wilson of John Wilson Partners is a highly capable professional to say the least, and well-known in the community,” remarks a peer. The firm is a well-established player in the IP market in Sri Lanka, with an enviable list of clients that includes Nike, Perfetti, Corona, Lindt, Dole, L’Oreal and Diageo.

The team provides IP counsel for leading film producer Dreamworks Animation in Sri Lanka. It is the exclusive IP legal services provider for notable pharmaceutical firm Galderma in Sri Lanka, and provides advice on market research issues and the prosecution of its trade mark portfolio in the country.

Julius & Creasy

The traditional leading firm in Sri Lanka, Julius & Creasy is widely respected for its expertise in intellectual property. A client gives the firm “the highest marks” for

value, noting especially how it “has been very professional in ensuring costs mitigation and making rebates when it saw it being appropriate”.

The firm practice, led by J M Swaminathan and Anomi Wanigasekara, acted for Unilever in an assignment of trade marks and designs owned by Wonderlight Consumer Products Company worth US\$1.7 million. Both lawyers were the lead on the team representing Starwood Hotels & Resorts Worldwide in an infringement/unfair competition matter regarding the client’s well-known W device.

DL&F de Saram

The intellectual property team at DL&F de Saram liaises regularly with Allen & Gledhill of Singapore in relation to trade mark and patent applications in Sri Lanka for its international clients.

The trade mark capabilities of the firm are highly regarded by the market. The team acts for longstanding Sri Lankan fast food chain Perera and Sons, and foodstuffs promoter Elephant food marketing company relating to their trade mark portfolios.

The firm is engaged by the British Council in Sri Lanka with regards to its trade mark applications.

Sudath Perera Associates

“Sudath Perera of Sudath Perera Associates is a very kind and knowledgeable person in IP matters in his country. He is certainly one of the top lawyers in this field in Sri Lanka,” comments a client. The IP department at this burgeoning firm is most definitely one of its strengths, with a peer commenting that “the firm is most well-known for its IP practice”.

The firm acted for Victoria’s Secret Brand Management in an action regarding the seizure of a stock of counterfeit garments which amounted to 7542 pieces. The matter was scheduled for trial in July 2010.

Another notable case for the team was its representation of Lacoste in a trade mark opposition filed against Crocodile International, as part of a series of trade mark conflicts between the two companies across various jurisdictions.

Other active firms

Shaam & Associates

Shaam & Associates is noted as a full-service IP law firm. It provides advice and representation to both local and foreign interests with regards to Sri Lankan law. A notable transaction for the firm last year was its issue of a cease and desist letter for its client’s worldwide registered trade mark. This unfair competition matter was headed up by partner M Musathik.