

Note on prohibition of Foreign Ownership of Land with provision made for Lease of land by Foreigners.

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- Subject to exemptions & limitations, Foreign nationals, Foreign Companies and Sri Lanka companies of which 50 per cent or more of its shareholding is held either directly or indirectly by a foreigners or a foreign company cannot own land.
- Subject to exemptions & limitations, Foreign nationals, Foreign Companies and Sri Lanka companies of which 50 per cent or more of its shareholding is held either directly or indirectly by a foreigners or a foreign company can Lease land upto 99 years.

Summary:

<p>What is the applicable Law ?.</p> <p>With retrospective effect ?</p>	<p>Land (Restriction On Alienation) Of Land No: 38 Of 2014</p> <p>Yes. Passed in Parliament & certified on 29th October 2014 but the act comes into force from 1st January 2013</p>
<p>Can Foreigners Buy Land ?.</p>	<p>NO. Foreign nationals, Foreign Companies and Sri Lanka companies of which 50 per cent or more of its shareholding is held either <u>directly or indirectly</u> by a foreigners or a foreign company would be <u>completely prohibited</u> from owning freehold land in Sri Lanka.</p> <p>A Sri Lankan company, with less than fifty <i>per cent</i> of foreign shareholding, can hold land provided such foreign shareholding remain less than fifty <i>per cent</i>, for a minimum period of consecutive twenty (20) years from the date of such transfer.</p> <p>However, this will be void if it is 50% or more due to a change of ownership or transfer to next of kin is a foreigner due to death of a shareholder. This can only be rectified if</p> <p>(a) the reduction takes place within 12 months of the occurrence in the case of a quoted company on the Diri Savi Board with a minimum of 200 shareholders or a quoted company on the Main Board with 1000 shareholders or</p> <p>(b) the reduction takes place within 06 months of the occurrence in the case of any other Company.</p> <p>Land transferred to a Foreign nationals, Foreign Companies and Sri Lanka companies of which 50 per cent or more of its shareholding is held either directly or indirectly by a foreigners or a foreign company, 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.</p>
<p>Are there any exemptions on Land Purchases by Foreigners ?</p>	<p>Yes. Exemptions;</p> <ol style="list-style-type: none"> 1. Transfer to a Diplomatic Mission of another State within the meaning of the Diplomatic Privileges Act or to an International, Multilateral or Bilateral Organisation in terms of that Act. 2. Transfer of a condominium parcel situated <u>on or above the fourth floor of a building</u> specified under the Apartment Ownership Law, <u>(excluding the ground level floor and floors which accommodate any common element or elements within the meaning of Apartment Ownership Law)</u> provided that, the entire value shall be paid up front

	<p>through an inward foreign remittance prior to the execution of the relevant deed of transfer.</p> <ol style="list-style-type: none"> 3. transfer to a foreign investor in consequent to a <u>decision of the Cabinet of Ministers taken prior to January 1, 2013</u>, 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; 4. <u>Inheritance rights. transfer by intestacy, gift or testamentary disposition to a next of kin (who is a foreigner)</u> of the owner of such land, in accordance with the applicable law of succession of Sri Lanka. 5. transfer to a <u>dual citizen of Sri Lanka</u> within the meaning of the Citizenship Act. 6. land, transferred to a company with 50 per cent or more of its shareholding held either directly or indirectly by a foreigners or a foreign company, during the period from 1st Jan.2013 and ending on the date (20th Oct.2014) 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. 7. transfer to any bank licensed under the Banking Act, or Finance Leasing Institution in which any foreign shareholding is fifty <i>per cent</i> or above in settlement of a debt in terms of the respective applicable laws. 8. Transfer to any foreign entity engaged in banking, finance and insurance, maritime, aviation, advanced technology or infrastructure development subject to approval by the Finance Minister in consultation with the Land Minister and with prior written approval of the Cabinet of Ministers. <p>Such investors must, however, satisfy one or more of the requirements set out in the Strategic Development Projects Act – such as "substantial inflow of foreign exchange" or generation of "substantial employment.</p> <ol style="list-style-type: none"> 9. Again subject to prior written approval of the Cabinet of Ministers, by Order published in the Gazette, land may be transferred to any foreign entity involved in international operations to locate or relocate its global or regional operations or to set up a Branch Office
Can Foreigners Lease Land ?	<p>YES. Foreign nationals, Foreign Companies and Sri Lanka companies of which 50 per cent or more of its shareholding is held either directly or indirectly by a foreigners or a foreign company would be permitted to lease land in Sri Lanka subject to a maximum of 99 years and payment of Land Lease tax.</p> <p>Any state land shall not be sub-let or sub- leased 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.</p>

	<p>The rate of such Land Lease Tax shall be <u>fifteen per cent of the total rental payable for the entire duration</u> of the lease.</p> <p>The 15% shall be reduced to 7.5% in respect of the following;</p> <ol style="list-style-type: none"> land leased to a company with 50 per cent or more of its shareholding held either directly or indirectly by a foreigners or a foreign company provided that such company has been in active operation in Sri Lanka for a consecutive period of <u>not less than ten years</u>, immediately prior to the date of the indenture of lease. land leased to a <u>subsidiary of a Sri Lankan holding company</u>, in which the shareholding of the holding company in such subsidiary is fifty <i>per cent</i> or above and any foreign shareholding in the holding company is fifty <i>per cent</i> or above provided that such company has been in active operation in Sri Lanka for a consecutive period of <u>not less than ten years</u>, immediately prior to the date of the indenture of lease. Lease of a condominium parcel situated <u>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</u> Lease of a condominium parcel situated <u>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.</u> lease of any land to Foreign nationals, Foreign Companies and Sri Lanka companies of which 50 per cent or more, situated within; (i) a <u>Licensed Zone</u> declared under the Board of Investment of Sri Lanka Law, No. 4 of 1978; or (ii) a <u>Tourist Development Area</u> declared under the Tourism Act, No. 38 of 2005 or Tourist Development Act, No. 14 of 1968; or (iii) an <u>Industrial Estate</u> established under the Industrial Development Act, No. 36 of 1969; or (iv) an area declared by the <u>Minister by regulations as an area.</u> land leased to a Sri Lankan company, where any foreign shareholding in such company, either direct or indirect, is fifty <i>per cent</i> or above, as approved by the <u>Cabinet of Ministers decides</u> 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. <p><u>In addition to the Land Lease Tax, the Lessee has 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.</u></p> <p>Land leased to a person or a company referred to Foreign nationals, Foreign Companies and Sri Lanka companies of which 50 per cent or more of its shareholding is held either directly or indirectly by a foreigners or a foreign company 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</p>
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	years with effect from the execution of the relevant instrument of lease
Are there any exemptions on Land Leases ?	<p>Yes. Exemptions;</p> <ol style="list-style-type: none"> 1. Lease to a Diplomatic Mission of another State within the meaning of the Diplomatic Privileges Act or to an International, Multilateral or Bilateral Organisation in terms of that Act. 2. Lease of a condominium parcel situated <u>on or above the fourth floor of a building</u> specified under the Apartment Ownership Law, <u>(excluding the ground level floor and floors which</u> 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 3. Lease to a foreign investor in consequent to a <u>decision of the Cabinet of Ministers taken prior to January 1, 2013</u>, 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; 4. Lease to <u>a dual citizen of Sri Lanka</u> within the meaning of the Citizenship Act. 5. Lease of land situated within a <u>Bonded Area or a Free Port declared under the Finance Act, No. 12 of 2012</u> 6. Lease to any foreign entity engaged in banking, finance and insurance, maritime, aviation, advanced technology or infrastructure development subject to approval by the Finance Minister in consultation with the Land Minister and with prior written approval of the Cabinet of Ministers. Such investors must, however, satisfy one or more of the requirements set out in the Strategic Development Projects Act – such as "substantial inflow of foreign exchange" or generation of "substantial employment." 7. Again subject to prior written approval of the Cabinet of Ministers, by Order published in the Gazette, land may be leased to any foreign entity involved in international operations to locate or relocate its global or regional operations or to set up a Branch Office
What is the maximum period permitted for lease ?	maximum of 99 years.
Are these conditions applicable for the lease of business premises for short periods ?.	Yes. Therefore, the Land Lease Tax Applicable should be paid.
Who is Responsible for	Registrar of Lands; for the registration of land purchased or leased. He

required applicable actions ?	<p>can reject if he is not satisfied that such transfer/lease is in compliance with the provisions of this Act/applicable laws.</p> <p>The Commissioner General of Inland Revenue; for the collection of Stamp Duty for land purchased or leased. He can reject if he is not satisfied that such transfer/lease is in compliance with the provisions of this Act/applicable laws.</p> <p>The Commissioner General of Inland Revenue; for the collection of Land Lease Tax for land leased. He can reject if he is not satisfied that such transfer/lease is in compliance with the provisions of this Act/applicable laws.</p> <p>Company Secretary; 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 <i>per cent</i> of the total number of shares issued by such company, during the said period of six months.</p>
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