

PARLIAMENT OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF

SRI LANKA

LAND (RESTRICTIONS ON ALIENATION)

ACT, No. 38 OF 2014

[Certified on 29th October, 2014]

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Land (Restrictions on Alienation) 1

Act, No. 38 of 2014

[Certified on 29th October, 2014]

L.D.—O. 23/2013.

AN ACT TO MAKE PROVSIONS 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 PART VI 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 Preamble.

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:—

1. (1) This Act may be cited as the Land (Restrictions Short title and

on Alienation) Act, No. 38 of 2014. date of

operation.

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

come into operation with effect from January 1, 2013.

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Restriction on 2. (1) Notwithstanding any provision to the

transfer of land.

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,

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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 Securitites and Exchange Commission of Sri Lanka

Act, No. 36 of 1987 and published in Gazette Extraordinary

No. 1215/2 of December 18, 2001.

3. (1) The provisions of section 2 shall not apply to— Exemption from

the application

of the provisions

(a) any land the title of which is transferred to a of section 2.

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meaning of the Diplomatic Privileges Act or to an

International, Multilateral or Bilateral Orgnization

recognized in terms of that Act;

(b) a condominium parcel situated on or above the

fourth floor of a building specified under the

Apartment Ownership Law, (excluding the ground

level floor and floors which accommodates only

common element or elements within the meaning

of Apartment Ownership Law):

Provided that, the entire value shall be paid up

front 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 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

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 shareholing is fifty per cent or above—

(i) at an auction conducted by such Bank in

terms of the Recovery of Loans by Banks

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(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 January1, 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.

(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

publidhed 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.

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(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

publidhed 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 4. (1) The Registrar of Lands shall not register an

the registration instrument effecting any transfer of title referred to in section

of instruments

2, under the provisions of the Registration of Documents

relating to the

transfer of title Ordinance,unless such registrar of lands is satisfied that such

of lands. transfer is in compliance with the provisions of this Act.

(2) (a) Notwithstading 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 recongized 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

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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 fifity per cent of the total number

of shares issued by such company, during the said period of

six months.

(b) Where the foreing 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.

5. (1) Notwithstanding any provision to the contrary in Restrictions on

any other written law, the leasing of a land— the leasing of

lands to

foreigners.

(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.

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(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 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.

Tax on the lands 6. (1) There shall be a Land Lease Tax payable up-front

leased out to

by the Lessee, for every lease of land, in terms of section

foreigners.

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:

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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 envestment has already been realized by

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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 7. (1) The Land Lease Tax payable under section 6,

the Land Lease shall not be applicable on the lease of—

Tax.

(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

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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 foriegn 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 povisions 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 Minster 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.

8. (1) An indenture of lease effecting a lease of any Conditions on

land to a person or a company referred to in section 5(1), the registration

of instruments

shall not be registered under the provisions of the

of lease.

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.

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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 10. The Land Lease Tax charged, levied or collected

to be credited to under section 9, by the Commissioner General of Inland

the Consolidated

Fund. Revenue shall be credited to the Consolidated Fund.

Restrictions on 11. (1) Any land transferred or leased to a person or a

mortgaging company referred to in section 2(1) or 5(1), after the date on

lands of which

title has passed which the certificate of the speaker is endorsed in respect of

or has been this Act, shall not for any purpose be mortgaged or pledged

leased to a to any bank licensed under the Banking Act, for a period of

foreign five years with effect from the execution of the relevant

national.

instrument of transfer or lease.

(2) Any mortgage or pledge executed in contravention of

subsection (1), shall be void.

Land Reform 12. The provisions of the Land Reform Law, No. 1 of

Act to apply in 1972, on the maximum extent of land that can be owned by

respect of

any person, shall continue to apply in respect of any transfer

exempted

transfers and of title or lease of a land exempted from the application of

leases. 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).

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14. (1) Where any person liable to pay the Land Lease Offences and

Tax under this Act, fails to pay such tax, as provided for in punishment.

this Act, shall be deemed to be a defaulter of tax under this

Act.

(2) Any such defaulter commits and 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.

15. Where an offence under this Act is committed by a Offences by

body of persons, if that body of persons is- bodies of

persons.

(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.

16. Where a State land is transferred or leased to a project Concessions for

approved by the Cabinet of Ministers as a Development Development

Project to which freehold right or leasehold right of the State Projects.

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

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(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 18. Any alienation of land effected in contravention of

land in the provisions of this Act, shall be void and shall have no

contravention of

this Act to be effect in law.

void.

Repeal of Part 19. Part VI (Imposition of tax on transfers of property

VI of Act No. under certain conditions) of the Finance Act, No. 11 of 1963,

11 of 1963.

is hereby repealed.

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

doubts. 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

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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.

21. The Commissioner General of Inland Revenue who Validation.

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.

22. Where the amount of the Land Lease Tax charged Recovery of any

or collected by the Commissioner General of Inland Revenue difference

between the

under section 21, is less than the actual amount of the Land actual amount

Lease Tax payable by a Lessee under section 6, the and the amount

Commissioner General shall by notice in writing require paid as the Land

Lease Tax.

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.

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Refund of 23. (1) Where the amount of the Land Lease Tax charged

excess amount or collected by the Commissioner General of Inland Revenue

paid as Land

Lease Tax. 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 24. In the event of any inconsistency between the

prevail in case Sinhala and Tamil texts of this Act, the Sinhala text shall

of inconsistency.

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;

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“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;

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“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.

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Annual subscription of English Bills and Acts of the Parliament Rs. 885 (Local), Rs. 1,180

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