Preface

The Ministry of Industry and Commerce with the financial support of Gesellschaft für Internationale Zusammenarbeit (GiZ), commissioned Ernst and Young (EY) to carry out an assessment of the institutional and regulatory framework relating to the SME sector in Sri Lanka. The regulatory framework assessment was sub contracted by EY to F J & G De Saram.

This is the draft report on the outcome of the assignment presented with a view to obtain feedback from the key stakeholders. The feedback received will be taken in to consideration in finalizing the report to be presented to the government for their consideration.
Acknowledgements

We thank the Senior Staff of the Ministry of Industries and Commerce led by its Additional Secretary Mr. M.A. Thajudeen who were closely involved with the study, the Chairman, Directors and Staff of National Enterprise Development Authority (NEDA) Sri Lanka for the assistance provided in conducting the study, the District Secretariats for the support extended in coordination of the Focus Group Discussions (FGDs), Department heads of the government agencies, associations and banks who were interviewed for the study and Le Duy Binh at Economica Vietnam and Hasitha Wijesundara at GiZ for the guidance and insights in formulating this report.

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Acronyms

ADB      Asian Development Bank
BOC      Bank of Ceylon
BOI      Board of Investment
CBSL     Central Bank of Sri Lanka
CEA      Central Environmental Authority
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>CGTTI</td>
<td>Ceylon German Technical Training Institute</td>
</tr>
<tr>
<td>CSE</td>
<td>Colombo Stock Exchange</td>
</tr>
<tr>
<td>DoC</td>
<td>Department of Commerce</td>
</tr>
<tr>
<td>DTET</td>
<td>Department of Technical Education and Training</td>
</tr>
<tr>
<td>EIA</td>
<td>Environment Impact Assessment</td>
</tr>
<tr>
<td>EIS</td>
<td>Enterprise Investment Scheme</td>
</tr>
<tr>
<td>FCAU</td>
<td>Food Control Administration Unit</td>
</tr>
<tr>
<td>FGDs</td>
<td>Focus Group Discussions</td>
</tr>
<tr>
<td>IDB</td>
<td>Industrial Development Board</td>
</tr>
<tr>
<td>IRCSL</td>
<td>Insurance Regulatory Commission of Sri Lanka</td>
</tr>
<tr>
<td>IRD</td>
<td>Inland Revenue Department</td>
</tr>
<tr>
<td>ITI</td>
<td>Industrial Technology Institute</td>
</tr>
<tr>
<td>KII</td>
<td>Key Information Interviews</td>
</tr>
<tr>
<td>LCBs</td>
<td>Licensed Commercial Banks</td>
</tr>
<tr>
<td>LFC</td>
<td>Licensed Finance Companies</td>
</tr>
<tr>
<td>LSB</td>
<td>Licensed Specialized Banks</td>
</tr>
<tr>
<td>MoF</td>
<td>Ministry of Finance</td>
</tr>
<tr>
<td>MOIC</td>
<td>Ministry of Industry and Commerce</td>
</tr>
<tr>
<td>NAITA</td>
<td>National Apprentice and Industrial Training Authority</td>
</tr>
<tr>
<td>NEA</td>
<td>National Environment Agency</td>
</tr>
<tr>
<td>NEDA</td>
<td>National Enterprise Development Authority</td>
</tr>
<tr>
<td>NERD</td>
<td>National Engineering Research and Development Centre</td>
</tr>
<tr>
<td>NISD</td>
<td>National Institute of Social Development</td>
</tr>
<tr>
<td>RDO</td>
<td>Regional Development Authority</td>
</tr>
<tr>
<td>RFLE</td>
<td>Registered Finance Leasing Establishments</td>
</tr>
<tr>
<td>RSPGLoC</td>
<td>Rooftop Solar Power Generation Line of Credit Project</td>
</tr>
<tr>
<td>SAP</td>
<td>Smallholder Agribusiness Partnership</td>
</tr>
<tr>
<td>SCORE</td>
<td>SME Competitiveness Rating for Enhancement</td>
</tr>
<tr>
<td>SDFL</td>
<td>Skills Development Fund Ltd</td>
</tr>
<tr>
<td>SEC</td>
<td>Securities and Exchange Commission</td>
</tr>
<tr>
<td>SED</td>
<td>Small Enterprises Development Bureau</td>
</tr>
<tr>
<td>SLC</td>
<td>Specialized Leasing Companies</td>
</tr>
<tr>
<td>SLFRS</td>
<td>Sri Lanka Financial Reporting Standards</td>
</tr>
</tbody>
</table>
Executive Summary

This report analyzes and evaluates; the current business environment relating to Small and Medium Enterprises (SMEs) in Sri Lanka, the prevailing Institutional Framework supporting the sector and the Regulatory Framework that relates to the SME sector.

The study comprises of a detailed assessment of public and private sector institutions which provides services supporting the SME sector and mapping these to its key stakeholders, subsequent to detailed interviews held with related institutions (associated with the sector- Supply side analysis). Discussions and responses from SMEs were assessed to establish the current business environment relating to SMEs, examining the issues and constraints faced throughout the business life cycle (Demand side analysis).

The legal framework applicable to SMEs and a commentary on the legal and regulatory issues that impact SMEs are also stated in this report as provided by FJ&G de Saram subsequent to a study by them for the purpose of this assignment.

In conclusion, the report outlines recommendations prioritized based on importance and urgency to create a more conducive enabling environment for the development of the SME Sector in Sri Lanka.
Composition of Small and Medium Enterprise (SME) Sector in Sri Lanka

- SMEs pave the way for socio economic development in the country making a significant contribution to the country’s GDP, employment, trade balance and other aspects.

- National Policy Framework (2015) for SME development, presented in 2015, is a milestone in the journey to create a more conducive environment for SMEs as it envisions to transform SMEs to large scale, sustainable business enterprises.

- The Policy Framework provides a national definition of a SME and states the SME policy vision, mission and objectives.

Table: Definition of SMEs

<table>
<thead>
<tr>
<th>Size/Sector</th>
<th>Criteria</th>
<th>Medium</th>
<th>Small</th>
<th>Micro</th>
</tr>
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<tbody>
<tr>
<td>Manufacturing</td>
<td><strong>Annual Turnover (Rs.Mn)</strong></td>
<td>251-750</td>
<td>16-250</td>
<td>15 or less than 15</td>
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<td><strong>Number of Employees</strong></td>
<td>51-300</td>
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<td><strong>Annual Turnover (Rs.Mn)</strong></td>
<td>251-750</td>
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</tr>
<tr>
<td></td>
<td><strong>Number of Employees</strong></td>
<td>51-200</td>
<td>11-50</td>
<td>10 or less than 10</td>
</tr>
</tbody>
</table>

*Source: National Policy Framework for Small Medium Enterprise (SME) Development*

Challenges faced by SMEs

- Even though numerous initiatives, schemes and projects are initiated for the betterment of the SME sector, yet the study indicates that many difficulties are encountered by SMEs throughout their business life cycle. The figure below presents key constraints faced by SMEs in their lifecycle of doing business, as revealed during the study.

*Figure: Key Constraints of SMEs*

*Source: EY SME Survey 2018*

- According to the analysis, Access to Finance is a key constraint faced by over 59% of the respondents. The requirement to invest in technology to meet compliance requirements and capacity to meet buyer demands are limited due to inadequate infrastructure and finances, thus limited capacity for innovation and market expansion.
Institutional Framework Analysis

• Over 20 ministries (Refer appendix 9) serve the business sector with over 90 departments/authorities/councils established under such ministries.

• Though the prevailing Institutional Framework consists of significant strengths such as solid regional presence and provision of portfolio of services, the prevailing weaknesses tend to override these strengths.

• In addition to the weaknesses identified within the overall Institutional Framework, ineffective financial lending mechanisms adopted by both private and government institutions result in limited Access to Finance, which is the most crucial factor encountered by SMEs in doing business.

• The lacuna ineffective financial services aimed at the SME industry derives from few key factors as depicted in the Figure below.

Figure: Issues Faced by Financial Institutions
## Recommendations

*Figure: Parameters of Implementation*

*Source: EY Analysis*

### Importance/Urgency

<table>
<thead>
<tr>
<th>Importance/Urgency</th>
<th>Scale/Time Frame of intervention</th>
<th>Recommendations – Institutional Framework</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td><strong>Set-up SME Advisory Council</strong></td>
</tr>
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<td></td>
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<td><strong>Institutionalize SME Authority with amalgamation of selected key existing institutions</strong></td>
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<td><strong>Establish SME Affairs Committee at Provincial Councils</strong></td>
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<td><strong>District Secretary to be empowered for district level SME development</strong></td>
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<td></td>
<td></td>
<td><strong>Establish the concept of “Business Support Service Centre”</strong></td>
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<td></td>
<td></td>
<td><strong>In a national scale, SME Authority to roll out processes, procedures, and mechanisms for providing a superior service for the SME sector, both efficiently and effectively in a standardized manner, facilitated by the District Secretaries wherever applicable, utilizing technical and administrative expertise from respective service providers.</strong></td>
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<td></td>
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<td><strong>Create Centralised SME Database at the SME Authority</strong></td>
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<td>Measures</td>
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<tr>
<td>Institutionalize regular and effective engagement with SMEs at regional level</td>
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<td>Formulate effective government policies to create linkages and to facilitate market for goods and services of SMEs.</td>
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<td>Develop an e-platform to monitor and manage market supply and demand conditions at regional level</td>
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<tr>
<td>Inventorise resource base at regional level to evaluate opportunities and make interventions for SME development</td>
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<tr>
<td>Introduce an index to measure regional competitiveness</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SME Authority to introduce a measurement for monitoring and rewarding regional level service efficiencies</td>
<td></td>
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<tr>
<td>Establishment of SME specific industrial zones</td>
<td></td>
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<tr>
<td>Implementation of an ‘Availability Search’ e-system for Trademarks/Patents</td>
<td></td>
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<tr>
<td>Create CBSL affiliated Credit Guarantee Institution</td>
<td></td>
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<tr>
<td>Create a SME Credit Guarantee Fund, collaborated with CBSL and MoF</td>
<td></td>
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<tr>
<td>Reforms required in the financial system</td>
<td></td>
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</tr>
<tr>
<td>Incentivize setting up VC institutions and ease regulatory burden relating the SME Board in CSE to channel equity funding for SMEs</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Create linkage between banks and “Business Support Services Centre”</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Introduce an Impact Monitoring mechanism through the “Business Support Service Centre”</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Regulatory Framework Analysis**

The scope of the review includes laws and regulations applicable to SMEs specifically in relation to the following aspects:
- Incorporation and business registration
- Licenses, permits and approvals
- Access to land, water and other utilities required for the business and operations
- Relevant registrations pertaining to purchase and lease of immovable property
- Registration of trademarks, trade names and other intellectual property
- Taxation
- Labour matters
- Enforcement of contracts
- Insurance and other social security schemes
- Compliance with environmental laws
- Import and export related matters
- Quality and standards
- Access to equity and debt financing
- Technology transfer/innovation
- Closure of business

Pursuant to the review of the relevant regulatory framework, following constraints were identified as issues that impact the business operations of SMEs the most, and remedial actions were also suggested for the development of the SME sector. The table below highlights few of the selected recommendations which should be given priority.

**Recommendations**

*Table: Constraints within the Regulatory Framework*

<table>
<thead>
<tr>
<th>Issue</th>
<th>Description</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Narrow definitions of SMEs in the 2017 IRD Act</td>
<td>Definition of SME as contained in the Inland Revenue Act No. 24 of 2017 (&quot;2017 IRD Act&quot;), the annual turnover threshold considered for an entity to be considered as an SME within the meaning thereof is Rs. 500 Million, whereas the turnover threshold in National Policy Framework Small Medium Enterprise Development is Rs. 750 Million.</td>
<td>• The definition to be amended to increase the turnover threshold from Rs. 500 Million to Rs. 750 Million so as to ensure that SMEs within that revenue bracket will also have the benefit of the concessionary tax rate.</td>
</tr>
</tbody>
</table>
| Laws delays resulting in Court action being protracted | There are long delays in the lower courts, which can be attributed predominantly to lack of resources and inadequacy of the number of courts and judges in the context of the volume of litigation. Further inadequate knowledge of judges relating to the subject matter of disputes has also resulted in delays. | • From SMEs point of view, encouraging enforcement of contracts through arbitration and other alternate dispute resolution methods by creating awareness among them of these methods would be the short-term recommendation.  
• Long term recommendation, which are essentially policy based and... |
<table>
<thead>
<tr>
<th>Issue</th>
<th>Description</th>
<th>Solutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failures in Arbitration to consistently deliver in facilitating expeditious and cost-effective dispute resolution</td>
<td>Arbitration, although expected to be an effective alternative dispute resolution mechanism, in Sri Lanka, has faced the same destiny as judicial system due to manifestly inadequate use of technology (as in the case of the judicial system as discussed above), absence of qualified professional arbitrators.</td>
<td>• A separate set of rules to be promulgated for SMEs to provide for arbitration by a sole arbitrator to be selected from a list of qualified international arbitrators maintained by the arbitration institution</td>
</tr>
<tr>
<td>Inability of certain SMEs to provide collateral to obtain financing</td>
<td>The grant of loans and financial accommodations by banks and finance companies are generally required to be secured by collateral (either immovable or movable assets of the borrower) and banks are usually reluctant to accept certain types of assets (i.e. equipment, trading goods etc.)</td>
<td>• The implementation of a policy both at Governmental level and institutional level to require banks and finance companies to allocate funds every year for lending to SMEs that meet certain criteria (i.e. SMEs in initial stage of operations, SMEs carrying on certain types of businesses etc.) at low interest rates and/or without collateral.</td>
</tr>
<tr>
<td>Lack of consistent set of rules with regard to the registration of partnerships and sole proprietorships.</td>
<td>The registration process of partnerships and sole proprietorships is carried out at regional levels by Provincial Councils and local authorities and each Provincial Council/local authority has its own set of rules on the procedures for registration, which has resulted in irregular application of the provisions of the Business Names Registration Ordinance No. 6 of 1918 (“BNRO”) and also procedures/fees that differ from region to region.</td>
<td>• Rules and orders to be made under section 17 of the BNRO to specify (i) a registration procedure that will uniformly apply in respect of all registrations irrespective of the geographical location, (ii) uniform fees which may be revised from time to time by further orders under the BNRO and (ii) streamline the supporting documents required to be submitted.</td>
</tr>
<tr>
<td>The number of licences, permits and approvals to be obtained for many SMEs</td>
<td>Depending on the business activities that the SME wishes to engage in, the SME will have to apply for and obtain certain licences, permits and approvals, a majority of which must also be renewed every year.</td>
<td>• An institution may be set up to administer and attend to the affairs and needs of SMEs and may be conferred with the same licensing and approving power and authority as the BOI. • A rationalization of the</td>
</tr>
</tbody>
</table>
licences, permits and approvals required so that the number of licences, permits and approvals required for a particular business is reduced to the extent possible. This would require amendments to the licensing requirements set out in some of the laws and regulations referred to in the report.

- All relevant licensing/regulatory/approving authorities can be located in one centralized location and each such centralized location to be set up for each District.

| Delays in the issuance of licences, permits and approvals | Given that a majority of the laws that set out licensing, permit and approval requirements for businesses do not specify the timeframes within which such licences, permits and approvals should be issued, there are invariably delays in the issuance of these licences, permits and approvals. | • Definite time periods to issue licences, permits and approvals to be introduced |
| Unavailability of information and lack of awareness relating to licensing and approvals requirements specified in the law resulting in breach of such requirements | No public information platform that provides composite and accurate information to the public on the specific licences, permits and approvals to be obtained for various businesses. | • A publicly available information system to be implemented. |

Recommendations with regard to the steps that may be taken and solutions that may be adopted in the Sri Lankan context to resolve the issues faced by SMEs are set forth in Chapter 04.
**Economic Environment**

A brief Macroeconomic outlook of Sri Lanka is depicted below in *Table 01*.

*Table 1: Key Economic Indicators*

<table>
<thead>
<tr>
<th>Indicators</th>
<th>Unit</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Real GDP (at current market prices)</td>
<td>US $ million</td>
<td>74,294</td>
<td>79,359</td>
<td>80,556</td>
<td>81,776</td>
<td>87,168</td>
</tr>
<tr>
<td>Real GDP Growth</td>
<td>%</td>
<td>3.4</td>
<td>4.9</td>
<td>4.8</td>
<td>4.4</td>
<td>4.5</td>
</tr>
<tr>
<td>Per Capita GDP (at market prices)</td>
<td>US$</td>
<td>3,609</td>
<td>3,821</td>
<td>3,843</td>
<td>3,835</td>
<td>4,065</td>
</tr>
<tr>
<td>Average Inflation</td>
<td>%</td>
<td>6.9</td>
<td>3.3</td>
<td>0.9</td>
<td>3.7</td>
<td>7.0</td>
</tr>
<tr>
<td>Trade Deficit</td>
<td>US$ million</td>
<td>-7,609</td>
<td>-8,287</td>
<td>-8,388</td>
<td>-9,090</td>
<td>-9,619</td>
</tr>
<tr>
<td>FDI Inflows</td>
<td>US$ million</td>
<td>1,391</td>
<td>1,528</td>
<td>969</td>
<td>801</td>
<td>1,710</td>
</tr>
<tr>
<td>Exchange Rate (average)</td>
<td>LKR/US$</td>
<td>129.11</td>
<td>130.56</td>
<td>135.94</td>
<td>145.60</td>
<td>152.46</td>
</tr>
<tr>
<td>Budget Deficit</td>
<td>% of GDP</td>
<td>-5.4</td>
<td>-5.7</td>
<td>-7.6</td>
<td>-5.4</td>
<td>-5.5</td>
</tr>
<tr>
<td>Government Debt</td>
<td>% of GDP</td>
<td>70.8</td>
<td>71.3</td>
<td>77.6</td>
<td>79.3</td>
<td>77.6</td>
</tr>
<tr>
<td>Tax revenue</td>
<td>% of GDP</td>
<td>10.49</td>
<td>10.14</td>
<td>12.38</td>
<td>12.29</td>
<td>12.57</td>
</tr>
<tr>
<td>Time required to get electricity</td>
<td>Days</td>
<td>104</td>
<td>104</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
<tr>
<td>Time required to register property</td>
<td>Days</td>
<td>51</td>
<td>51</td>
<td>51</td>
<td>51</td>
<td>51</td>
</tr>
<tr>
<td>Cost of business start-up procedures</td>
<td>% of GNI per capita</td>
<td>26.1</td>
<td>20.7</td>
<td>18.7</td>
<td>12.2</td>
<td>10.4</td>
</tr>
</tbody>
</table>

*Source: CBSL, World Bank, IMF*

**Business Environment**

A sound vision towards an enabling environment for businesses will pave the way for economic success of a country. A country’s position within the global corporate world is measured by various institutions through
several indices. A sound business enabling environment will be a strong catalyst for business growth which has a significant impact on SMEs.

The World Bank “Doing Business Survey” rankings as depicted below in Figure 01, indicates parameters which measure the level of attractiveness of the country’s’ business environment. The Figure 01 depicts relatively a lower performance in enforcing contracts, paying taxes, registering property, and getting credit.

Figure 01: Ranking on Doing Business topics- Sri Lanka


According to the Global Competitiveness Index 2017/18, Sri Lanka was ranked 85th among 137 countries. Figure 03 demonstrates the parameters employed by the World Economic Forum in arriving at the ranking which indicates relatively lower competitiveness in parameters such as Innovation and Business Sophistication for Sri Lanka. Meanwhile, a survey among members of the American Chamber of Commerce (AmCham) in Sri Lanka indicated a foray in labour cost, which in retrospect may contribute to the higher labour market inefficiencies.

Whereas, the indication of inadequacy of Technological readiness will aggravate barriers for Business innovation and Business Sophistication.
• **Defining SMEs in Sri Lanka**

Definition of Small and Medium Enterprises (SME) differs from country to country, over time. Some of the key parameters used in defining SMEs include turnover, value of the assets, total investment and number of persons involved.

The prevailing definition for SMEs was introduced in the ‘The National Policy Framework for SME Development’ in 2015 by the Ministry of Industry and Commerce (MOIC).

![Table 2: Definition of SMEs](https://example.com/table2)

<table>
<thead>
<tr>
<th>Size/Sector</th>
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</tr>
</tbody>
</table>

*Source: National Policy Framework for Small Medium Enterprise (SME) Development*

If in a given circumstance an enterprise falls under more than one category in Table 02, the number of employees is considered to be the deciding factor.

• **Composition of Small and Medium Enterprises in Sri Lanka**

Small and Medium Enterprises (“SME”) is perceived to represent the backbone of an economy and help to create an entrepreneurial culture. In Sri Lanka SMEs play a key role in the development and growth of the economy by contributing to 52% of the Gross Domestic Production (GDP), earning foreign exchange through export and most importantly provide employment to over 45% of the residents in the country. (See Figure 05)

As indicated in Figure 06, over 42% of the total establishments in Sri Lanka are unregistered. Unregistered micro enterprises account for 98% of the total unregistered enterprises, the highest share of unregistered businesses in the country.

The Registration of Sole Proprietorship/Partnerships under the Business Names Registration Ordinance No. 6 of 1918 (“BNRO”) is necessary only if such Sole Proprietorship/Partnership opt to carry on the business that does not consist of true full names of all partners (in the case of a Partnership) and individual proprietor (in case of sole proprietorship).
In the context of business authorization, a specific business license, registration, permit and approval will not be necessary if the law regulating the relevant business does not prescribe the requirement to obtain such business license, registration, permit and/or approval.

*Figure 7: Sole Ownership percentage of enterprises*

*Figure 07* depicts the percentile of sole ownership enterprises for each category or business. Whilst, representation of sole proprietorships are highest in micro enterprises accounting to 93.1% of sole proprietorships within the registered 54.6% of the establishments.

*Figure 8: Female Participation for the Enterprises*

As depicted in the *Figure 08*, the female participation in the SME sector is limited to 24.8%, of which majority of the women are engaged in micro level establishments whilst only a 4.6% of women own large scale businesses.

*Figure 09* indicates an uneven spread of enterprises within the 9 Provinces. A majority 35.7% of establishments are within the Western Province, whilst the lowest proportion of enterprises are being operated in Uva and Northern provinces. According to studies carried out by the Institute of Policy Studies, unavailability of infrastructure in rural areas may cause an uneven spread of establishments within the country.

*Source: Non-Agricultural Economic Activities in Sri Lanka, Department of Census and Statistics, 2013/14*

*Note*

The aforementioned statistics were gathered by the Department of Census and Statistics during the Economic Census in year 2013/14, prior to the publication of prevailing definition of SMEs in Sri Lanka, published by the Ministry of Industry and Commerce. (Refer Table 3 for the definition referred by Department of Census and Statistics) Since 2013/14 Economic Census is the most recent, comprehensive survey that provides data relating to the SME sector, EY referred that.
<table>
<thead>
<tr>
<th>Major Economic Sector</th>
<th>SME Groups</th>
<th>Criteria (Number of Persons Engaged)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry and Construction</td>
<td>Micro</td>
<td>1 to 4</td>
</tr>
<tr>
<td></td>
<td>Small</td>
<td>5 to 24</td>
</tr>
<tr>
<td></td>
<td>Medium</td>
<td>25 to 199</td>
</tr>
<tr>
<td></td>
<td>Large</td>
<td>200 and above</td>
</tr>
<tr>
<td>Trade</td>
<td>Micro</td>
<td>1 to 3</td>
</tr>
<tr>
<td></td>
<td>Small</td>
<td>4 to 14</td>
</tr>
<tr>
<td></td>
<td>Medium</td>
<td>15 to 34</td>
</tr>
<tr>
<td></td>
<td>Large</td>
<td>35 and above</td>
</tr>
<tr>
<td>Services</td>
<td>Micro</td>
<td>1 to 4</td>
</tr>
<tr>
<td></td>
<td>Small</td>
<td>5 to 15</td>
</tr>
<tr>
<td></td>
<td>Medium</td>
<td>16 to 74</td>
</tr>
<tr>
<td></td>
<td>Large</td>
<td>75 and above</td>
</tr>
</tbody>
</table>

- **National Policy Framework and Action Plan for SME Development**

National Policy Framework (2015) for SME Sector Development (hereinafter referred as Policy Framework) can be identified as the foremost initiative taken by the Ministry of Industry and Commerce in creating a more conducive environment for SMEs whilst envisioning to transform SMEs to large scale, sustainable business enterprises that would create positive impact towards the growth of the country’s economy.

*Source: National Policy Framework for SME Development*

The Policy Framework has set forth vision, mission and objectives governing the SME sector as depicted in figure 10 above. Moreover, six key policy intervention areas were highlighted in creating a more conducive environment for the SMEs and focus was also given towards creating a regional balance and resource efficiency in doing business.

As the foundation for creating an enabling environment, the Policy Framework outlines six strategies as indicated in Table 4

- Design and enforce *SME friendly laws and regulations* and contract enforcement to strengthen the legal environment for SMEs
- Improve the quality and outreach of service delivery of *SME related Ministries, Departments, Statutory Boards, and other public and private sector institutions*. SME friendly front office or *SME desk* in key ministries / agencies and one-stop service should be provided to SMEs through a coordinated approach.
• Support and improve infrastructure facilities including common service centers, industrial estates, incubation facilities and geographical location based clustering and SME enterprise village development mainly focus on less developed regions.

• Strengthen public private dialogue and partnership arrangements and development of industrial associations for more effective empowerment and involvement.

• Simplification of business and industry commencement and dispute settlement procedures including simplification of accounting standards.

• Create awareness to SMEs on green growth opportunities and promote environmental friendly cleaner production technologies and practices.

Table 4: Policy Interventions for Enabling Environment

Source: National Policy Framework for SME Development

Subsequent to the Policy Framework, an Action Plan has proposed by the same ministry, with the intention of achieving the set vision, mission and objectives.

First and the sixth strategies under creation of an enabling environment consist following key activities.

Table 5: Strategies to create an Enabling Environment

<table>
<thead>
<tr>
<th>First Strategy</th>
<th>Sixth Strategy</th>
</tr>
</thead>
<tbody>
<tr>
<td>• List the entities involved in SME related outreach of service delivery</td>
<td>• Identify existing laws and regulations and identify the gaps which need to be addressed relevant to the SME sector</td>
</tr>
<tr>
<td>• Identify the issues and potentials of the entities through a SWOT analysis</td>
<td>• Design and finalize the laws and regulations in line with the best international practices</td>
</tr>
<tr>
<td>• Synergy development among the service delivery entities</td>
<td>• Enactment and enforcement</td>
</tr>
<tr>
<td>• Provide services to SMEs through one stop shops</td>
<td></td>
</tr>
<tr>
<td>• Promote a joint forum representing SMEs</td>
<td></td>
</tr>
</tbody>
</table>

EY report focuses on first and sixth strategy of the Action Plan which eventually tries to create a conducive environment for SMEs.

• Study Methodology
Overview of the Study

Assessment on Legal & regulatory aspects
- High level review of laws & regulatory constraints

SME Feedback
- SME FGDs
- Survey Feedback

Assessment on Institutional aspects
- SME Focus Group Discussions (FGDÉ)
- Interviews with Head of Departments

Key Recommendations
in order to create a more conducive environment for SMEs in Sri Lanka
• **Challenges faced by SMEs**

The analysis of the key challenges faced by SMEs in doing business, depicted through the Focus Group Discussions (FGDs) carried out with SMEs across the country is presented in *Figure 11*. As per the analysis, it is evident that lack of access to finance is the most crucial factor affecting SMEs whilst, technology & innovation is the second key constraint identified. Lack of infrastructure is the third key issue highlighted by many SMEs followed by market facilitation, taxation, lack of skilled labor, issues in registering the business and obtaining licenses and R&D.

Moreover, increasing severity of natural disasters result in adverse effects on industrial performance, which will eventually surge challenges faced by SMEs.

*Figure 11: Issues faced by SMEs*

*Source: EY SME Survey 2018*

It is apparent that even though numerous initiatives, schemes and projects have been launched by the government targeting the development of the SME sector, many difficulties are encountered by SMEs in *doing business* from the inception stage to closure of a business, which would also be deterrent for emergence of new entrepreneurs/ startups. (*Refer figure 11*)

• **Key Constraints within the SME Lifecycle**
Analysis of SME Survey

The constraints surfaced by SMEs during the study are analyzed below in an attempt to understand the root-causes which may have triggered such constraints.

Table 6: Analysis of EY SME Survey 2018

<table>
<thead>
<tr>
<th>Access to Finance</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Amongst the micro level enterprises interviewed, none of them were able to secure a SME loan facility, whilst, amongst medium level enterprises, most were granted bank loans at commercial rates.</td>
</tr>
<tr>
<td>• The effective interest rates charged by banks (13%-17%) and non-bank financial institutions (30%-50%) are high and burdensome for SMEs.</td>
</tr>
<tr>
<td>• Credit facilities to be provided under refinancing schemes introduced by CBSL does not reach needy SMEs.</td>
</tr>
<tr>
<td>• Banks provide excuses such as exhaustion of allocated budgets for SME loans when SMEs approach for concessionary loan provided for SMEs.</td>
</tr>
<tr>
<td>• It is perceived that SME loans are granted to those who only maintain a close dialog with the bank and to a selected high/medium profiled clientele.</td>
</tr>
<tr>
<td>• Banks provide credit facilities on ‘security/collateral based’ lending as opposed to ‘cash flow based’ lending. Lack of access to collateral deprives them of such loan schemes. Unattended land title disputes and significant delays in obtaining permits/licenses are some of the common causes for lack of collateral SMEs may have, in not being good enough to obtain loans.</td>
</tr>
<tr>
<td>• Unavailability of accounts and financial information due to not maintaining proper accounting records and lack of know-how on business plan creation results in difficulties in obtaining loan facilities.</td>
</tr>
<tr>
<td>• Informal borrowings have increased due to the lengthy time taken to approve SME loans by banks.</td>
</tr>
<tr>
<td>• Commercial Lending is focused towards the growth stage rather than the inception stage of the Business Life cycle. Further, due to the unavailability of credit history, it is very difficult for startups/young entrepreneurs to secure a bank loan.</td>
</tr>
<tr>
<td>• SME funding is mainly driven by the long term/short term debt obtained through Financial Institutions (FIs). Equity related funding opportunities such as Venture Capital (VC) and a public offering through a listing on the SME board of Colombo Stock Exchange (CSE) is not familiar among SMEs.</td>
</tr>
<tr>
<td>• CSE SME definition differs from the national SME Policy definition. Even though listing procedure at CSE is simple and viable, the requirement to prepare accounts as per full SLFRS is too onerous.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Market Facilitation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>
- SMEs are directed towards several institutions i.e.: NEDA, IDB, SED, NGOs, where they witness an overlap in services leading to confusion, conflicts, communication gaps, lack of coordination, and ineffective resource allocations. Therefore, a dire need for a centralised, well-coordinated body was felt by the SMEs.

- High time consumption to clear imports and exports through customs demotivate SMEs.

- Financial constraints to carry out marketing promotions.

- Lack of access to marketing channels and lack of regional level awareness building by the government institutions with the support and collaboration of chambers

- High credit periods and credit guarantees are requested by leading supermarket channels in obtaining shelf space, which results in a lack of finance to meet such criteria’s.

- Higher Economies of Scales of large players, have resulted in low cost production and costing, with whom the SMEs find extremely difficult to compete.

- Lack of market linkages
  - Majority of SMEs sell their goods to the intermediaries.
  - Absence of an inter-dependent culture in doing businesses with the large players due to poor quality, lack of reliability /high cost associated in productions of SMEs.
  - Absence of a strategic direction in developing infrastructure for market facilitation within regions, where most are haphazard arrangements, therefore, micro enterprises are not able to gain true benefits of public resources. Due to which, market linkages cannot be achieved.
  - Lack of technology usage in building market linkages

- Production capacity constraints of an SME resulting in limitations for business growth.

- Lack of knowledge on potential export markets and opportunities

- Inability to maintain competitiveness within international markets due to high cost associated in-terms of labour. Therefore, technology know-how and continuous adaption to technological changes require a district level intervention and coordination.

**Enabling Environment**

**Infrastructure**

- Lack of government interventions and guidance in managing waste at regional level.
<table>
<thead>
<tr>
<th>Invariably there are delays in obtaining government land. SMEs are usually asked to consult with the Divisional Secretariat to identify the land and then submit proposals via them. The Divisional Secretariat takes the position that the applicant should fall under a low-income family, or in the event of a dispute over title they should come to a settlement via the Land Settlement department for a title clearance.</th>
</tr>
</thead>
<tbody>
<tr>
<td>There are number of licenses and permits that should be obtained before obtaining state lands for business purposes. (Clearance from Central Environmental Authority, Forest Department, and Archeological Department etc. considering the nature of the business). This makes the state land alienation process rigid and cumbersome, making it difficult for SMEs to obtain required lands in doing businesses.</td>
</tr>
<tr>
<td>Land title clearance project named “Bim Saviya” do not meet its true purpose. There are major lags in clearing the titles of the privately-owned lands</td>
</tr>
<tr>
<td>There is ambiguity amongst SMEs due to lack of clarity on the process to obtain grants/lease agreements for state owned lands for business purposes. With the banks demanding collateral for issuing of loans, this is perceived to be a root level key constraint faced by SMEs.</td>
</tr>
</tbody>
</table>

### Business Registration and Obtaining Licensing

| Majority of the respondents had no major issues in registering their businesses. However, requirement to have the land deeds for business registration is a constraint for SMEs due to issues relating to the land title. |
| Requirement to have trade license for the business name registration is a constraint. The application for trade registration requires Business Registration particulars. These procedures are conflicting and requiring of sound procedures devoid of conflicts. |
| The lengthy time taken by the National Intellectual Property office of nearly 1 to 1 ½ years is an issue faced by SMEs. There are instances where the product was outdated by the time the parent was granted. |

### Taxation

| Low awareness on applicable taxes and on the associated benefits of registration for taxes. |
| Burdensome tax on imported raw material and capital goods reduce profits |
- High volatility and unpredictability in tax rates affecting viability and vulnerable market condition for the SMEs.

- Undue pressure and influence from tax officers creates anxiety amongst SMEs which in response creates an uncalled-for resistance towards the business registration process.

- Lack of tax reliefs for businesses at inception stage resulting in low margins/profits is a deterrent to commence business. Even though there are number of tax reliefs proposed by National Budget, they are either not communicated or implemented properly for the benefit of SMEs.

### Innovation and Technology

- Unavailability of business advisory services resulting in lack of know-how for business expansion and product diversifications.

- Limited access to funds and high time consumption in acquiring advanced technology.

- Limited access to latest technology and new knowledge.
  - Lack of linkages between Colombo based technology service providers and regional level SMEs.
  - No proper and effective mechanism established on technology transfer
  - Operation of Vidatha centers are at a minimum level.

- Low awareness amongst SMEs about government initiatives on technology transfer and provision of institutional infrastructure for technology transfer.

- Linkage between universities and SMEs is at its minimum level. Use of resources at the universities (such as laboratories, expertise, students) are highly under-utilized for the SME sector development.

### Skilled Labour

- Regulatory requirements are burdensome especially if the nature of the business demand is for casual – short term employees.

- Low wages result in labour migration and hence, a vacuum in the skilled labour market.

- Lack of career progression within the sector causes difficulties in attracting skilled labour. As a result, skilled labour seek employment opportunities in large scale, established organisations, or overseas markets. There is no proper mechanism of absorbing talent in to SME sector.

- No proper link between the vocational training institutes/colleges/schools with the SME sector.
• **Existing Institutional Framework**

Over 20 ministries (Refer Appendix 9) serve the business sector with numerous departments, authorities and councils established under each ministry for the purpose of creating a more conducive environment for businesses. As a result, SMEs are required to make recurrent visits to various departments/authorities throughout the business life cycle. Furthermore, some institutions are mandated specifically to serve the SME sector. Regulatory bodies such as Central Bank of Sri Lanka, also support SMEs through its Department of Regional Development. Among all these government institutions, the Ministry of Industry and Commerce (MOIC) serve as the leading ministry serving businesses and SMEs consisting of over 15 departments/authorities (Refer Appendix. 9).

As per the EY SME survey 2018, the Figure 13 depicts institutions frequently visited by the SMEs.

*Figure 13: Frequently visited Institutions*

*Source: EY SME Survey 2018*

Apart from above institutions and authorities, SMEs also stated that Sri Lanka Tourist Board, NEDA, Ministry of Primary Industries and Laksala are also often visited by them.

*Figure 14* indicates the recurrent visits made by SMEs to the same institution, in different stages of their lifecycle.

• **Operational Overview**

*Figure 15: Operational Outlook*

*Source: EY Analysis, The State of Social Enterprises in Sri Lanka, ESCAP*

Except for the above mentioned ministries and departments, there are numerous private bodies, chambers, associations, donor agencies and programs and Non-Governmental Organisations (“NGOs”) who also serve the development of the SME sector.
As depicted in Figure 14 and 15, it is evident of an absence of a strong mechanism for coordination between ministries/government agencies multiple structures, overlapping institutions & mandates, and complicated regional, provincial & national structures that have arisen resulting in ineffective allocation and utilization of government resources.

- **Situational Analysis**

It is evident that even though the existing institutions are functioning with the mandate of creating a conducive business environment, absence of a coherent, proactive consistent and coordinated mechanism acts as the key barrier in achieving its purpose. Despite the constraints within the current institutional framework, the prevailing strengths and opportunities can be used in the process of converting existing threats in to
opportunities whilst eliminating the weaknesses, for an effective and efficient contribution towards nurturing a conducive business environment.

As indicated above, currently the government provides a diversified service portfolio for the upliftment of the SME sector. Prevailing opportunities within the current market context, outlines the path that can be taken in strengthening the existing framework. However, the internal weaknesses along with external threats hinder the smooth functioning of the system as a whole.

• **Strengths within Institutional Framework**

  Amongst the strengths identified in the above SWOT analysis, the regional presence in order to facilitate SME development is a key feature. In addition, the number of institutions established towards market facilitation, and skill development is a strength which has the resources and expertise to uplift the standing of the SME Sector.

  • Ministry of Industries and Commerce, with its line agency Department of Commerce (DoC) recently launched the Sri Lanka Trade Information Portal (SLTIP) to bring together trade-related regulatory and other information across 43 government agencies such as Customs, on to one single, user-friendly website. This would facilitate Sri Lankan industries, especially SMEs, in expanding their trading opportunities at a lower cost and shorter time.

  • Ministry of Development Strategies and International Trade, with the technical assistance of UNIDO, formulated the National Quality Infrastructure Strategy of Sri Lanka 2018-2022, with the goal of setting quality related functions which will facilitate SMEs, large enterprises and exporters to comply with market quality requirements.

  • Reforms relating to business environment which leading to improvements in the country’s ranking on Doing Business Index.

  • The government has launched Enterprise Sri Lanka exhibitions at selected districts in order to create market linkages for SME development, whilst other industry level exhibitions are hosted by various stakeholders.

  • The Samurdhi Authority and its regional departments whose mandate is social empowerment and improving living standards can also be stated as a key strength of the institutional framework.

Sri Lanka has a literacy rate of 93.2% (CBSL Annual Report 2017). In contrast with other SAARC countries availability of literate labour in Sri Lanka is high. Despite the low figure achieved in availability of skilled labour, this factor implies a positive aspect for doing businesses in Sri Lanka. Therefore, the necessity to improve the skills of the work force is paramount and requires policy makers’ urgent attention to meet the needs of businesses.

The “EMPOWER Board”, which is fully focusing on listing of SMEs was launched by the CSE along with the Securities and Exchange Commission (SEC) is an important initiative in relation to improving access to funds.
• **Weaknesses in relation to the Institutional Framework**

Lack of capacity of financial institutions for effective SME lending

The financial services industry primarily consists of 25 Licensed Commercial Banks (LCBs), 7 Licensed Specialised Banks (LSBs) and 2 Representative Offices (ROs). 45 Licensed Finance Companies (LFCs), 6 Specialised Leasing Companies (SLCs). In addition, licenses have been granted for 68 Registered Finance Leasing Establishments (RFLEs) under the Finance Leasing Act, which also includes SLCs and nine applications were received by the Central Bank as at the end of 2017 for the license under the Microfinance Act. LFCs and SLCs, along with microfinance institutions, often serve as the main funding source for SMEs at entry point providing them the opportunity to develop a credit history and financial discipline.
According to the ‘Standard and Poor’s Global Financial Literacy Survey – 2014’, only 35% of the adults in Sri Lanka are financially literate. With the trend towards the informal means of obtaining funds been evident, and given the low level financial literacy, it calls for a high necessity for regulators to intervene towards implementing sound financial policies within the country. Even though the financial system of the country is highly regulated and supervised by various regulators including CBSL, Insurance Regulatory Commission of Sri Lanka (IRCSL) and Securities and Exchange Commission (SEC), it is evident that the informal financial sector, which is common amongst majority of SMEs, is not well regulated and monitored.

Even though the existing financial system is structured in a manner to provide both equity and debt capital for businesses, as illustrated in Chapter 3.1.3, majority of the SMEs tend to obtain long term/ short term debt.

As per the EY SME Survey 2018, Access to Finance is the foremost issue faced by SMEs in doing business. Despite the wide-range of initiatives by CBSL, MoF, MOIC and other government institutions (Refer Appendix. 01), during the FGDs conducted by EY, it was evident that access to finance is yet a persisting issue faced by many SMEs.

According to the Key Information Interviews (KII), financial institutions also face numerous issues in SME lending. Figure 20 presents the issues associated with debt finance providers such as LCBs, LSBs and equity finance providers, CSE and VC firms.

*Figure 20: Issues Faced by Financial Institutions*

As per the KII, Banks that support SMEs in provisioning debt capital encounter several issues as illustrated in Table 07.
<table>
<thead>
<tr>
<th>Constraints faced by the Banking Sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>• High interest rates and request for collaterals are a result of following factors.</td>
</tr>
<tr>
<td>• SMEs come under the high-risk category due to their lack of managerial capabilities, lack of planning, high risk of failure, limited access to markets</td>
</tr>
<tr>
<td>• Serving SMEs is costly (small value of loans, cost to conduct training programs especially in the rural areas on book keeping, financial management, developing business plans, training own staff to assist SMEs in developing financial proposals, maintaining SME centers etc.)</td>
</tr>
<tr>
<td>• Even though the “Secured Transactions Act” facilitates financing against movable assets such as inventory and equipment, banks are reluctant to accept movable property as collateral due to high volatility of such property values overtime.</td>
</tr>
<tr>
<td>• At present, there is no agency in Sri Lanka which provides credit ratings for SMEs.</td>
</tr>
<tr>
<td>• SMEs are reluctant to disclose accurate accounting and financial data due to the fear of getting exposed to taxes. Absence of proper accounting and financial information hinders banks from lending to SMEs. As per the Baking Act, banks are required to have these documents for their credit evaluation.</td>
</tr>
<tr>
<td>• Absence of a proper insurance coverage for SMEs.</td>
</tr>
<tr>
<td>• Banks have regulatory requirements to meet as per CBSL guidelines such as minimum capital requirement, risk exposure etc. As a result, banks are very selective in lending to the SME sector especially to the micro level.</td>
</tr>
<tr>
<td>• Banks are profit oriented organisations hence, are more focused on improving the bottom-line of the business. Thus, it is not practical to expect from banks to lend at low interest rates. Therefore, unless the government has a control over such institutes, SMEs will ever have issue with accessing finance.</td>
</tr>
<tr>
<td>• Banks are under the view that micro finance institutions and informal sector are destroying the trust SMEs have on entire financial sector, thus, it affects the banking system as well.</td>
</tr>
<tr>
<td>• The refinance schemes given by the government is not enough to serve the requirements of the SMEs</td>
</tr>
<tr>
<td>• Attractive SME projects whom are with high potential to sustain are lacking/ are not known to the banks</td>
</tr>
</tbody>
</table>

‘VC’ is an equity investment scheme which aims at supporting early stage development phases of a business. Despite funding, VC also provides strategic directions to companies, with the aim of obtaining high returns at the event of liquidation/ sale. Improving SMEs access to finance through the form of VC helps them directly through funding and indirectly through the provision of specialized expertise of the “general partners” in taking strategic decisions of the investee company. Structure of a VC is shown in the Figure 21.
VCs encounter following depicted issues:

- Information asymmetry: VCs face difficulties in selecting potential investee SMEs due to lack of information, thus face issues in carrying out due diligences.
- There is no vibrant VC market in the country.
- Closed structured VC funds prevent premature exits from underperforming investee companies, thus reducing liquidity of the investment.
- VC fund are mandated to have sufficient scale/capacity to provide multiple funding for Investee Company.

Recent initiative, of CSE, the “Empower SME Board” provides fund growth opportunities for SMEs, while facilitating the enhancement of corporate profiles of SMEs. Countries such as Malaysia, Singapore and Thailand have established SME Boards in enhancing access to equity finance.

Institutional issues associated with CSE are as follows:

- Complexity of the listing procedures will deter CSE in attracting SMEs to list on the SME Board. Therefore, it is required to establish balanced administrative and regulatory procedures.

  i.e.: SMEs should adhere to the following requirements in listing on the SME board.

  - Stated Capital- Above Rs. 25 million and below Rs. 100 million at the time of listing.
  - Positive Net Assets- As per the audited financial statements for the financial year immediately preceding the date of application.
  - Operating History- At least 2 years immediately preceding the date of application.
  - Total Assets- Of or below Rs. 600 million as at the date of the Initial Listing Application.
  - An Unmodified Audit Opinion- An unmodified audit opinion for the Financial Year immediately preceding the date of the Initial Listing Application or an audit opinion which
does not contain an emphasis of matter on “going concern” as set out in the Independent Auditor’s Report of audited financial statements contained in the annual report of the Entity.

• Sponsor- The application to list Securities shall be made through a ‘Sponsor’ approved by with CSE

• Lack of awareness among SMEs about the importance of listing at CSE

• Risk averse attitude of the SMEs will make them hesitant to list themselves on the board. SMEs fear about loss of ownership, control over their businesses and to experience the volatility of share price.

• Absence of a Centralised SME Database

A central database provides a foundation to effectively serve the SME sector and to formulate policies, processes, and mechanisms for the development of the SME sector. The Registrar of Companies already launched its e-platform for the registration of private limited liability companies. However, due to Business Name Registration of Sole Proprietorship/Partnerships carried out at Provincial level, registers are maintained in isolation within the Provinces. However, various government and non-government institutions in disseminating services to the SME sector, (i.e. NEDA, IDB, EDB, SED) individually maintains databases of SMEs to whom they facilitate services in isolation. Consequently, the SMEs that do not come under the institutions’ database does not receive the required attention. Most of these institutions are reluctant to share their databases amongst each other, despite even being established under a single ministry.

Failure to assimilate the Company Registrar and Provincial level databases towards SME sector development initiatives carried out by afore mentioned institutions, has deprived SMEs from reaping true benefits of such initiatives. Hence, it is beneficial to collate all databases to establish a Countrywide Central Database to carryout analysis required for focused market facilitation initiatives, formulation of policies, processes, and mechanisms for development of the SME sector.

• Lack of Effective Coordination and Communication Mechanisms

The study identified lack of effective coordination and communication mechanisms amongst:

• Ministries

• Departments under same ministry

• Departments under different ministries

for a cohesive and a coherent approach to serve SMEs more efficiently and effectively. Whilst the lack of coordination within the government institutions affects and creates challenges for SMEs, it is also affecting internal process and performance of government institutions.
Reasons that surfaced during the study for the lack of coordination between government ministries/agencies are as follows:

- Lack of correlation between government institutions’ mission statements with the Sri Lanka Vision 2025. As a result, government institutions try to achieve mission statements allocated to each of them without working towards achieving overall vision of the country.
- Lack of collaborative approach in serving towards the development of the SME Sector
- Complex, multi layered internal structures within government institutions.
- Operations of many government institutions serving SME sector are situated in isolation
- Regulatory constraints
- Knowledge gap
- Lack of interpersonal skills
- Lack of staff for dissemination of effective services

- Inadequate Strategic Focus on Market Facilitation
  There are many initiatives taken by the government to support the SME sector (Refer Appendix.1). Yet, Market Facilitation was identified the fourth most problematic factor in doing business as a result of some concerns as highlighted below;

  - Lack of awareness due to ineffective promotional campaigns carried out. E.g.: Awareness sessions are conducted by EDB, NEDA, IDB, SED, NGOs and many other gov. / private institutions. However, most of these sessions are targeted at SME databases maintained by the respective institutions.
  - Meeting industry standards, and maintaining regulatory requirements is paramount for business sustainability and access to larger markets. Cost of such compliance and lack of knowledge is a key constraint surfaced during the study. E.g.: SLSI will conduct awareness sessions only at a cost and upon a request. Lack of staff to initiate regional awareness programmes, limited budgets and the disintegration with the regional level Vidatha centers operated under the same Ministry were indicated as few constraints.
  - Duplication of services carried out by National Craft Council, Design Centre and Laksala.
  - Export Controls
    - All exporters need to be registered - Imports and Exports Control Act
    - All the export certificates are signed or countersigned by the Food Control Administration Unit (FCAU)
    - Time duration for Export factory inspection
    - Testing of samples is done by the exporter from approved laboratories. (However, majority of laboratories are situated within the Western Province as indicated in Figure 22)
It is necessary to have an effective communication and coordination mechanism to ensure highly effective and efficient provision of services to improve market facilitation.

- **Provision of services in the nature of generic services**
  Among the enterprises who have obtained services through government institutions, majority are on the view that the services provided are not tailor made to cater to the needs of different SMEs. Categorization, in comparison to generic service offerings to different clusters of stakeholders (SMEs) adds value to enhance productivity in service offerings. Countries such as Malaysia, in facilitating SMEs, categorise SMEs based on their level of growth and expertise in carrying out the business (SME Rating in Malaysia - “SCORE”). (Refer Appendix. 05)

<table>
<thead>
<tr>
<th>Facilities granted</th>
<th>SMEs viewpoint on the services obtained</th>
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| Numerus business related trainings/skill enhancement programmes conducted by many government organisations such as IDB, NEDA, EDB, Ministry of Vocational Training etc. | - Programmes are not customized to cater to inherent needs of SMEs.  
- Training courses are conducted to meet the annual targets set out by respective institutions, hence do not attempt to realise such specific requirements.  
- Gap in inclusion of Modern practices within the training curriculum to meet with the current dynamic market context. |
| SME Funding | Absence of categorization of SME funding prerequisites deprives micro and small enterprises from obtaining such concessionary loan schemes that were funded by numerous institutions. |

- **Lag in sustainability of service offerings**
  Study shows that there are instances where government initiatives are not pursued in a sustainable manner. Few of such key service offerings discontinued are listed below.
  - “Mobile service” program which was carried out 10 years ago at DS level is not in progress.
  - “Laknipayum” Sales Centre which was maintained by the IDB is not functioning at the moment.
• **Structural Issues**

  Considerable amount of time is consumed in deploying government services due to the nature of the bureaucratic structure in existence.

  As an example, according to Verite research Sri Lankan export process is cumbersome and challenging to the business sector. To register as an exporter, a business should visit approximately 3 institutions which requires average 3-7 days. (Refer Appendix. 06) It is noted that initiatives are now underway towards implementation of a new export policy.

  Processing and approving trademark applications through National Intellectual Property Office (NIPO) takes a significant time period (2-4 years). In Philippine time period to process trademark applications is approximately 5 months and in Singapore 8 to 12 months.

  Even though the registration process for limited liability companies through the Registrar of Company (Refer Appendix. 07) is now shifting towards an e-platform, registration procedure for sole proprietorships and partnerships differ at each province, thus, a necessity to introduce amendments to streamline the prerequisites.

  According to the “Enterprise Survey” 2011 by World Bank, an enterprise in Sri Lanka should spend 8.1 days to clear imports from customs, whilst it takes 7.6 days to clear exports. These time consuming, procedural work demotivate SMEs in expanding their businesses.

• **Existing Regulatory Framework**

  The review of the legal and regulatory framework applicable to SME sector examines the laws and regulations that are commonly applicable to all SMEs irrespective of the nature of business and geographical location.

  The primary methodology adopted for purposes of this study was to review the existing legal and regulatory framework applicable to the SMEs in the context of the activities typically carried out by SMEs with emphasis on the parameters and specific industries proposed and identified in the Scope of the Report. Based on such legal framework, the experience in rendering legal advice to SMEs and the input received by Ernst & Young from SMEs during their surveys, F. J & G De Saram have identified the legal and regulatory issues that affect the operations of the SMEs and the development of the SME sector. In identifying the steps to be taken and solution to be adopted in the Sri Lankan context to resolve such legal and regulatory issues, the report also examines the measures taken in the other jurisdictions to overcome similar barriers and issues.

  An overview of the laws and regulations applicable to SMEs in Sri Lanka specifically in relation to the aspects identified in Chapter 03 is set out in Appendix 01.

• **Necessity for Change**

  It is evident that key changes within the institutional and regulatory framework, must be incorporated to bring about impactful change to create a conducive environment for the SME sector. Considering the impact and urgency for change, quick wins and long-term interventions (national/regional level) must be made in this endeavor. These interventions must cater to effective utilization of public resources, whilst meeting its true purpose. Furthermore, the access to finance, which was recognized as the key constraint in doing business, must receive adequate attention to bring about a true beneficial financing mechanism for the sustainable development of the sector.
The high level recommendations and required interventions for sustainable development of the SME sector as outlined below.

### 4.1 Recommendations in relation to the Institutional Framework

*Figure 23: Parameters of Implementation*

*Source: EY Analysis*

<table>
<thead>
<tr>
<th>Importance/Urgency</th>
<th>Scale/Time Frame of intervention</th>
<th>Recommendations — Institutional Framework</th>
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<td></td>
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<td><strong>Set-up SME Advisory Council</strong></td>
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<td><strong>Institutionalize SME Authority with amalgamation of selected key existing institutions</strong></td>
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<td><strong>Establish SME Affairs Committee at Provincial Councils</strong></td>
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<td><strong>District Secretary to be empowered for district level SME development</strong></td>
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<td><strong>Establish the concept of “Business Support Service Centre”</strong></td>
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<td><strong>In a national scale, SME Authority to roll out processes, procedures, and mechanisms for providing a superior service for the SME sector, both efficiently and effectively in a standardized manner, facilitated by the District Secretaries wherever applicable, utilizing technical and administrative expertise from respective service providers.</strong></td>
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<td><strong>Create Centralised SME Database at the SME Authority</strong></td>
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<td><strong>Institutionalize regular and effective engagement with SMEs at regional level</strong></td>
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<td><strong>Formulate effective government policies to create linkages and to facilitate market for goods and services of SMEs.</strong></td>
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<td><strong>Develop an e-platform to monitor and manage market supply and demand conditions at regional level</strong></td>
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<td><strong>Inventorise resource base at regional level to evaluate opportunities and make interventions for SME development</strong></td>
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<td><strong>Introduce an index to measure regional competitiveness</strong></td>
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<td><strong>SME Authority to introduce a measurement for monitoring and rewarding regional level service efficiencies</strong></td>
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<td><strong>Establishment of SME specific industrial zones</strong></td>
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<td><strong>Implementation of an ‘Availability Search’ e-system for Trademarks/Patents</strong></td>
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<td><strong>Create CBSL affiliated Credit Guarantee Institution</strong></td>
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<td><strong>Create a SME Credit Guarantee Fund, collaborated with CBSL and MoF</strong></td>
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<td><strong>Reforms required in the financial system</strong></td>
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<td><strong>Incentivize setting up VC institutions and ease regulatory burden relating the SME Board in CSE to channel equity funding for SMEs</strong></td>
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<td><strong>Create linkage between banks and “Business Support Services Centre”</strong></td>
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<tr>
<td><strong>Introduce an Impact Monitoring mechanism through the “Business Support Service Centre”</strong></td>
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Recommendations for the Institutional Framework.

• Set-up national level SME Advisory Council

• Formation of the SME Advisory Council

In order to support effective monitoring and coordination of SME related activities across government and for policy advocacy in relation to the SME sector, set-up a council named ‘SME Advisory Council’ operating under the office of the Prime Minister. This council’s composition should include representation of all relevant stakeholders of the SME sector at the highest level including representation from relevant government ministries/agencies having relationship to the SME Sector. In addition, sector specialist should be appointed to the council. This council as a priority should facilitate the amalgamation of the National Enterprise Development Authority (NEDA) and Industrial Development Board (IDB) creating one institution and will be responsible for supervision/oversight of the implementation of recommendations outlined within this report.

• Operationalizing SME Advisory Council

The SME Advisory Council in the interim will be supported by few handpicked staff seconded full time from NEDA and IDB to work for the Council. Once the SME Authority is created the institutional support for the SME Advisory Council will come from the SME Authority.

• Institutionalize SME Authority with the amalgamation of selected key existing institutions

Introduce legislation to amalgamate NEDA and IDB and create one strong resourceful institution under the Ministry of Industry and Commerce granting the exclusive mandate and strength to effectively address the needs of the SME Sector. Subsequently this agency can absorb other SME related agencies/entities/operations such as Small Enterprises Development Bureau (SED) to further consolidate the ‘SME Authority’. The proposed legislation of this Authority should clearly specify the mandate and operating mechanism. The mandate should include, among other responsibilities, the following,

• responsible of SME sector related policy, advocacy, and related sector promotion activities.

• coordination at a national level all SME related activities which are under the purview of government agencies (e.g. SME activities of respective universities, vocational training providers, R&D institutions, technical service providers, standard setters, regulators, market facilitators, registration and licensing authorities etc.), addressing the requirements of SMEs to bring about synergy and high impact.
• acting as an ombudsman to resolve disputes relating to SMEs.

- **Establish SME Affairs Committee at Provincial Councils**

  An ‘SME Affairs Committee’ will be established under the chairmanship of the Secretary of the Provincial Council consisting of District Secretaries and Divisional Secretaries within the Province and other relevant officials and will meet quarterly. This committee should consist of representatives of the regional chambers as well. The committee will ensure efficient delivery of services for SMEs by way of close engagement, encouragement and monitoring of SME development initiatives executed by respective district and divisional secretariats.

- **District Secretary to be empowered for district level SME development**

  All field level activities of the SME Authority mentioned above, should be channeled through the District Secretary who will be the ultimate responsible and accountable officer for all regional level implementation. An Additional/Assistant District Secretary who will be functionally reporting to the SME Authority and administratively reporting to the District Secretary should be responsible and accountable for this work. All field level activities and functions relating to SMEs shall be directed by the District Secretary through the said Additional/Assistant District Secretary.

- **Establish the concept of ‘one stop shop’**

- **Resources at district level and divisional level to be pooled-in**

  Activities related to SME development at the district level and divisional level will be executed by pooling-in all staff/resources involved in SME activity at district/divisional secretariats. This would mean the pooled-in resources from entities such as, NEDA, IDB, and SED etc. will administratively report to the District Secretary and Additional/Assistant District Secretary at the District Secretariat level and to the
Divisional Secretary at the Divisional Secretariat level. The pooled-in resources at the District Secretariat/Divisional Secretariat level should operate as a ‘one stop shop’ in serving/fulfilling the requirements of SMEs/other enterprises, including, but not limited to, initiatives focused on Market Facilitation, Business Advisory Services, Legal Support Services, and Technical Advisory Services etc. This ‘One Stop Shop’ could be named ‘Business Support Services Centre’

- **Empowering ‘Business Support Services Centre’**

  In operating the ‘Business Support Services Centre’ at the District Secretariat/Divisional Secretariat level, in addition to the activities performed by the pooled-in resources, activities related to SMEs conducted by other government/provincial government agencies and staff of the District Secretariat/Divisional Secretariat providing services generally to enterprises including SMEs should be positioned at the ‘Business Support Services Centre’ to create a fully integrated ‘One Stop Shop’ facilitating higher service efficiency including the expeditious granting of the relevant licenses, permits, and approvals.

- This ‘one stop shop’ concept will be required to be technology enabled through the introduction of a technology platform/portal for higher efficiency/effectiveness where an SME requiring a service will submit an application via the portal which will get automatically directed to the relevant agencies for processing of the required needs within established timelines.

- **In a national scale, SME Authority to rollout processes, procedures, and mechanisms towards provisioning of superior services for the SME sector, both efficiently and effectively in a standardized manner, facilitated by the District Secretaries wherever applicable, utilizing technical and administrative expertise from respective service providers.**

- **Reform administrative procedures to reduce burden on business**

  Reform administrative procedures to improve transparency and eliminate redundant, overlapping, and unnecessary paperwork/inspections in order to reduce time businesses are required to devote on regulatory/compliance procedures.

- **Strengthen capacity to support businesses at regional level**

  Ensure capacity exist at the business support service centers in the area of ‘Business Advisory Services’ to support SMEs when in need to sustain / revive business, access to finance etc. This may include institutionalizing joint processes and programmes with financial institutions.

- **Establish disaster recovery mechanisms for SMEs**

  Institutionalizing speedy disaster recovery mechanisms to support SMEs affected by natural disasters to ensure fast recovery and business continuity.
• **Mechanisms of Public Private Partnerships (PPP) to facilitate efficient and effective service provisions to the SME sector.**

  The SME authority shall partner with private organizations in delivering quality service in areas including, but not limiting to skill development, technical advisory services, market facilitation etc.

• **Improve service efficiency is awarding certifications**

  Build capacity between Vidatha Centres and Sri Lanka Standards Institute to substantially increase the efficiency of consultancy services offered for SMEs in obtaining certification.

• **Collate and publish industry business policies & procedures**

  The SME Authority shall collate and publish industry specific business policies & procedures in relation to areas such as business registrations, obtaining licensees/permits/certifications etc. and place such documentation at island-wide ‘Business Support Service Centers’, with a view to enhancing efficiency and effectiveness and creating transparency in service offerings.

• **Develop an Information Portal to cater for the local business context**

  Create an information portal similar to the ‘Sri Lanka Trade Information Portal’ to facilitate information relating to institutional and regulatory requirements within the context of local business e.g.: Business Registrations, Permits, Licences and procedures relating to government land requests, Financing, and Market Facilitation etc.

• **Development and distribution of informative guidance for SMEs**

  Produce brochures with technical/infrastructure requirements to address gaps in strategic knowhow in doing businesses. e.g.: How to set up a viable business infrastructure (Industry specific guidelines), obtaining certifications, obtaining intellectual property rights etc.

• **Create Centralised SME Database at the SME Authority**

  Collate all SME related databases which are currently owned by various institutions and create an exhaustive comprehensive database hosted at the SME Authority and made available for Public view via an e-platform.

• **Institutionalize regular and effective engagement with SMEs at regional level**

• **Institutionalising a SME Forum**

  Initiate effective public private dialog with SMEs by institutionalising a “SME Forums” at District Secretariat level. These SME forums to be held at the Divisional Secretary Level chaired by the Divisional Secretary bi-annually and at the District level chaired by the District Secretary annually with SMEs within their respective Divisions/District.
• **Form an ‘Entrepreneur Café’**

Further, it is proposed for an informal dialog to be carried out through a concept in the nature of ‘Entrepreneur Café’ periodically at the Divisional Secretariat level chaired by the Divisional Secretary.

• **Formulate effective government policies to create linkages and to facilitate market for goods and services of SMEs.**

The proposed policies should address the following.

• Public Sector to procure a certain quota of goods and services from SMEs.

• Public Sector retail shops to dedicate certain amount of shelf space specifically for SMEs.

• Facilitate non-SME (larger) corporates in the private sector to create linkages with SMEs within their value chain/Supply Chain.

• **Develop e-platform to monitor and manage market supply and demand conditions at regional level**

Launch an online platform to assimilate market information of the manufacturing and agriculture sectors and a mobile application for effective management of market supply and demand conditions at regional level. E-Platform will consist market supply at national and international level. This application to be officially owned by the amalgamated entity and to be managed by the respective regional/regulators in effective management of national production levels.

• **Inventorise resource base at regional level to evaluate opportunities and make interventions for SME development.**

Inventorise resource base at District/Divisional Secretariat level to evaluate opportunities for entrepreneurship/SME development. District Secretary/Divisional Secretary using this information along with the SME Authority to make interventions/launch initiatives to create opportunities for SMEs in the District/Divisional Secretariat level.

• **Introduce an index to measure regional competitiveness**
In order to measure and monitor competitiveness of Districts in relation to business environment it is proposed that an index be developed by CBSL to measure and monitor such competitiveness.

The suggested competitiveness index can be a multi-dimensional indicator, backed by number of pre-identified variables in par with the methodology used in the Sri Lanka Prosperity Index (SLPI) developed by CBSL.

- **SME Authority to introduce measurement, monitoring and rewarding of regional service efficiencies**

  A strong measuring and monitoring mechanism to be implemented to measure and monitor the level of service of the government agencies and departments at a District and Divisional Secretariat level, through the feedback of SMEs in the nature of a ‘customer satisfaction survey’. A mobile application shall be developed to generate feedback from SMEs.

  Further, as a rewarding mechanism SME Authority to host an annual award ceremony creating a platform to recognize regional service efficiencies.

  A national chamber through regional chambers shall actively engage in this process for assessment of regional service efficiencies ensuring independence and transparency in the assessment process.

- **Establishment of SME specific industrial zones**

  To address the need of maximizing efficiency in management of resources and infrastructure of SMEs establish SME specific industrial zones/areas separately (State lands under the purview MOIC) or within the industry zones (E.g.: IDB).

- **Implementation of an ‘Availability Search’ e-system for Trademarks/Patents**

  Implementation of an ‘Availability search’ system on an online platform managed by the National Intellectual Property Office to ensure prior to filing an application the availability can be verified from a Registry of Trademarks/Patents thus the processing timelines can be minimized.

- **Create CBSL affiliated Credit Guarantee Institution**

  Create a Credit Guarantee Institution, where majority ownership is with the government to improve access to finance through the provision of guarantees for credit facilities for viable SME businesses. This will tremendously resolve the issues associated with of collateralized lending in existing Banking System.
• **Create a SME Credit Guarantee Fund, collaborated with CBSL and MoF**

In the interim, create a “SME Credit Guarantee Fund” under CBSL to facilitate the provision of issuing credit guarantees to SMEs, until the Credit Guarantee Institution is set-up, and to channel all SME related funding to facilitate an impactful and well-coordinated channeling of funds.

This fund shall be capitalized by the government budget, any donor funds, contributions from CBSL and commercial banks whilst the operations of this institution will be under CBSL. This entity could be set-up similar to the model adopted in the case of CRIB and Lanka Clear.

• **Reforms required in the financial system**

The following reforms are recommended to smoothen and simplify the access to finance

  • Relaxing requirements pertaining to government’s concessionary loan schemes.

  • Financial institutions to ease the requirement of clean record at the Credit Information Bureau (CRIB) to provide credit to SMEs.

• **Incentivize setting up VC institutions and ease regulatory burden relating the SME Board in CSE to channel equity funding for SMEs**

Government shall channel funds on concessionary terms to VC companies to invest in SMEs and provide other support that they require. In addition, Government shall create an ecosystem for private venture capital funds to come and operate in Sri Lankan financial market. e.g.: Australia’s VC Limited Partnerships programme (VCLP), aims at increasing foreign investment in the Australian VC.

Even though the CSE SME Board initiation towards the SME sector is commendable, some of the prerequisites for listing on SME Board should be relaxed. (E.g. requirement of preparing financial statements as per SLFRSs. SME should be allowed to prepare the accounts as per the SLFRS for SMEs/SLFRS for Small Entities as applicable to them).

Tax concessions can be provided to the investments on early stage ventures. Venture Capital Trust Scheme (VCT) in UK provides tax reliefs to encourage VC investments. Provision of tax concessions for the SME board investors. Enterprise Investment Scheme (EIS), in UK offers tax incentives to investors who purchase new shares in small higher risk trading companies.

• **Create linkages between banks and the Business Support Service Centre**
Business Support Service Centre should be a platform for SMEs to link up with banks to resolve their access to finance issues. In ensuring proper communication, banks can place help desks with a representative and/ make available their leaflets at Business Support Service Centres.

- **Introduce an Impact-Monitoring mechanism through the ‘Business Support Services Centre’**

  Introduce an Impact monitoring mechanism, through the ‘Business Support Services Centre’, of projects to which SME credit facilities have been granted through government initiated programs and schemes.

Credit Guarantee Institution/fund may lead towards lending without collateral. It is evident that countries like Japan carry out such systems in resolving lack of funding issue. The structure of the fund will be as depicted in the following *Figure 24*.

*Figure 24: Credit Guarantee system*

*Source: Credit Guarantee Corporation of Tokyo & EY Team*

A coherent control and monitoring mechanism must be established in order to monitor the sustainability of the SMEs who have obtained SME lending. It is recommended that the responsibility of the monitoring to be granted to the ‘Business Support Service center’. These centers, while linking up with related stakeholders such as Enterprise Sri Lanka desk established at BOC, Peoples’ bank and RDB, government institutions that facilitate SME lending will ensure that the SMEs are utilizing the obtained loans effectively.

- **Recommendations in relation to the Regulatory Framework**

  The legal and regulatory issues that impact the business and operations of the SMEs and the development of the SME sector, pursuant to the review of the relevant legal framework, recommendations with regard to the steps may be taken and solutions that may be adopted in the Sri Lankan context to resolve key constraints are set forth below.

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<th>ISSUE IDENTIFIED</th>
<th>COMMENTARY</th>
<th>RECOMMENDATION</th>
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## Incorporation and business registration

- **The length of time taken to obtain certified copies of companies forms from the Department of the Registrar General of Companies**

  Companies are generally required to submit copies of Form 1 (Incorporation application form), Form 20 (Notice of change of directors and secretaries), Form 13 (Notice of registered office), Form 15 (Annual Return) etc. certified by the Registrar General of Companies, when applying for licences, permits, approvals and registrations from Government/regulatory authorities (including tax registrations with the Department of Inland Revenue). In certain instances, licensed banks also require certified copies of companies’ forms issued by the Registrar General of Companies to open bank accounts or to grant loans.

  However, the time taken for companies to obtain such certified copies from the Department of Registrar General of Companies is usually lengthy (ranging from two weeks to two months), resulting in difficulties in ensuring timely commencement or carrying on of business. As per the Department of Registrar General of Companies, this delay is primarily due to errors and discrepancies in the forms filed and other non-compliances by the relevant company of filing requirements. We understand that any errors and discrepancies in forms are only identified and notified by the Department on a contingent basis when a request is made for certified copies and not on a periodical basis. When notified of errors or discrepancies (in certain instances in forms that have been filed long ago), rectification of the same usually takes time depending on the

- **Mechanism to be implemented and resources to be deployed within the Department of Registrar General of Companies for companies forms that are filed to be examined within a definite time period after filing (i.e. 5 to 10 working days) and any errors and discrepancies to be notified in due time, so that the necessary corrections can be made to such forms;**

- **Mechanism to be implemented and resources to be deployed within the Department of Registrar General of Companies for certified copies to be issued within an identified period of time in order to ensure that there is certainty with regard to timelines.**

- **As a solution to be adopted in the long term, a mechanism to be implemented for filing of companies forms’ to be done electronically and certified copies to be obtained electronically from a web interface to be operated by the Department of Inland Revenue. We note that the Department of Registrar General of Companies is already taking steps to implement an electronic system through computerization (eROC) project which is currently in progress.**

All of the above recommendations are policy based administrative mechanisms to be adopted by the Registrar General of Companies and can be implemented without any amendment to the laws.
availability of signatories.

The Companies Act does not prescribe a specific mechanism or timeline in relation to the issuance by Registrar General of Companies of certified copies of companies forms.

Given that companies forms certified by the Registrar General of Companies have now become a key component in commencement and expansion of businesses, the timely and expeditious issuance of such certified copies are critical in the development of the business sector.

| • Lack of consistent set of rules with regard to the registration of partnerships and sole proprietorships | Whilst the primary legal framework that governs registration of partnerships and sole proprietorships is set out in the BNRO, the registration process is carried out at regional levels by Provincial Councils and local authorities. Each Provincial Council/local authority that administers this registration process has its own set of rules on the procedures for registration, which has resulted in irregular application of the provisions of the BNRO and also procedures/fees that differ from region to region. Furthermore, certain supporting documents that applicants are required to submit along with the application such as Grama Niladhari certificates, police clearances etc. are outdated and impractical in the modern context and should no longer be included in the process, if effective and efficient business commencement is to be encouraged. | • Rules and orders to be made under section 17 of the BNRO to specify (i) a registration procedure that will uniformly apply in respect of all registrations irrespective of the geographical location and (ii) uniform fees which may be revised from time to time by further orders under the BNRO. • The application procedure to be streamlined with each requirement and the supporting document to be submitted specifically set out in the rules and orders referred to above. The outdated and impractical requirements such as Grama Niladhari certificates and police clearances to not be included. |

| **Licenses, Permits and Approvals** | • The number of After the incorporation of SMEs • The setting up of an SME |
licences, permits and approvals to be obtained for many SMEs which are companies, the next step for commencement of business is the obtaining of the necessary business licences, permits and approvals. With regard to SME’s which are sole proprietorships and partnerships, the applications for registration under the BNRO has to be submitted within 14 days from the commencement of business and therefore, the specific licence, permit or approval required should typically be in place at the time the application is made for registration.

The specific licence, permit or approval to be obtained essentially depends on the nature of the business to be carried out by the SME. Certain businesses require multiple licences, permits and approvals as identified in the Annexure of the report in addition to possible environmental approvals and licences, building approvals etc.

Accordingly, depending on the business activities that the SME wishes to engage in, the SME will have to apply for and many licences, permits and approvals, a majority of which must also be renewed every year. Given that these licences, permits and approvals are issued by different Government/regulatory authorities, SMEs will invariably be required spend an excessive amount of time, effort, resources and cost at the commencement of business as well at yearly intervals. This is counterproductive for business and cumbersome nature of the entire process could dissuade business proponents as well as investors.

In order to ensure that the licensing and approval process for business is efficient, effective and conducive for channel in each licensing/regulatory/approving authority which will dedicated towards catering to the needs and affairs of SMEs including the expeditious granting of the relevant licences, permits and approvals. This can essentially be a policy based administrative step to be implemented by each authority and it is not necessary for laws and regulations to be amended to facilitate this process;

• The rationalization of the licences, permits and approvals required so that the number of licences, permits and approvals required for a particular business is reduced to the extent possible. The rationalization process will require amendments to the licensing requirements set out in some of the laws and regulations referred to in the Annexure. The laws that require amendment include the following:
  • Food Act to be amended as the current practice of food related trades proceeding with a trade licence issued by local authorities is not consistent with the registration requirements under Food Act and therefore, it creates confusion with regard to the exact compliance that is necessary;
  • Hotels and guest houses which require registration with the SLTDA should also separately obtain trade licences for the manufacture and sale of food and a liquor licence for the sale of liquor. At a minimum, the by-laws of local authorities that require trade licences for
business, the following steps can, in our view, be adopted:

- the setting up of an SME channel in each licensing/regulatory/approving authority as a first step;
- a rationalization of the licences, permits and approvals required so that the number of licences, permits and approvals required for a particular business is reduced to the extent possible; and/or
- all relevant licensing/regulatory/approving authorities can be located in one centralised location (i.e. one building containing offices of all relevant authorities), which will enable SMEs to apply for all licences, permits and approvals in one visit.

As a solution in the longer term, an institution may be set up to administer and attend to the affairs and needs of SMEs with licensing and approving power and authorities. It may be noted in this regard that in terms of the Board of Investment Law No. 04 of 1978 (the “BOI Law”), the Board of Investment of Sri Lanka (the “BOI”) is empowered to,

- Exercise, perform and discharge, in relation to any licensed enterprise, all powers, duties functions conferred or imposed on, or assigned to, any person, body or authority, by any written law, relating to the approval of plans for buildings required for the business of such manufacture and sale of food should be amended to exclude hotels and guest houses registered with the SLTDA from the requirement to obtain a trade licence (this will however require SLTDA to work together with the local authorities or the Health Ministry to carry out the necessary health inspections prior to registration);
- The Coconut Products Ordinance and the Coconut Fiber Act to be repealed, thereby removing all parallel licensing requirements and compliances relating to the Coconut industry so that the regulation of the Coconut industry can be carried out through one composite law, viz., the Coconut Development Act suitably amended to cover all coconut related industries;
- The Control of Pesticide Act, The Seed Act and the Plant Protection Act to be repealed, and replaced by a composite law governing the agriculture industry with the licences streamlines and a framework stipulated therein for necessary licences to be obtained from a single regulatory authority.
- All relevant licensing/regulatory/approving authorities can be located in one centralised location (i.e. one building containing offices of all relevant authorities), which will enable SMEs to apply for all licences, permits and
licensed enterprise or the issue of any licence, permit or authority required for the setting up, commencement or carrying on, of the business of such licensed enterprise, as though the references in such written law to the person, body or authority empowered to exercise, perform or discharge such powers, duties or functions were references to the BOI;

- exercise, perform, and discharge, in relation to a licensed enterprise outside a licensed zone, all powers, duties and functions conferred or imposed on, or assigned to, any person, body or authority by the written law specified in Schedule C and Schedule D hereto as though the references in such written law to the person, body or authority empowered to exercise, perform and discharge, such powers, duties and functions were references to the BOI.

Accordingly, BOI has been conferred with the power to necessary licences, permits or approvals to enterprises licensed with the BOI. Similarly, the institution that may be set up to administer and attend to the affairs and needs of SMEs can be conferred with the same licensing and approving power and authorities which will ensure that SMEs are only required coordinate and deal with only one institution as opposed to several.

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<td>approvals in one visit. One such location can be set up for each District, where SME to be set up in a particular District can obtain all necessary all licences, permits and approvals at such District office. This can essentially be a policy based administrative step to be implemented by the Government and each authority and it is not necessary for laws and regulations to be amended to facilitate this process;</td>
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<td></td>
<td>• If practical and feasible, an institution to be set up under a new law or an existing statutory institution to be specifically empowered through an amendment to the establishing statute, to administer and specifically attend to the affairs and needs of SMEs as a ‘one stop shop’. This institution should be conferred with similar powers conferred on the BOI by section 20A of the BOI Law (including the power and authority to grant business licences, permits and approvals) by express provision in the establishing statute. Institution should have regional offices in every District to administer the requirements of SME within each District. This would require the enactment of a new statute, in the event a new institution is to be set up. If an existing statutory institution such as the Industrial Development Board or National Enterprise Development Authority is to be used for this purpose, the relevant statute by which such institution should be suitably amended to lay out the necessary framework for the same.</td>
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</table>
This institution could be an entirely new institution established by a new law or could be an existing institution with powers and authority in respect of SMEs being conferred through an amendment to the statute establishing such institution.

The practicality and feasibility of the setting up of an institution similar to the BOI to administer the affairs of SMEs should however be considered.

<table>
<thead>
<tr>
<th>Delays in the issuance of licences, permits and approvals</th>
<th>The laws setting forth licensing, permit and approval requirements as specified in the Annexure of this report to be amended to prescribe the time period within which licences, permits and approvals should be granted or refused.</th>
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<tr>
<td>Given that a majority of the laws that set out licensing, permit and approval requirements for businesses do not specify the timeframes within which such licences, permits and approvals should be issued, there are invariably delays in the issuance of these licences, permits and approvals. Given the inevitable impact such delays would have on the commencement and continuation of businesses, necessary provision must be included in the relevant laws prescribing timelines within which licences, permits and approvals should be granted or refused.</td>
<td>The amendment should specifically require the relevant authority to convey its decision to the applicant within the prescribed time period. As to what time period would be reasonable and practical in the context of each licence may have to be specifically discussed with the relevant licensing/regulatory/approving authority prior to introducing such time periods, as the reasonability and practicality will essentially depend on the criteria for the grant of each licence/permit/approval on a case by case basis.</td>
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<tr>
<th>Unavailability of information and lack of awareness relating to licensing and approvals requirements specified in the law resulting in breach</th>
<th>A publicly available information system to be implemented providing information on all licences, permits and approvals required for the business for every industry in order to ensure that businesses including SMEs are...</th>
</tr>
</thead>
</table>
Given that there are multiple licensing requirements applicable for certain businesses, which are prescribed by various sources of law (i.e. legislation passed by the Parliament, prescribed in Gazettes issued under legislation, Statutes enacted by Provincial Councils based on the legislative authority conferred by the 13th amendment to the Constitution, by-laws of local authorities promulgated based on the legislative authority conferred by the legislations governing the local authorities), the possibility of many SMEs not being able to comply with all licensing requirements is likely to be high as not all SMEs would have the financial capacity to engage the services of legal advisors at the commencement of businesses to advise on the licensing procedure.

It is therefore important that a publicly available information portal be maintained (which can also be accessible over the internet) to provide the public with the information on all necessary licences, permits and approvals required for the business for every industry in order to ensure that businesses including SMEs are able to comply with such requirements.

<table>
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<tr>
<th>Requirements</th>
<th>Description</th>
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<tr>
<td>Insurance cover and bank guarantee</td>
<td>The Shipping Agents Act and the regulations promulgated thereunder require a</td>
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<td>for obtaining a freight</td>
<td>person carrying on freight forwarding or non-vessel owning common carriers</td>
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<tr>
<td>forwarding licence.</td>
<td>business and seeking a Class A category licence to provide an “all risk</td>
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<tr>
<td></td>
<td>liability” insurance cover for a minimum of US $ One Hundred Thousand (US $</td>
</tr>
<tr>
<td></td>
<td>100,000) and minimum cover of US $ Fifty Thousand (US $ 50,000) for errors</td>
</tr>
<tr>
<td></td>
<td>and omissions.</td>
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</table>

This can essentially be a policy based administrative step to be implemented by the Government and it is not necessary for laws and regulations to be amended to facilitate this process.

- The regulations requiring an insurance cover for all risk to be amended to either remove such requirement or reduce the value of the insurance cover that is required.

This requires an amendment to the Freight Forwarders and Non Vessel Operating Common Carriers (Licensing) Regulations, 2014 published by the Minister in charge of the subject of Port and Shipping. The regulation for the amendment should be published.
Such obligations on a SME can be onerous and unnecessary for the reason that the goods are already insured by the shipper and consignee. There is no necessity for the freight forwarder as an intermediary to obtain an “all risk liability” cover.

In addition to an insurance cover the regulations also require a bank guarantee of Rs. 500,000 or Rs. 250,000 depending on the category of the license, to be provided. These can be too expensive for SMEs looking to start up as freight forwarders and a burden to their limited capital resources.

### Access to land, water and other required for the business and operations

| • Title disputes in lands for which mining licenses have been issued | In terms of the Mining Act, the licences for mining specify the land for which the licence is granted and the holder of the licence is entitled to enter and possess any area of the land specified in the licence.

The regulations that provide for the licensing mechanisms require the title deeds or consent of the owner to be submitted together with the other documentation.

However, in the event the title deeds are challenged after the licence has been granted, there are no provisions in the law to provide for a mechanism for resolution without cancelling the license.

The current practice is to obtain an affidavit from the licence holder declaring that the licence will be cancelled upon a dispute as to the title of the land.

The cancellation of the licence in Gazette and as soon as convenient after its publication in the Gazette, the regulation should be brought before Parliament for approval. |
Disrupts the business of the SME completely and therefore the legal framework should specifically provide for the retention of licences even where the title to the land is subject to a dispute.

### Relevant registrations pertaining to purchase and lease of immovable property

<table>
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<tr>
<th>•</th>
<th>Limited areas are affected by the new Registration of Title Act</th>
<th>Registration of titles only apply to certain areas as prescribed by the Gazette.</th>
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<td>At present, the land title registration program coming under the name “BimSaviya”, which has been introduced to facilitate expeditious clearance and registration of title for both State and private land (thereby enhancing certainty and bankability of businesses), has only been launched so far in 72 Divisional Secretary's Divisions.</td>
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<td></td>
<td></td>
<td>BimSaviya Program to be implemented in other parts of the country as well.</td>
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<td></td>
<td>This will essentially be a policy based administrative step to be implemented by the relevant Government departments backed by the issuance of necessary Gazette notifications to prescribe the areas which are not prescribed already.</td>
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</table>

| • | Non-Availability of an effective electronic data base. | In terms of the section 44 of the Registration of Title Act, a notary public attesting an instrument must satisfy himself about the identity of the land and the state of the title dealt with in such instrument by reference to the certificate of title issued by the Registrar of Title and to the records in the title registry. |
| --- | --- | However, Most of the records in title registry are damaged due to the continuous use and due to this Notaries are legally incapable of certifying the state of the title. |
|  |  | Therefore the person who wishes have title to land registered has to provide written documents to reconstruct the records in the title registry and even in the instances where those documents are provided the process of reconstructing |
|  |  | An efficient reconstruction process to be introduced for damaged records. |
|  |  | An electronic data base of title records to be made effective by including comprehensive records and speeding up the computerisation process. |
|  |  | This can essentially be a policy based administrative step to be implemented by the Government and it is not necessary for laws and regulations to be amended to facilitate this process. We understand from the input provided by the Land Commissioner that the Government is in the process of implementing the Electronic Land Registry (ELR) system with the support of Information and Communication Technology Agency of Sri Lanka. The Land Commissioner has however pointed out that the Department |
those records is a time consuming process.

At the present, computerising of the records has been commenced. But the database does not provide comprehensive records and only few records are available.

Registrar of Land and the Department of Inland Revenue imposing requirements which are outside the scope of the mandate given to such authorities, when documents are presented for registration/stamping

Section 36 of the RDO provides that a Registrar of Land may, if he thinks fit, refuse to register an instrument where he has reason to suspect that the person presenting the instrument for registration is not a person who is authorized by the RDO or if it does not comply with the provisions of the RDO or any written law affecting the form or mode of execution of such instrument.

In practice however, we have experienced instances where the Registrars of Land have refused registration of documents due to non-submission of proof of title of the transferor/lessee. This, in our view, is outside the scope of the power given to Registrars of Land under the RDO to refuse registration of documents, as the Registrar Of Lands can refuse registrations only in the following instances

Similarly, the Department of Inland Revenue has also, in certain instances acted outside the scope of the powers conferred on the officers of the Department under the Stamp Duty Act No. 43 of 1982 read together with the Stamp Duty (Special Provisions) Act No. 12 of 2006 and have insisted on the submission of documents that do not have direct relevance to the assessment and payment of stamp duty causing unnecessary delays in the process.

Delays in the The RDO does not specify the • The RDO to be amended to
registration of documents relating to land | timeframes within which the registration of documents should be completed by Registrars of Land and in the absence of such timelines, there are lengthy delays in registrations and return of duly registered documents to the relevant parties.

Given the inevitable impact such delays would have on SMEs, specifically in relation to licensing and obtaining financing (banks and financiers are unlikely to grant loans and funding unless title documents are duly registered in the relevant land registries), necessary provision must be included in the RDO prescribing timelines within which the registration should be completed and the registered document should be returned.

As what time period will be reasonable and practical in the context of administrative steps associated with the registration process may have to be specifically discussed with the Registrar General or the Land Commissioner prior to introducing such time periods, as the delays could be due various reasons including inadequacy of necessary resources.

If an amendment to the RDO is impractical due to difficulties in determining a definite time period for the registered documents to be returned, a practical administrative process that may be implemented at a minimum is for directives to be issued by Registrar General or the Land Commissioner to the Registrars of Land with indicative timelines within which the documents should be registered and returned.

<table>
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<tr>
<th>Registration of trademarks, trade names and other intellectual property</th>
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<tr>
<td>Rejection of registration of industrial designs and grant of patents due to the high level of novelty required from the design and invention which are deemed by applicants to be unreasonable</td>
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</table>
| With regard to applications submitted for the registration of industrial designs and grant of patents, novelty is usually the deciding factor in acceptance of applications for registration.

However, the high threshold of novelty causes many applications to be rejected. In terms of the IP Act, an industrial design or invention will not be considered novel solely by reason of the fact that it differs from an earlier industrial design or invention, as the case may be, in minor respects or that it concerns a

- An independent panel consisting of experts in the intellectual property field to be appointed under the IP Act to receive and adjudicate on appeals made by any person aggrieved by a decision of the Director-General with regard to registration of intellectual property including industrial designs and grant of patents.
- The provisions relating to such panel including on the appointment and powers of the panel, the appeal process, the time frame within which the decision of the panel should be given should specifically
type of product different from a product embodying an earlier industrial design or invention.

Accordingly, as to whether a particular industrial design or invention is novel or not is decided by the Director-General of Intellectual Property and therefore the approval of the design and invention is essentially dependent on the Director-General being satisfied that it is a new industrial design.

Once the Director-General has refused to register an industrial design or grant a patent, appealing to the Director-General could be a futile attempt as there is a likelihood of the Director-General not amending his decision not to register the industrial design.

Although provisions are included in the law to allow applicant to appeal against a decision of the Director-General to the High Court for the Western Province, appealing to the High Court for the Western Province and subsequently to the Supreme Court may not be the most practicable solution given the protracted nature of court proceedings.

The implementation of the above recommendations requires an amendment to section 173 of the IP Act.

<table>
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<th>Delay in processing applications for registration of trademarks and industrial designs and grant of patents</th>
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<tbody>
<tr>
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<td>An application for the registration of trademarks usually takes 4 - 5 years to be processed and an application for</td>
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<td>registration of industrial designs usually takes 2-3 years. An application for the grant of a patent usually takes</td>
</tr>
<tr>
<td></td>
<td>4-5 years to be processed.</td>
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<td></td>
<td>The process for registration of intellectual property which takes considerable amount of time as aforementioned is</td>
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<td>not suitable for fast-moving industries with a short product life cycle.</td>
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<tr>
<td></td>
<td>* A short term protection mechanism with speedy registration and validation should be included in the IP Act by</td>
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<td>way of an amendment by prescribing the time period within which each stage of the registration and validation</td>
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<td>process should be completed.</td>
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<tr>
<td></td>
<td>As what time period will be reasonable and practical in the context of administrative steps associated with the</td>
</tr>
<tr>
<td></td>
<td>registration and validation process may have to be specifically discussed with the National Intellectual Property</td>
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Office prior to introducing such time periods, as the delays could be due various reasons including inadequacy of necessary resources.

## Taxation

<table>
<thead>
<tr>
<th>Narrow definitions of SMEs in the 2017 IRD Act</th>
<th>The 2017 IRD Act provides a concessionary tax rate for SME at 14% of the taxable income. However, as per the definition of for SME as contained in the 2017 IRD Act, the annual turnover threshold considered for an entity to be considered as an SME within the meaning thereof is Rs. 500 Million, whereas the turnover threshold in National Policy Framework Small Medium Enterprise Development is Rs. 750 Million. Accordingly, any SME that has an annual turnover between Rs. 500 Million and Rs. 750 Million will not be eligible for the tax benefits conferred on SMEs by the 2007 IRD Act.</th>
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<tr>
<td>• The definition for the term “Small and Medium Enterprises” in the 2017 IRD Act to be amended to increase the turnover threshold from Rs. 500 Million to Rs. 750 Million so as to ensure that SMEs within that revenue bracket will also have the benefit of the concessionary tax rate.</td>
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## Labour matters

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<tr>
<th>Broad definition for ‘employee’ imposes unreasonable constraints for employers</th>
<th>In the legislations relating to labour, the term “employee” is broadly defined to include casual and seasonal employees entitling them to the same rights and privileges as the permanent employees. Many businesses including SMEs employ and engage seasonal and casual employees including employees on short fixed term contracts. Persons who are employed on short fixed term contracts and flexible time contracts could also fall within the ambit of the “employee”.</th>
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<tr>
<td>• The term “employee” to be redefined to explicitly exclude person engaged on short fixed term contracts and persons employed through secondment arrangements so as to ensure that SMEs can employ persons on short term contracts and secondment arrangements without having to comply with obligations under the EPF Act, ETF Act and TEW Act in relation to such employees.</td>
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The implementation of the above
The employers will therefore be required to comply with the relevant obligations under the labour legislations including EPF Act, ETF Act and TEW Act in relation to such seasonal and casual employees as well.

**Enforcement of contracts**

<table>
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<tr>
<th>Laws delays resulting in Court action being protracted</th>
<th>There are long delays in the lower courts, which can be attributed predominantly to lack of resources and inadequacy of the number of courts and judges in the context of the volume of litigation. Further inadequate knowledge of judges relating to the subject matter of disputes has also resulted in delays. The backlog and resulting delays in the appellate courts is less than in the lower courts. Due to laws delays, litigation has become impracticable, undesirable and ineffective in Sri Lanka. This issue may however not be capable of being fully resolved by legal reforms. The changes that are required, in addition to change of attitude by persons involved in the administration of justice, are more policy based with increase of courts, judges, resources and the use of technology.</th>
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<tbody>
<tr>
<td>Failures in Arbitration to consistently deliver in facilitating expeditious and cost effective dispute resolution</td>
<td>Arbitration, although expected to be an effective alternative dispute resolution mechanism, in Sri Lanka, has faced the same destiny as judicial system due to manifestly inadequate use of technology (as in the case of the judicial system as discussed above), absence of qualified professional arbitrators. Even though arbitration is considered globally as one of the most expeditious forms of dispute resolution, the time that is usually taken in the Sri Lankan context to conclude arbitration recommendation requires amendment to section 47 of the EPF Act, section 44 of the ETF Act and the definition for the term ‘workmen’ in section 19 of the TEW Act.</td>
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- From SMEs point of view, encouraging enforcement of contracts through arbitration and other alternate dispute resolution methods would be the short term recommendations.
- Long term recommendations, which are essentially policy based, to take steps to increase of courts, judges, resources and the use of technology

The first recommendation requires the creation of awareness at the SME level with regard to the alternate dispute resolution methods and the advantages of providing for such alternate dispute resolution mechanisms (i.e. arbitration) in the contracts that they enter into.

The implementation of the second recommendation, which is a long term structural change and enhancement is entirely policy based to be orchestrated by the Ministry of Justice.

- A separate set of rules to be promulgated for SMEs to provide for arbitration by a sole arbitrator to be selected from a list of qualified international arbitrators maintained by the arbitration institution. The maximum use of technology in conducting arbitral proceedings would be essential, if the arbitrations conducted in Sri Lanka are to be brought to the same standard of regional international arbitrations conducted by institutions such as
proceedings is more than 2 years. Singapore International Arbitration Center.

This recommendation should be implemented at local arbitration institution levels (i.e. ICLP Arbitration Centre, Sri Lanka National Arbitration Centre) with the promulgation of the relevant and deployment of the necessary resources to facilitate expeditious conclusion of proceedings.

<table>
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<th>Compliance with environmental laws</th>
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<td>Timeframe for approving the EIA/IEE is not given.</td>
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<th>Quality and standards</th>
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| Mandatory quality standards are costly for SMEs | Section 12 of the CAA Act prescribes mandatory standards for certain products, mandatory SLS standards are prescribed under the CAA Act. The fees charged by the SLSI are generally in the range of Rs. 70,000 to Rs. 100,000
While the requirement to obtain such quality standards accreditation is essentially with the view of protecting consumers, the cost of obtaining such mandatory standards are financial burdensome for SMEs who are at commencement of operations or during initial stages of operations.
This adds up to the starting costs of business given that the SMEs would in any event have to incur various necessary expenses in incorporation, licensing and asset acquisition. |
| High cost for voluntary quality standards could potentially discourage SMEs from acquiring those standards | The cost of voluntary quality certificate except for Vidatha Certificate are fairly high from an SME point of view (in the range of Rs. 70,000 to 80,000) and this could be quite challenging for SMEs who are at commencement of operations or during initial stages of operations, given the other costs of business.
In Vidatha Certification, the business is categorized on the value of the fixed assets of the business. The annual fee varies from Rs. 1,000 (for a business having less than Rs. 100,000 of fixed assets) to Rs. 25,000 (a business having above Rs. 5,000,000 fixed assets). |

- The introduction of concession schemes for SMEs with regard to mandatory standards to ease the financial burden for SMEs at the commencement of business. The concession scheme could be based on the value of the fixed assets of the business similar to Vidatha Certification.

- Introduction of concessionary schemes for SMEs. Similar to Vidatha certification scheme, the annual certification fee can be calculated depending on the value of the fixed assets of the business.

- The restrictions in the Foreign Exchange Act that precludes short term foreign borrowings (with a term of less than 3 years) without in terms of the Foreign Exchange Act read together with the FE Regulations, no person resident in Sri Lanka can obtain foreign loans with a term of less than 3 years, with the

- The FE Regulations to be amended to allow SMEs to obtain short term foreign loan borrowings with any regulatory approval. The relaxation of the 3 year term
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<th>special approval of the Monetary Board</th>
<th>special approval of the Monetary Board. The special approval of the Monetary Board is given only in exceptional circumstances, and in any event, the approval process usually takes a long time. In the context of the fact that local borrowings from banks and other financial institutions usually requires collateral as security and given the high interest rates usually associated with local borrowings, short term foreign borrowings with low interest rates (especially from institutional foreign lenders with mandates to lend to businesses in developing countries) is advantageous to SMEs. The above restriction on obtaining short term foreign borrowings is a regulatory barrier that will hinder SMEs access to foreign financing opportunities.</th>
<th>restriction can be subject to conditions such as low interest rates, lender meeting identified criteria etc. This requires the issuance of a further regulation by the Minister assigned the subject of the Central Bank under the Foreign Exchange Act to amend the FE Regulations. The regulation should be published in Gazette and within 3 months from publication in the Gazette, the regulation should be brought before Parliament for approval.</th>
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<tr>
<td>Inability of certain SMEs to provide collateral to obtain financing</td>
<td>Due to stringent regulatory controls imposed on banks and finance companies with regard to lending and grant of financial accommodations and with regard to the maintenance of financial ratios, the grant of loans and financial accommodations by banks and finance companies are generally required to be secured by collateral (either immovable or movable assets of the borrower). We also understand that banks are usually reluctant to accept certain types of assets (i.e. equipment, trading goods etc.) which are fluid and rapidly depreciable in nature as collateral due to their internal policies on financing and consideration on meeting financial and capital adequacy ratios set out in the Banking Act Directions No. 9 of 2007 (as amended from time to time). Therefore, SMEs which do not have adequate assets whether at the commencement of business or thereafter do face challenges in obtaining financing for their business unless alternate funding sources, whether equity or debt, can be found.</td>
<td>• The implementation of a policy both at Governmental level and institutional level to require banks and finance companies to allocate funds every year for lending to SMEs that meet certain criteria (i.e. SMEs in initial stage of operations, SMEs carrying on certain types of businesses etc.) at low interest rates and/or without collateral. Such concessionary loans can be subject to certain preconditions such as the submission of business plans and the bank/finance company being satisfied with the financial viability of the business. This can essentially be policy based administrative steps to be implemented by the Central Bank, which may be effected by the issuance of directions to the banks and non-bank financial institutions within the framework of the Banking Act, the Finance Business Act, the Finance Leasing Act and the Microfinance Act respectively.</td>
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</table>
The impact of the Land Alienation Act on foreign investment in land owning companies affecting the ability of companies to raise financing

In terms of the Land Alienation Act, where a land is transferred to a company with more than 50% local shareholding, the status quo of that company as a company with more than 50% local shareholding should be retained for at least 20 years from the transfer, in order to maintain the legal validity of such transfer. In the event, within such 20 year period, foreign shareholding of the company increases to 50% or more, whether directly or indirectly, the transfer becomes null and void and the company loses title to the land, unless local shareholding is restored to more than 50% within 12 months.

The above restriction under the Land Alienation Act effectively impacts the ability of local companies that have purchased lands after 1st January 2013 (the effective date of the Land Alienation Act) to obtain equity financing from foreign investors, given that the company will lose title to such lands if the foreign shareholding of the company increases to 50% or more pursuant to such investment.

Whilst acknowledging that the removal of the above restriction in the entirety may not be desirable given the intention of the Land Alienation Act and then objective that the law seeks to accomplish, the restrictive period may be decreased to 10 years or if that is not possible from a policy point of view, the restriction may be made inapplicable to companies that have been in active operation for at least 10 years. The latter will ensure that the exemption will be available to only long standing operations with bona fide requirement for funding and the exemption can be subject to conditions such as a minimum quantum of investment into the share capital of the company, the availability of financial statements for at least 10 years etc.

| The restrictive period in section 2(2) of the Land Alienation Act to be decreased from 20 years to 10 years. |
| Alternatively, section 2(2) may be amended to exempt companies that have been in active operation for at least 10 years from the restriction on the increase of foreign shareholding. The exemption may be subject to conditions such as a minimum quantum of investment into the share capital of the company, the availability of financial statements for at least 10 years etc. |

The above recommendations can be implemented by amending section 2 of the Land Alienation Act.
## Closure of business

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<tr>
<th>Lengthy time duration taken for completion of winding ups</th>
<th>A voluntary winding up of companies, whether as a voluntary winding up by shareholders or a voluntary winding up creditors, can take from 6 months to 18 months to complete depending on the extent of assets and liabilities of the company. If the assets and liabilities of the company at the time of commencement of the winding up are negligible, the winding up could be completed in 6 months and if not, the process could take up to 18 months. If the winding up is by court, the process could take even longer. Whilst the expeditious winding up of a company that has incurred significant liabilities may not be practical nor desirable given the involvement of the rights and interest of third parties, a framework should be introduced for dissolution of companies that do not have liabilities or have settled all liabilities, without such companies having to go through a lengthy and formal liquidation process. As stated in section 15 in the Annexure of the report, the Companies Act already provides for a mechanism where companies that have not commenced businesses to be struck off from the register by the Registrar-General of Companies. This expedited dissolution process is implemented in practice by the Registrar-General of Companies on its own initiation or pursuant to requests made by the relevant companies. This mechanism can be extended to SMEs by an amendment to the Companies Act so long as the SME is able to provide a certificate from its auditors supported by closing audited financial statements of company certifying that the company has settled all liabilities (including statutory dues and dues to employees) and distributed all assets and liabilities as the date of the request to the Registrar-General of Companies. The above recommendation can be implemented by amending section 394 of the Companies Act.</th>
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<tbody>
<tr>
<td>• The Companies Act to be amended to allow companies which have carried on operations as well to be struck off from the register maintained by the Registrar-General of Companies by making a request in writing to the Registrar-General of Companies. • The request in writing to be made to the Registrar-General of Companies to be accompanied by a certificate from the auditors of the company supported by closing audited financial statements of company certifying that the company has settled all liabilities (including statutory dues and dues to employees) and distributed all assets and that the company has no assets and liabilities as the date of the request to the Registrar-General of Companies.</td>
<td></td>
</tr>
</tbody>
</table>
and that the company has no assets and liabilities as at the date of the request to the Registrar-General of Companies. This will allow SMEs to minimize costs associated with the winding up as well.

Appendix 1- Government Initiatives

• **GIZ – SME Development Program**

Federal Republic of Germany and the government of Sri Lanka signed an agreement for SME development to facilitate SMEs throughout a wide range of areas including policies and institutional framework conditions, access to finance, access to technology and markets, innovation and entrepreneurship.

• **Establishment of National Enterprise Development Authority (NEDA)**

NEDA facilitates training programs such as Regional Enterprise Development Programme, Women Entrepreneurship Development Programme and ‘Upadhidari Vyavasayake Udanaya’ Programme in order to build up skills and competencies required for SMEs.

• **Formulation of National Policy Framework for SME Development**

Evaluated the SME sector as a whole and have clearly identified the requirement of policy interventions and strategies to resolve SME issues and also the respective implementation arrangements.

• **Gamperaliya project**

The rapid rural infrastructure investment scheme, ‘GAMPERALIYA’ is introduced in order to invest directly in the rural economy. LKR 80 billion has been allocated to the “Gamperaliya project” which is focused on village development. The key focus of this project is to link villages to the wider global economy as partners of the global production sharing system that is ruling the global economy today. This includes the rehabilitation of over 22,000 rural tanks which will have a major impact on agricultural productivity and agricultural incomes that have suffered during the previous droughts. A “Haritha Udyanaya” or a “Green Park” will bring the ancient Athenian concept of nourishing one’s body, mind and soul to the village. Wi-Fi enabled Haritha Udyanaya will have a building with a library, gymnasium for the young and old, men, women and a roof-garden for meditation, yoga and other religious spiritual activities. Places of worship in the village will be repaired and the village schools will get playgrounds. The government will also invest in the development of rural roads, rural markets, and other public works.

• **Enterprise Sri Lanka**
This program provides both financial and non-financial support for the entrepreneurs including private enterprises, self-employees and SMEs. Non-financial support is disseminated through the provision of technical assistance in incorporation of companies, maintenance of financial books, and promotion of market linkages, buy back arrangements, infusion technology etc.

1) Access to Finance

   • **Colombo Stock Exchange (CSE) SME Board**

   CSE has launched a SME board to widen equity finance opportunities available for the SMEs. Securities and Exchange Commission (SEC) will take several initiatives to encourage and give opportunities for SMEs to access the board.

   • **“Enterprise Sri Lanka” Loan Scheme**

   There are three donor funded loan schemes that comes under the program.

   • Small and Medium Enterprise Line of Credit (SMELoC) – initiated by the MoF and ADB. The loan scheme aims at SMEs who have not previously borrowed from a bank, women led SMEs and SMEs located outside Colombo

   • Rooftop Solar Power Generation Line of Credit Project (RSPGLoC) - aims to promote renewable energy

   • E-Friends RF (Pavithra Ganga) – aims to ensure zero disposal of waste by industries into rivers, lagoons and estuaries in next 5 years.

   • **Small and Medium Sized Enterprises Line of Credit**

   This agreement was signed between the Ministry of Finance and the Asian Development Bank (ADB) in the year 2016. The obtained amount of USD 100 million will be utilized to fulfill the capital requirement of the SME sector at an affordable rate. To initiate this, ADB has selected 10 banks (People’s Bank, BOC, Regional Development Bank (RDB), Commercial Bank of Ceylon PLC, Sampath Bank PLC, HNB, DFCC Bank, NDB, NTB and Seylan Bank) as Participating Financial Institutions.

   • **Enactment of Microfinance Act**
Microfinance Act No 6 of 2016 was enacted with the aim of improving the facilitation of the poor with their funding requirements. The Act came into effect from 15\textsuperscript{th} July 2016 onwards.

- **Concessionary loan schemes**

There are numerous concessionary loan schemes given by various government bodies such as Ministry of Finance (MoF), CBSL, Ministry of Industry and Commerce (MOIC) etc. as depicted in the table- ‘Concessionary Loan Schemes’. As per the MoF annual report 2017, “There are 16 tailor made schemes including 11 interest subsidy loan schemes, 3 donor funded refinance loan schemes and 2 financial plus non-financial support schemes”. Moreover, there are more than 60 loan schemes facilitating SMEs, which are given with the collaboration of LCBs and CBSL.

*Table: Concessionary Loan Schemes*

<table>
<thead>
<tr>
<th>Loan Scheme</th>
<th>Implementation Institution</th>
<th>Interest Rate for the Beneficiary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rivi Bala Savi</td>
<td>MoF-DFD</td>
<td>6%</td>
</tr>
<tr>
<td>Govi Navoda</td>
<td>MoF-DFD</td>
<td>3.27%</td>
</tr>
<tr>
<td>Jaya Isura 1</td>
<td>MoF-DFD</td>
<td>6.54%</td>
</tr>
<tr>
<td>Jaya Isura 2</td>
<td>MoF-DFD</td>
<td>9.81%</td>
</tr>
<tr>
<td>Ran Aswenna 1</td>
<td>MoF-DFD</td>
<td>6.54%</td>
</tr>
<tr>
<td>Ran Aswenna 2</td>
<td>MoF-DFD</td>
<td>6.54%</td>
</tr>
<tr>
<td>Ran Aswenna 3</td>
<td>MoF-DFD</td>
<td>6.54%</td>
</tr>
<tr>
<td>NCRS</td>
<td>CBSL-RDD</td>
<td>7%</td>
</tr>
<tr>
<td>CSDDLTS</td>
<td>CBSL-RDD</td>
<td>6%</td>
</tr>
<tr>
<td>Kapruka Ayojana Credit Scheme</td>
<td>Coconut Cultivation Board</td>
<td>9%</td>
</tr>
<tr>
<td>Sepi phase 11</td>
<td>CBSL-RDD</td>
<td>8%</td>
</tr>
<tr>
<td>Saubhagya</td>
<td>CBSL-RDD</td>
<td>8%</td>
</tr>
<tr>
<td>Swashakthi</td>
<td>CBSL-RDD</td>
<td>5.50%</td>
</tr>
<tr>
<td>Smile 111</td>
<td>MOIC</td>
<td>8%</td>
</tr>
<tr>
<td>PAMAP RF</td>
<td>CBSL-RDD</td>
<td>12%</td>
</tr>
<tr>
<td>PAMP 11 RF</td>
<td>CBSL-RDD</td>
<td>10%</td>
</tr>
<tr>
<td>NADeP4</td>
<td>CBSL-RDD</td>
<td>6.50%</td>
</tr>
<tr>
<td>NADeP Disaster</td>
<td>CBSL-RDD</td>
<td>6.50%</td>
</tr>
<tr>
<td>Athwela</td>
<td>CBSL-RDD</td>
<td>2%</td>
</tr>
<tr>
<td>Kapruka Jaya Isuru</td>
<td>Coconut Development Authority</td>
<td>Investment rate - 6% W/capital rate-8%</td>
</tr>
<tr>
<td>-------------------</td>
<td>------------------------------</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>Mahaweli Saviya</td>
<td>Mahaweli authority</td>
<td>7%</td>
</tr>
<tr>
<td>Moragahakanda</td>
<td>Mahaweli authority</td>
<td>7%</td>
</tr>
<tr>
<td>SMAGL</td>
<td>Strome micro finance Asia guarantee limited</td>
<td>13%</td>
</tr>
<tr>
<td>SMAGL</td>
<td>Strome micro finance Asia guarantee</td>
<td>13%</td>
</tr>
</tbody>
</table>

Table: Progress of Interest Subsidy Loan Schemes as at 31st March, 2018

Source: Ministry of Finance Annual Report 2017

Table: Funds Disbursed by Commercial and Development Banks to SMEs – 2017

Source: Ministry of Finance Annual Report 2017

12% of the above loan scheme was for the agriculture sector, 21% for the industry sector, 8% for the service sector and 59% for other sectors.

- CBSL issued a directive requesting banks to ensure that from their total loan portfolio, 10% should be given to the SMEs, exports and tourism activities and for agriculture and 5 per cent each for youth and women.

- In year 2017, the Central Bank carried out 150 financial literacy, entrepreneurship development and skills development programmes during 2017 with special focus on those who have no access to the formal financial sector due to various reasons. These programs were designed to create awareness among the
general public, mainly on the drawbacks of financial exclusion and the benefits of linking with the formal financial sector. These programs also acted as knowledge sharing forums on good banking and financial habits, financial discipline and new financial instruments and services available in the formal sector.

2) Marketability

• National program to establish 2000 exporters (2017-2020)

The government envisages to launch a national program in 2017 to establish 2000 exporters during the period 2017 to 2020.

Activities to be carried out under the Programme

• Establishment of a database

• Grouping of entrepreneurs sector wise

• Conducting one to one interviews for need analysis with representations by relevant stockholders

• Sharing of model project reports / feasibility studies available with the EDB.

• Facilitation for setting up infrastructure facilities lands / industrial estate etc.

• Facilitation for technology transfer / sourcing of machinery /training etc.

• Facilitation for bank financing

• Facilitation for product development as identified through the need analysis

• Facilitation for market development as identified through the need analysis

• Opportunities to participate at EDB organized trade promotion events

• Opportunities to participate at b2b meetings and inward buying mission programs organized by EDB/ chambers held locally

• Follow up and monitoring

• Lakkam Sales Center of Industrial Development Board
The Objective of "Lakkam" sales center is to identify and promote marketable products of SMEs and provide the opportunity to market them in one place at an affordable price which is located at IDB head office in Katubadda.

The SMEs who wishes to market their products through this center should obtain a certificate from the relevant DS office following the inspection and hand it over to the center.

• **Marketing Facilities provided by National Enterprise Development Authority**

  NEDA provides services for entrepreneurs to improve marketability through capacity building of the entrepreneurs, business counseling process (marketing strategy development and implementation consultancies) and technology advancement.

• **Maintain SME related websites**

  A website maintain by Small Enterprises Development (“SED”) Bureau ([http://sed.gov.lk](http://sed.gov.lk)) which facilitate SMEs to sell their products online.

  The SME.lk was developed with the focus to help SMEs by exposing them to a larger magnitude of clientele, locally and internationally. This will be done using cyber mediums and by educating these industries on Telecommunication, Marketing and Advertising, to face challenges of present day clients.
This project is governed by the Ministry of Industry and Commerce and NEDA to give much needed support to the SMEs and work hand in hand with Lanka Bell to provide telecommunication support.

3) Innovation and Technology

- The Ministry of Science, Technology and Research conduct training programmes to provide technical training to entrepreneurs through their “Vidatha Centers”.

- **Incubator and Technology Transfer Centre (ITTC) for SMEs**

The ITTC for SMEs is a joint collaboration between National Enterprises Development Authority (NEDA), Wayamba University and supported by Malaysian Technology Development Cooperation.

- **Sri Lanka Telecom (SLT) SME solutions**

SLT has introduced tailor-made communications suite especially designed for SME businesses. SLT's SME solutions include Voice, Networking, Data Hosting and Managed Services are especially designed taking into consideration the unique requirements of the small and medium scale entrepreneurs.

4) Skills Development

1. Technical and Vocational Education and Training (TVET)

TVET Policy addresses following objectives

- To identify training needs based on labour market analysis
• To ensure high level training; careful selection of instructors and mechanisms for regularly updating their knowledge and skills
• To identify employability outcomes of each programme through tracer and center based studies
• To identify skills needs of industry and set annual national training targets
• To provide employees acceptable to industry
• To guide training providers to set annual training targets based on national training targets
• To take measures to mitigate dropout rate and to reduce unemployment of VT pass outs
• To have continuous improvement in training delivery processes
• To popularize the National Vocational Qualification framework while providing equivalences for non-NVQ qualifications

• **Skill Sector Development Program (“SSDP”)**

SSDP is a mega initiative in the skills development sector with the support of development partners as the successor of the Technical Education Development Project (“TEDP”) supported by ADB. The first phase of this programme was commenced in 2014 and extended to 2018 with total financial inputs of around USD 201.5 Mn from the Asian Development Bank and the World Bank together.

The second phase of SSDP will be up to 2020 with an additional financing of USD 100 Mn from ADB the outcome of having an efficient skills education system to meet the local and foreign labour market demand. This programme is executed by SSDD under the purview of the Ministry of Skills Development & Vocational Training for a period of seven years commencing from 2014 onwards. The major objective of this programme is to build an efficient skills development system to meet the demands of local as well as foreign labour markets with the support of ADB and World Bank along with other development partners. The overall objective of this programme is to provide constructive platform for better alignment and coordination of assistance in the TVET sector.

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**Appendix 2- Budget Proposals for SME Sector**

The government budgets over the past few years have focused on the SME sector development and have allocated funds and initiated several sector development strategies as listed down below.

**Budget 2016**

• To improve SME access to markets, budget proposed super markets to provide prominent shelf space for SME sector products at a reasonable price.
• A credit facility of USD 100 million will be obtained from the ADB to support MSME lending at concessional rates.

• Venture capital approach for providing equity financing facilities to SMEs through the establishment of one fund that will be a “Fund of Funds”.

• Reduction in Corporate Income Tax by 50% for SMEs for a period of 5 years from 1st April, 2016

• Guaranteed price will be given for paddy

• LKR 2,000 million to rehabilitate small tanks and canals to support rural agriculture

• Remove the Construction Industry Guarantee Fund Levy, to encourage small and medium scale contractors and to create an improved level playing field

• Listed Real Estate Trust to be introduced in order to provide capital to real estate and infrastructure development and to enable small investors to directly benefit from the growth of real estate sector

• 50% reduction of tax will be applicable to profits earned by private equity funds or venture capital companies on providing funds to upgrade SMEs registered with the SME Board of CSE for a period of 5 years.

• 50% reduction of tax will be applicable to profits earned by SMEs by investing in designated areas on creating incubators for a period of 3 years.

**Budget 2017**

• It is proposed to simplify the annual renewal of licenses, with the Sri Lanka Tea Board which had six categories to two, where large companies will be subjected to a fee of LKR 500,000 per annum and smaller companies a fee of for LKR50, 000 per annum.

• A tourism development levy of 0.5% is proposed to be imposed on relatively smaller hotel chains

• Revision of current corporate SME tax rate to 14% from 12%

• Banks to ensure that at least 10% of their lending portfolio is for Agriculture, 1% for SME, 10% for Exports, 10% for Tourism, 5% for Youth and 5percent for Women. In addition banks to lend at least 15% of the deposits within the same area for business development.

• creating a new SME board on the CSE

**Budget 2018**

• LKR500Mn will be allocated for establishment of a SME Guarantee Fund.
• The SME Guarantee Fund will be extended to the “IT Initiative” and the exporters who require support.

• The proposed SME Guarantee Fund will enable SME Exporters who are in the CRIB but have the potential to export to access financing from Banks utilizing the SME guarantees.

• An allocation of LKR2, 200Mn in extending support mainly to the farmers, fisherman, youth and women who are already engaged in small businesses and introducing development programmes to address regional issues.

• The Government will launch the “IT Initiative”, which is in effect the Government’s angel fund for the IT industry. This initiative will be operated through the EDB and the government will invest LKR3 billion in the next 5 years to support: The local start-ups and to attract foreign start-ups, Small and Medium sized IT Companies, and create the enabling environment by supporting establishment of Incubators, supporting the acquisition and augmentation of skills and knowhow in collaboration with the local universities etc.

• It is proposed to facilitate existing small industries to increase production and to connect with the markets through existing subsidized credit schemes under the “Enterprise Sri Lanka” Credit Schemes.

• It is proposed to support by way of grants, selected small industries throughout the Northern Province by empowering the vast network of Producer Cooperatives in the province. An allocation of LKR1, 000Mn is made for this purpose.

• An allocation of LKR25Mn is made to support the “Ammachchi” concept where women affected by the war are facilitated to engage in small trader businesses.

• An allocation of LKR250Mn will be made in extending assistance to Tea small holders to improve productivity.

• A University College will be established in Kinniya for advanced training opportunities for youth.

Appendix 3 - Government Vision 2025- Strategies for SME Development

“We will encourage innovations in mobile payment systems and peer-to-peer lending platforms with necessary oversight.”
This will facilitate the growing penetration of connectivity and increasing affordability of devices, which are expected to provide a range of financial services to both small-scale entrepreneurs and low-income households, enabling them to grow their businesses and make financial transactions fast and cost effectively.

- “We will introduce an incentive structure for SME agribusinesses to invest in commercial agriculture and value chains”

This will promote partnership arrangements between the private sector and smallholder producers; demonstrate new technologies to enhance productivity, resilience, and diversification; and promote technology diffusion.

- “The Government will help smallholders in the tea, rubber and non-traditional export sectors”

We will help smallholders improve production and processing, enhance productivity and align their products to take advantage of global market opportunities. Also, the Government will offer short-term price support in the event of a sudden global commodity glut or collapse in price.

- “We will establish a conducive institutional framework for SMEs to flourish in the tourism industry”

We recognise the services by these SMEs, which account for over 90% of all tourist establishments. Appropriate training facilities will be made available to develop this sector with peripheral services.

- “The Government will promote a Smallholder Agribusiness Partnership (SAP) project to enhance competitiveness”

The SAP establishes and scales-up public-private producer partnership (4Ps) in agribusiness. It enables inclusive rural financial services provision, joint financing, and risk sharing, thereby empowering smallholder farmers as business partners. We will facilitate linkages between smallholder producers and modern value chain actors.

- “The Government will initiate and streamline development projects in Uva Province”

We will primarily address rural infrastructure development such as building bridges, town development, small and medium size irrigation and potable water supply facilities, an accelerated irrigation development project in Monaragala District (Wellassa Navodaya), the Rideemaliyadda Integrated Development Project, and a revitalisation project for smallholders in the tea and rubber industries. In addition, we will prioritise enhancing access to finance.

- “We will encourage efforts to raise agriculture productivity and offer price support to cushion the domestic smallholder sector against global price shocks”

We will also provide economic security to the less well-off through stronger social safety nets to mitigate their vulnerability to shocks.

- “The Government will take steps to integrate SMEs into the formal sector”

To boost domestic private investment, we will better integrate the SME sector into the formal sector through the financial system. We will establish hard and soft infrastructure frameworks to help them improve their brand value, and access credit and new markets. We will implement policies to increase project-based lending rather than
collateral-based lending, remove taxes that prevent firms from expanding, and encourage knowledge sharing between R&D institutions and SMEs.

• “We will strengthen ICT based marketing interfaces”
Marketing interfaces based on ICT will be introduced for domestic producers to access a larger global market. The necessary technical support will be provided, particularly for SMEs. The Government will promote ICT enabled agricultural extension services to farmers by encouraging mobile phone-based services. This is in line with the social market concept and will move farmer from purely subsistence agriculture to agri-business, by eliminating information asymmetries and reducing transaction costs along the farmer value chain.

• “We will expedite the proposed Agriculture Sector Modernisation Project”
We will introduce an incentive structure for SME agribusinesses to invest in commercial agriculture and value chains. This will promote partnership arrangements between the private sector and smallholder producers; demonstrate new technologies to enhance productivity, resilience, and diversification; and promote technology diffusion.

• “The Government will implement strategies for financial inclusion”
Government will introduce concessionary loan schemes, SME credit guarantee scheme, and a new development bank to expand SMEs access to finance.

• “The Government will establish regional technology centers”
This will improve SMEs’ access to finance and thus will lead to more accurate demand forecasting, identification of target markets etc.

Appendix 4- Business reforms in Sri Lanka

<table>
<thead>
<tr>
<th>Year</th>
<th>Indicator</th>
<th>Implemented Reforms</th>
</tr>
</thead>
<tbody>
<tr>
<td>DB2019</td>
<td>Dealing with Construction Permits</td>
<td>Sri Lanka made dealing with construction permits easier by launching a single window, increasing transparency by providing online access to building regulations and reducing the processing times to issue several building certificates.</td>
</tr>
<tr>
<td></td>
<td>Registering Property</td>
<td>Sri Lanka made property registration easier by implementing a single window to streamline the process of delivering several certificates and increased transparency by providing online access to</td>
</tr>
<tr>
<td>DB2018</td>
<td>Trading across Borders</td>
<td>Developed a customs single window to smoothen exports and imports.</td>
</tr>
<tr>
<td>DB2017</td>
<td>Starting a Business</td>
<td>Removed stamp duty on newly issued shares.</td>
</tr>
<tr>
<td>DB2016</td>
<td>Starting a Business</td>
<td>Eliminated the requirement to notify the Registrar of Companies of the payment of stamp duty for the initial issuance of shares.</td>
</tr>
<tr>
<td></td>
<td>Dealing with Construction Permits</td>
<td>Made dealing with construction permits less time-consuming by streamlining the internal review process for building permit applications.</td>
</tr>
<tr>
<td>DB2014</td>
<td>Dealing with Construction Permits</td>
<td>Eliminated the requirement to obtain a tax clearance and by reducing building permit fees.</td>
</tr>
<tr>
<td></td>
<td>Getting Electricity</td>
<td>Improved the utility’s internal workflow and by reducing the time required to process new applications for connections.</td>
</tr>
<tr>
<td></td>
<td>Paying Taxes</td>
<td>Introduction of an electronic filing system for social security contributions.</td>
</tr>
<tr>
<td></td>
<td>Trading across Borders</td>
<td>Introduction of an electronic payment system for port services.</td>
</tr>
</tbody>
</table>

### Appendix 5 - Country Comparison

<table>
<thead>
<tr>
<th><strong>Category</strong></th>
<th><strong>DB2018</strong></th>
<th><strong>DB2017</strong></th>
<th><strong>DB2016</strong></th>
<th><strong>DB2014</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Paying Taxes</td>
<td>Sri Lanka made paying taxes easier by introducing online systems for filing corporate income tax, value added tax and employee trust fund contributions.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Enforcing Contracts</td>
<td>Sri Lanka made enforcing contracts easier by introducing a pre-trial conference as part of the case management techniques used in court.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protecting Minority Investors</td>
<td>Strengthened minority investor protections by requiring board and in some cases shareholder approval of related-party transactions and by requiring that such transactions undergo external review.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trading across Borders</td>
<td>Developed a customs single window to smoothen exports and imports.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Starting a Business</td>
<td>Removed stamp duty on newly issued shares.</td>
<td></td>
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<td>Starting a Business</td>
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<tr>
<td>Dealing with Construction Permits</td>
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</tr>
<tr>
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<td>Paying Taxes</td>
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<td>Trading across Borders</td>
<td>Introduction of an electronic payment system for port services.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
**SME Competitiveness Rating for Enhancement ("SCORE")**
Assess SMEs based on seven assessment criteria namely financial strength, business performance, human resource, technology acquisition and adoption, certification and market presence.

<table>
<thead>
<tr>
<th>Rating</th>
<th>SME Characteristic</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-2 star</td>
<td>Very basic with manual/ semi-automated system</td>
</tr>
<tr>
<td></td>
<td>Semi to fully automated- implement quality system, undertakes product and process improvements, intellectual property registered, ready for export compliance certification</td>
</tr>
<tr>
<td></td>
<td>Fully automated- invest in product/ process improvements, most likely exporting, certification for export</td>
</tr>
<tr>
<td></td>
<td>High level automated- Good branding, export with complying to export requirements</td>
</tr>
</tbody>
</table>

Based on the assessment they rate SMEs. This helps to facilitate SME in a better coordinated manner by analyzing the weaknesses of them and serving them accordingly.

**South Korea**

Under the *Ministry of SMEs and startups*, there are nine affiliated institutions:

<table>
<thead>
<tr>
<th>Affiliation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>KOREG</td>
<td>Korea Federation of Credit Guarantee Foundations</td>
</tr>
<tr>
<td>SBC</td>
<td>Small and medium Business Corporation</td>
</tr>
<tr>
<td>TIPA</td>
<td>Korea Technology and Information Promotion Agency</td>
</tr>
<tr>
<td>SBDC</td>
<td>Small Business Distribution Center</td>
</tr>
<tr>
<td>SEMAS</td>
<td>Small Enterprises and Marketing Services</td>
</tr>
<tr>
<td>KISED</td>
<td>Korea Institute of Start-up and Entrepreneurship Development</td>
</tr>
<tr>
<td>KVIC</td>
<td>Korea Venture Investment Corporation</td>
</tr>
</tbody>
</table>
Small and Medium Business Administration (SMBA)

Support SMEs with finding new overseas markets, trade promotion delegation, fostering specialists to expand overseas markets, supporting SMEs in attaining international standards, supporting SMEs for global brand development, supporting prospective SME exporters and many more.

- Effectively implement government policies and programs
- Provide a wide range of assistance and services to help Koreans start, run and grow their businesses
- Provide support to help SMEs to solve their difficulties and improve their competitiveness.

Activities of SMBA

- Policy fund support for SMEs (Support the start-up, promote new growth of industries)
- Support cooperation among companies, small tradesmen and export financing.
- Technical support
- Support export marketing and overseas business cooperation
- Provide training on management and technical courses

Fair Transactions in Subcontracting Act
As per the Act, large-company contractors should make proper contracts with, and make proper payments to, SME subcontractors. The Act prohibits LEs from exploiting SME subcontractors. The Act, Investigates unfair practices (subcontract payment reduction, issuing no written document)

- Carries out actions against unfair practices
- Requires conglomerates to conduct formal subcontractor practice surveys

**Act on the Promotion of Collaborative Cooperation between Large Enterprises & SMEs**

Purpose of the Act is, sharpen the competitiveness of LEs and small-medium enterprises by consolidating win-win cooperation between them and to attain their shared growth Established Commission for Cooperate Partnership, which promotes “shared growth”, addressing existing gaps and conflicts between large enterprises and SMEs

**Functions of Commission for Cooperate Partnership**

- Calculate and announce the Win-Win Index of large enterprises.
- Identify and disseminate successful Win-Win growth models.
- Promote communication between the representatives of large enterprises and SMEs, providing educational programmes for the observation of corporate partnership norms.
- Establish the standards for business types and items suitable for SMEs, and designate and inspect such types of items.
- Identify the causes of conflicts relating to transactions among large enterprises and SMEs, and between different industries, as well as to promote social consensus. January 2017
- Disseminate an atmosphere of corporate partnership across industry.

**Japan**
Appendix 6 - Export Registration Process

Appendix 7 - Business Registration Process
Appendix 8 - Permits/ Licenses issued by Divisional Secretariats

- Tree Cutting Permits
- Timber Transport Permits (New Issuances/Extensions)
- Animal Transport Permits
- Business Name Registration Permits
- Machinery Permit & Renewal
- Noise Level Report
- Liquor Permits (New Issuances/Renewals)
- Mining Permits (New Issuances/Renewals)
- Trade License
- Registration with the Labour Department
- Environment Protection License from the Central Environmental Authority
• Mining industry- Approval from Geological Surveys and Mines Bureau for, mine, transport, process, store, trade in or export any minerals

• Construction industry- Approval of environmental, geological, and cultural heritage regulatory bodies, Register with the Construction Industry Development Authority, Registration as the contractor

• Food industry- Water Test and Food Test report, Trained food handler certificate, Medical reports of employees, Certificate of commendation/ mini HAC

Appendix 9 - Existing Institutional Framework

<table>
<thead>
<tr>
<th>National Interventions</th>
<th>“Ensure the benefits of development for each citizen through the formulation of national policies and dynamic economic strategies for inclusive development.”</th>
<th>Department of National Planning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of National Policies and Economic Affairs</td>
<td>“Design, propose, execute and evaluate, with efficiency and transparency, economic and fiscal policies of the country towards promoting investment and economic development to ensure quality living for the people”</td>
<td>Development Finance Department</td>
</tr>
<tr>
<td>Ministry of Finance</td>
<td>“Maintaining proper management which supports the title of undisputed land guiding to utilize state lands competently while assuring the sustainability of the development within a national policy and with proper co-ordination.”</td>
<td>Land Commissioner General’s Department</td>
</tr>
<tr>
<td>Ministry of Lands</td>
<td>“Contribute towards the Socio-Economic Development through the Promotion of Industrial Peace and Harmony, Social Protection, Rights at Work and Productivity.”</td>
<td>Department of Labour National Institute of Occupational Safety and Health</td>
</tr>
<tr>
<td>Ministry of Labour and Trade Union Relations</td>
<td>“Ensuring an excellent public service through proper administration, management and reformation of human resource”</td>
<td>Department of Labour National Institute of Occupational Safety and Health</td>
</tr>
<tr>
<td>Ministry of Public Administration and Management</td>
<td>“Maintaining economic and price stability and financial system stability to support sustainable growth through policy stimulus, advice, commitment and excellence.”</td>
<td>Department of Labour National Institute of Occupational Safety and Health</td>
</tr>
<tr>
<td>Central Bank of Sri Lanka</td>
<td>“Maintaining economic and price stability and financial system stability to support sustainable growth through policy stimulus, advice, commitment and excellence.”</td>
<td>Department of Labour National Institute of Occupational Safety and Health</td>
</tr>
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</tr>
<tr>
<td>Ministry of Higher Education and Cultural Affairs</td>
<td>“To Delight Students, The Industry, Staff And Other Stakeholders Of The Higher Education System Of Sri Lanka By Formulating And Implementing Results Oriented Policies &amp; Strategies And To Deliver Results In An Effective And Efficient Manner Through A Participatory Process To Produce The Best Intellectuals, Professionals, Researchers, Entrepreneurs To Deliver Innovative Solutions To Make Sri Lanka “The Wonder Of Asia” ”</td>
<td>University Grants Commission (UGC)  State Universities</td>
</tr>
<tr>
<td>Ministry of Science, technology and research</td>
<td>“To formulate and implement policies pertaining to the popularization and advancement of science and technology, including scientific research and development and transfer of technologies, to ensure improved quality and productivity so as to upgrade economic activities, which are essential for the economic and social development of Sri Lanka.”</td>
<td>Arthur C. Clarke Institute for Modern Technologies  Industrial Technology Institute  National Engineering Research and Development Centre  National Institute of Fundamental Studies  National Research Council  National Science Foundation  National Science and Technology Commission  Sri Lanka Accreditation Board for Conformity Assessment  Sri Lanka Inventors Commission  Sri Lanka Standards Institution  Sri Lanka Institute of Nanotechnology (pvt) Ltd (SLINTEC)</td>
</tr>
<tr>
<td>Department of Inland Revenue</td>
<td>“To collect taxes in terms of relevant tax and other related laws, by encouraging voluntary compliance while deterring tax evasion and tax avoidance, and To enhance public confidence in the tax system by administering relevant tax and other related legislation fairly, friendly and expeditiously and thereby facilitate and foster a beneficial tax culture.”</td>
<td></td>
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</tbody>
</table>
### Regional Interventions

<table>
<thead>
<tr>
<th>Ministry of Provincial Councils and Local Government</th>
<th>Sector Skills Development Programme (SSDP)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Ministry of Provincial Councils and Local Government</strong></td>
<td><strong>Regional Interventions</strong></td>
</tr>
</tbody>
</table>
| **“The ministry works for the betterment of all the communities through partnerships with provincial councils, local governments and other organisations to formulate policies and legislation to develop the provincial and local government system; Enhance the capacity of provincial and local government to exercise their powers and provide services; and, Ensure public interests are reflected in the provincial and local government system.”** | **Provincial Councils**  
**Municipal Councils**  
**Urban Councils**  
**Divisional Council** |
| **Ministry of Home Affairs** | **Regional Interventions** |
| **“Assuring an excellent service through an optimum administrative system at national and divisional level with the utilization of human resources endowed with required skills. Establishment of a district, divisional and rural administration mechanism, with a participatory development approach which is closer to general public.”** | **District Secretariat**  
**Divisional Secretariat**  
**Grama Niladhari Divisions** |
| **Ministry of Social Empowerment** | **Regional Interventions** |
| **“To formulate & implement policies & strategies and deliver results in creative and innovative ways to provide people friendly – social & economic services to marginalized & disadvantaged people (Poor, Elderly, Disabled, Single Parent Families, Substance-Addicts, Orphans) through institutions, networks & professionals in effective, efficient, speedy & productive manner to enhance their QUALITY OF LIFE in collaboration with local & global agencies.”** | **Department of Social Services**  
**Department of Samurdhi Development**  
**National Secretariat for Persons with Disabilities (NSPD)**  
**National Secretariat for Elders (NSE)**  
**National Institute of Social Development (NISD)**  
**Rural Development Training and Research Institute**  
**Social Security Board of Sri Lanka (SSB)**  
**Rural Development Division** |
| **Ministry of Rural Economy** | **Regional Interventions** |
| **“Livelihood development, development of livestock-farm products of high quality to match the local demand and promotion of prosperous, local producers capable of meeting the demands of the competition in the local and the international market successfully, aiming at raising the economic status of the rural population.”** | **Department of Animal Production and Health**  
**National Livestock Development Board**  
**Dedicated Economic Centers (DECs)** |
| **Ministry of Hill Country New Villages,** | **Regional Interventions** |
| **“Promote the Well-Being of the Plantation Community by Improving the Habitat, Living Condition and** | **Regional Interventions** |
| Infrastructure and Community Development | Socio Economic Facilities.

**Sectoral Interventions** |
|---|---|
| **Ministry of Industry and Commerce** | “Creation of a conducive environment for sustainable, commercially competitive, manufacturing entities, producing high value-added products and a vibrant commercial regime capable of contributing to the enhancement of living standards of the people”

Registrar of Companies
National Intellectual Property Office of Sri Lanka (NIPO)
Department of Commerce
Measurement Units, Standards & Services Department
National Enterprise Development Authority (NEDA)
Industrial Development Board (IDB)
Consumer Affairs Authority
Sri Lanka Handicraft Development Board
National Craft Council
National Design Centers
Department of Food Commissioner
Department of Co-operative Development
Co-operative Employees Commission
CO-OPERATIVE WHOLESALE ESTABLISHMENT
National Institute of Cooperative Development
Department of Textile Industries
Sri Lanka Institute of Textile & Apparel |
| **Ministry of Primary Industries** | “Developing Sri Lanka’s primary industries (any industry such as agriculture or fisheries that is concerned with obtaining or providing natural resources for conversion into commodities and products for the consumer) through Value chain development, Product diversification, Branding”

Board of Investment
Export Development Board |
| **Ministry of Development Strategies and International Trade** | “To promote and strategize Sri Lanka’s global competitiveness in international trade by providing high value added goods and services through innovation, quality investment and increased market assess”

Sri Lanka Tourism Development Authority
Sri Lanka Institute of Tourism and Hotel Management
Sri Lanka Tourism Promotion Bureau |
| **Ministry of Tourism Development** | “Create an enabling environment to develop, promote, productive and result oriented tourism industry while contributing to inclusive development of Sri Lanka”

Sri Lanka Tourism Development Authority
Sri Lanka Institute of Tourism and Hotel Management
Sri Lanka Tourism Promotion Bureau |
| **Ministry of Fisheries and Aquatic Resources Development** | “Managing the utilization of Fisheries and Aquatic Resources for the benefit of the present and future generation.”

Department of Fisheries & Aquatic Resources (DFAR)
National Aquatic Resources Research and Development Agency (NARA)
National Aquaculture Development Authority (NAQDA)
Ceylon Fisheries Corporation (CFC)
Ceylon Fishery Harbours Corporation (CFHC)
National Fisheries Federation |
<table>
<thead>
<tr>
<th>Ministry of Plantation Industries</th>
<th>“To enhance the productivity, profitability and sustainability of the plantation industry through economically, socially and environmentally established plantation sector.”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coconut Cultivation Board</td>
<td>Coconut Development Authority</td>
</tr>
<tr>
<td>Coconut Research Institute</td>
<td>Kalubowitiyana Tea Factory Limited</td>
</tr>
<tr>
<td>National Institute of Plantation Management</td>
<td>Rubber Development Department</td>
</tr>
<tr>
<td>Rubber Research Institute of Sri Lanka</td>
<td>Small Holders Plantation Entrepreneurship Development Programme</td>
</tr>
<tr>
<td>Sri Lanka Tea Board</td>
<td>Sugarcane Research Institute</td>
</tr>
<tr>
<td>Tea Research Institute of Sri Lanka</td>
<td>Tea Shakthi Fund</td>
</tr>
<tr>
<td>Tea Small Holdings Development Authority</td>
<td>The Smallholder Tea and Rubber Revitalization (STARR) Project</td>
</tr>
<tr>
<td>Tea Shakthi Fund</td>
<td>Thurusaviya Fund</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Ministry of Agriculture</th>
<th>“To achieve globally competitive production, processing and marketing enterprises through socially acceptable, innovative and commercially-oriented agriculture, through sustainable management of natural resources of the country”</th>
</tr>
</thead>
<tbody>
<tr>
<td>Department of Agriculture</td>
<td>Department of Agrarian Development</td>
</tr>
<tr>
<td>Agricultural &amp; Agrarian Insurance Board</td>
<td>Hector Kobbekaduwa Agrarian Research and Training Institute (HARTI)</td>
</tr>
<tr>
<td>Sri Lanka Council for Agricultural Research Policy(CARP)</td>
<td>Institute of Post-Harvest Technology (IPHT)</td>
</tr>
<tr>
<td>National Food Promotion Board</td>
<td>Colombo Commercial Fertilizer Co.Ltd</td>
</tr>
<tr>
<td>Ceylon Fertilizer Co.Ltd</td>
<td>National Fertilizer Secretariat</td>
</tr>
<tr>
<td>National Fertilizer Secretariat</td>
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</tbody>
</table>
Report Overview

The analysis is limited to the scope to review the laws and regulations applicable to SMEs specifically in relation to the following aspects:

- Incorporation and business registration,
- Licenses, permits and approvals
- Access to land, water and other utilities required for the business and operations
- Relevant registrations pertaining to purchase and lease of immovable property
- Registration of trademarks, trade names and other intellectual property
- Taxation
- Labour matters
- Enforcement of contracts
- Insurance and other social security schemes
- Compliance with environmental laws
- Import and export related matters
- Quality and standards
- Access to equity and debt financing
- Technology transfer/innovation
- Closure of business.

Prepared by:
Following list of Acts/Ordinance have been reviewed for the study.

• Companies Act No. 7 of 2007
• Prevention of Frauds Ordinance, No. 7 of 1840
• Control of Pesticide Act No. 33 of 1980
• Seed Act No. 22 of 2003
• Plant Protection Act No. 35 of 1999
• Food Act No. 20 of 1991
• Sri Lanka Telecommunications Act No. 25 of 1991
• Factories Ordinance No. 45 of 1942
• Mines and Minerals Act No. 33 of 1992
• Construction Industry Development Act No.33 of 2014
• Animals Act No. 29 of 1958
• Animal Disease Act No 59 of 1992
• Private Medical Institutions (Registration) Act No 21 of 2006
• Ayurveda Act, No. 31 of 1961
• Sri Lanka Atomic Energy Act No. 40 of 2014
• National Medicines Regulatory Authority Act No. 5 of 2015
• Tourism Act No. 38 of 2005
• National Transport Commission Act No. 37 of 1991
• Shipping Agents Act
• Coconut Development Act No. 46 of 1971
• Coconut Product Ordinance No. 13 of 1935
• Coconut Fibre Act No. 17 of 1967
• Fisheries and Aquatic Resource Act No 2 of 1996
• Rubber Control Act No. 11 of 1956
• National Gem and Jewellery Authority Act, No. 50 of 1993
• Tea Control Act No. 39 of 1974
• Consumer Affairs Authority Act No. 9 of 2003
• Urban Development Authority Act No. 41 of 1971
• Land (Restrictions on Alienation) Act No. 38 of 2014
• National Water Supply and Drainage Board Act, No 2 of 1972
• Registration of Title Act, No. 21 of 1998
• Intellectual Property Act, No. 36 of 2003
• Value Added Tax Act No. 14 of 2002
• Nation Building Tax Act No. 9 of 2009
• Port and Airports Development Levy Act No. 18 of 2011
• Economic Service Charge Act No. 13 of 2006
• 2017 IRD Act
• Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954
• Employees Provident Fund Act No. 15 of 1958
• The Employees Trust Fund Act No. 46 of 1980
• Payment of Gratuity Act No. 12 of 1983
• Wages Board Ordinance No. 27 of 1941
• Budgetary Relief Allowance of Workers Act No. 4 of 2016
• Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971
• Arbitration Act No. 11 of 1995
• Regulation of Insurance Industry Act No. 43 of 2000
• National Environmental Act No. 47 of 1980
• Marine Pollution Prevention Act No. 35 of 2008
• Coast Conservation Act No. 57 of 1981
• Imports and Exports (Control) Act No. 1 of 1969
• Excise (Special Provisions) Act No. 13 of 1989
• Measurement Units Standards and Services Act No 35 of 1995
• Conformity Assessment Act. No. 32 of 2005
• Foreign Exchange Act No. 12 of 2017
• Industrial Promotion Act No. 46 of 1990
• Finance Business Act No. 42 of 2011, Finance Leasing Act No. 56 of 2000, Microfinance Act No. 6 of 2016
• Monetary Law Act No. 58 of 1949
• Sri Lanka Inventors Incentives Act No 53 of 1979
• Business Names Registration Ordinance No. 6 of 1918
• Factories Ordinance No. 45 of 1942
• Coconut Product Ordinance No. 13 of 1935
Overview of the laws and regulations applicable to SMEs in Sri Lanka

- **Incorporation and business registration**

  - **SMEs which are companies**

    The Companies Act No. 7 of 2007 (the “Companies Act”) governs limited liability companies in Sri Lanka and the provisions relating to the incorporation of SMEs which are limited liability companies are contained in the Companies Act.

    A company may be set up as a company limited by shares, unlimited company or a company limited by guarantee. In a company limited by shares, the liability of the shareholders to contribute to the assets of the company is limited to the amount paid by them for shares of the company and in an unlimited company, the shareholders have unlimited liability to contribute to the assets of the company. In a company limited by guarantee, the liability of the members to contribute to the assets of the company is limited to that specified in the articles of association.

    A company limited by shares may be set up either as a private company or as a company limited by shares other than a private company (“public company”).

    A private company cannot offer shares or other securities to the public and the number of its shareholders is limited to 50 (not including employees and former employees who became shareholders of the company whilst being in its employment). The articles of association of a private company must include provisions setting out the abovementioned prohibition on offering shares and other securities to the public and the limit on the number of shareholders. A private company can be incorporated with one shareholder. Unless the articles of association provide otherwise, the minimum number of directors in a private company is one.

    A company, the articles of association of which do not provide for the abovementioned prohibition on offering shares and other securities to the public and the limit on the number of shareholders, is a public company. A public company can be incorporated with one shareholder and does not have a limit on the number of its shareholders. Unless the articles of association provide otherwise, the minimum number of directors in a public company is two.
A company limited by guarantee must have articles of association which sets out the objects of the company and the amounts which each member of company undertakes to contribute to the assets of the event of liquidation. Any two or more persons can apply to form a company limited by guarantee by making an application to the Registrar General of Companies in prescribed form signed by each of the initial members.

For the incorporation of a new company, approval has to be first obtained from the Registrar General of Companies with regard to the proposed name of the company. An application has to be submitted in this regard and applications can now be filed electronically through web interface of the Department of Registrar General of Companies.

Once approval has been obtained for the proposed name of the company, the following particulars have to be submitted when applying for the incorporation thereof. Applications can now be filed electronically through web interface of the Department of Registrar General of Companies

- Application, in prescribed form (Form 1).
- Articles of Association of the company signed by each of the initial shareholders/members, as the case may be.
- The consent of each of the initial directors, in prescribed form, to act as directors of the company (Form 18).
- The consent of the initial company secretary, in prescribed form, to act as the company secretary of the company (Form 19).

The certificate of incorporation is typically issued by the Registrar General of Companies within 5 to 10 working days from the submission of the documents referred to above. However, in our experience, there have been instances in which the issuance of the certificate of incorporation has taken a longer time where the initial shareholders were non-resident persons.

Once a company is incorporated, public notice of such incorporation must be given within 30 working days of incorporation (which entails publications in newspapers in all three languages and publication in Government Gazette).

The total minimum cost associated with the incorporation of a private company (which consists of the fees changes by the Registrar General of Companies and the cost of public notice) is approximately Rs. 30,000 (assuming that the company has only one director). The total minimum cost associated with the incorporation of a public company (which consists of the fees changes by the Registrar General of Companies and the cost of public notice) is approximately Rs. 55,000 (assuming that the company has the statutory minimum of 2 directors).

The requirements that a limited liability company must comply with under the Companies Act include the following:

- An auditor must be appointed to audit its financial statements (the financial statements of all companies should be audited);
- The financial statements of the company or the group as the case may be must be prepared every year together with the auditors’ report as at the balance sheet date of the company, within 6 months from the balance sheet date or within such extended period determined by the Registrar General of Companies;
- An annual report must be prepared as per the requirements of section 166 to 168 of the Companies Act within 6 months from the balance sheet date;
• An annual general meeting must be held once in each calendar year (other than in the calendar year of incorporation) not later than 6 months after the balance sheet date and not later than 15 months after the last annual general meeting;

• An annual return must be delivered to the Registrar General of Companies in prescribed form every year (other than in the calendar year of incorporation) as required in terms of section 131 of the Companies Act within 30 working days from the date of the annual general meeting (the fee charged by the Registrar General of Companies for the filing of annual returns is Rs. 6,000, exclusive of applicable taxes);

• Every company, other than a private company, must deliver financial statements to the Registrar General of Companies within 20 working days after the financial statements are required to be signed.

The following registers and records must be maintained by a company under the Companies Act:

• the register of shareholders to be maintained as required under section 123 of the Companies Act;

• an interests register to be maintained for the purposes of making the relevant entries specified in the Companies Act (unless dispensed with, in the case of private companies, with the unanimous agreement of the shareholders);

• the register of directors and secretaries to be maintained as required under section 223 of the Companies Act;

• the register of charges to be maintained as required under sections 109 and 110 of the Companies Act; and

• a register of debenture holders if the company has issued debentures.

• SMEs which are partnerships and sole proprietorships

According to the Prevention of Frauds Ordinance, No. 7 of 1840 (the “PFO”), a partnership with a capital of more than Rs. 1,000/- has to be formed through a written document and signed by the partners involved.

In terms of the Business Names Registration Ordinance No. 6 of 1918 (“BNRO”) and the statutes made by Provincial Councils by virtue of the legislative power conferred on Provincial Councils by the 13th Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka,

• every partnership having a place of business in Sri Lanka and carrying on business under a business name which does not consist of the true full names of all partners who are individuals and the corporate names of all partners who are corporations without any addition; and

• every individual having a place of business in Sri Lanka and carrying on business under a business name which does not consist of his true full names without any addition,

must be registered with the Registrar of Business Names of the Province in which the business is situated.

In order to be registered, the applicant must submit an application to the Registrar in prescribed form containing the following particulars within 14 days after the commencement of the business:-

• the business name;

• the general nature of the business/es;

• the principal place of business;
where the registration to be effected is that of a partnership, the name, the nationality, and where that nationality is not the nationality of origin, the nationality of origin, the usual residence, and the other business occupation, if any, of each of the individuals who are partners, and the corporate name and registered or principal office of every corporation which is a partner;

- where the registration to be effected is that of an individual, the name, the nationality, and if that nationality is not the nationality of origin, the nationality of origin, the usual residence, and the other business occupation, if any, of such individual.

The cost of registration and the time taken for the issuance of a registration certification upon the filing of applications differs from province to province. In the context of the Western Provincial Council, the time taken for the issuance of certificate is usually 5 working days from application and the cost of registration is approximately Rs. 3,000.

- **Licenses, permits and approvals**

The relevant requirements with regard to licences, permits and approvals necessary for the business and operations of SMEs will essentially depend on the specific businesses that the SME engages in. We have set out below a commentary on the licences, permits and approvals required for SMEs to carry on business in the industries identified by us for purposes of this report.

- **Agriculture**

The principal legislations for licensing and regulating activities related to agricultural industry are Control of Pesticide Act No. 33 of 1980 (the “Control of Pesticides Act”), Seed Act No. 22 of 2003 (the “Seed Act”) and the Plant Protection Act No. 35 of 1999 (the “Plant Protection Act”). These acts provide various licensing mechanisms for agriculture related activities such as seed handling, importing plants and fruits and marketing pesticides.

The Seed Act established the National Seed Council (the “Council”) which consists number of ex-officio members including Director in charge of seed certification in the Department of Agriculture who is in charge of the council (the “Director”). In terms of the section 8(1) of the Act all seed handlers should be registered with the Director according to the procedure prescribed by the Seeds Act. Every application for registration shall be in writing and shall be made to the Director in such a manner specified by the Director and the registration shall be issued on payment of the relevant registration fee subjected to conditions and terms therein. The registration is valid for the period specified in the registration forms and registration shall be renewable on an application made in that behalf to the Director, before the expiry date specified in the registration form.

Any person who, handles seed without being registered under the Seed Act is guilty of an offence and will be liable on conviction before a Magistrate to imprisonment of either description to a term not less than one month and nor exceeding six months or to a fine not less than Rs. 50,000, or to both such fine and imprisonment. Where the offence is committed by a body of persons, then if that body of persons is (i) a body corporate, every director, manager, secretary, or officer of that body corporate or (ii) if that body is a firm, every partner and every manager of that firm, will be guilty of that offence unless he proves that the offence was committed without his consent or concurrence and that he exercised all due diligence to prevent the commission of such offence.
The Plant Protection Act contains provisions for protection of plants and crops and in terms of the regulations made under section 12 of the Plant Protection Act referred as Plant Protection Regulations 2014, the regulated articles set out in the regulation should be imported under the authority of the relevant import permit issued by the Director-General of the Department of Agriculture.

Any person who, imports regulated articles without the importation permit is guilty of an offence and will be liable on conviction before a Magistrate to imprisonment of either description to a term not less than one month and not exceeding six months or to a fine of not less than Rs. 10,000 and not exceeding Rs. 100,000, or to both such fine and imprisonment. Where the offence is committed by a body of persons, then if that body of persons is (i) a body corporate, every director, manager, secretary, or officer of that body corporate or (ii) if that body is a firm, every partner and every manager of that firm, will be guilty of that offence unless he proves that the offence was committed without his consent or concurrence and that he exercised all due diligence to prevent the commission of such offence.

In terms of the Control of Pesticide Act, the Registrar of Pesticides has the power to register the pesticide and issue a licence valid for a period not exceeding three years or register the pesticide provisionally, and pending the issue of a licence or in lieu of a licence issue a provisional permit valid for a period not exceeding twelve months for restricted marketing and use of the pesticide in accordance with the conditions stipulated in such permit. Further, no person can import any pesticide except with the written approval of the Registrar of Pesticides.

Any person who, manufactures, stores, sells, distributes or imports pesticides without the licence and approval referred to above is guilty of an offence and will be liable on conviction before a Magistrate to imprisonment of either description to a term not less than two years or to a fine of not less than Rs. 50,000 and not exceeding Rs. 100,000, or to both such fine and imprisonment. Where the offence is committed by a body of persons, then if that body of persons is (i) a body corporate, every director, manager, secretary, or officer of that body corporate or (ii) if that body is a firm, every partner and every manager of that firm, will be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

- **Manufacturing**
- **Food manufacturing**

The Food Act No. 20 of 1991 (the “Food Act”) regulates and controls the manufacture of food. The term “food” is widely defined in the Food Act to mean any article manufactured, sold or represented for use as food or drink for human beings and includes any article which ordinarily enters into or is used in the composition or preparation of food.

In terms of the Food Act, no person can manufacture, prepare, preserve, package or store any food in any premises unless such premises has been registered by the relevant Food Authority (i.e. Municipal Council, Urban Council or Pradeshiya Sabha constituted for the area in which the premises is situated). We however understand that the process for registration under the Food Act is not implemented and the practice that is prevailing at present is for a trade licence to be issued by the local authorities for all food related trades. This process, in effect, ensures that no food related trade can be carried out without the concurrence of the local authorities.
even though the exact modality of registration that is envisaged under the Food Act is not implemented. We also understand that prior to the issuance of a licence for food related trades, an inspection is carried out by the Public Health Department of the relevant local authority.

Accordingly, any SME that proposes to engage in the business of manufacturing food products should, as per the prevailing practice, obtain a trade licence from the Municipal Council, Urban Council or Pradeshiya Sabha constituted for the area in which the manufacturing facility is situated.

If a person contravenes the provisions of the Food Act, he is guilty of an offence and if the offence is committed for the first time, will be liable on conviction to a fine not less than Rs. 500 and not exceeding Rs. 3,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment. If the offence is committed for more than one time, he will be liable upon conviction to imprisonment for a term not less than three months and not exceeding one year and also to a fine not less than Rs. 1,000 and not exceeding Rs. 5,000. Further, where a person convicted of the offence of using any premises without first obtaining a certificate of registration continues to use such premises either by himself or by any other person on his behalf notwithstanding such conviction, the Magistrate may, upon application made for a closure order by the relevant Food Authority or any officer authorized by such Food Authority, order the closure of such premises or the discontinuance of the trade or business carried on therein until such time as such person obtains a certificate of registration in respect of such premises from such Food Authority.

Where the offence is committed by a body of persons, then if that body of persons is (i) a body corporate, every director, manager, secretary, or officer of that body corporate or (ii) if that body is a firm, every partner and every manager of that firm, will be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

• Apparel manufacturing

There are no specific laws that govern the apparel manufacturing industry and accordingly an SME that wishes to carry on business as an apparel manufacturer does not require any licence to specifically carry on such business.

• Manufacturing of electronic and electrical appliances

In terms of section 21(1) of the Sri Lanka Telecommunications Act No. 25 of 1991 as amended (the “TRC Act”), no person can trade, manufacture, import, sell, offer for sale, deal in, transfer, hire, lease, demonstrate, maintain or repair any telecommunication apparatus, except under the authority of a licence issued by the Telecommunications Regulatory Commission (“TRC”)
The TRC Act defines “telecommunication apparatus” to mean “apparatus constructed or adopted for use in transmitting or receiving anything falling within the definition of the expression “telecommunication system” which is to be or has been conveyed by means of a telecommunication system, or in conveying for the purposes of such a system anything falling within that definition”. Approval is granted by the TRC in respect of the types of telecommunication apparatus which may be connected to a telecommunication system.

Any person who trades, manufactures, imports, sells, offers for sale, deals in, transfers, hires, leases, demonstrates, maintains or repairs any telecommunication apparatus is guilty of an offence and will be liable on conviction to a fine not exceeding Rs. 5,000, and, in default of payment of such line, to imprisonment of either description for a term not exceeding three months. Where the offence is committed by a body of persons, then if that body of persons is (i) a body corporate, every director, general manager, secretary, or other similar officer of that body corporate or (ii) if that body is not a body corporate, every person who at the time of commission of the offence was the President, Manager, Secretary or other similar officer of that body, will be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of such offence.

There are no other specific laws that govern the electronic and electrical appliances manufacturing industry and accordingly an SME that wishes to carry on business as an electronic and electrical appliances manufacturer (other than telecommunication apparatus discussed above) does not require any licence to do so.

Every manufacturer who maintains and operates a factory must, in terms of the Factories Ordinance No. 45 of 1942, send a return to the Chief Factory Inspecting Engineer which includes the number of persons employed in the factory, and such particulars as may be prescribed, as to the hours of employment of women and young persons employed, as to the age, sex, and occupation of all persons employed. This return must be filed at intervals of not less than one year.

• **Mining**

The mining industry is governed and regulated by the Mines and Minerals Act No. 33 of 1992 as amended by the Mines and Minerals (Amendment) Act No. 66 of 2009 (the “Mining Act”) which provides that no person can explore for, mine, transport, process, store, trade in or export any minerals except under the authority of, or otherwise than in accordance with, a licence issued in that behalf by Geological Surveys and Mines Bureau.
Every application for a licence must be made to the Geological Surveys and Mines Bureau in prescribed form and must contain the particulars prescribed by the Bureau. The licence is valid for the period specified therein. A licence will be renewed after the expiration of the period specified in the licence on application made to the Bureau not less than thirty days before the expiry thereof, if the Bureau is satisfied that the licensee has observed the terms and conditions attached to such licence.

Any person who explores for, or mines, processes, stores, transports, trades in or exports, any mineral without a licence is guilty of an offence and will on conviction after summary trial before a Magistrate be liable to a fine not less than Rs. 50,000 and not exceeding Rs. 500,000 and in the case of a second or subsequent offence, to a fine not less than Rs. 150,000 and not exceeding Rs. 2,000,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment. Where a Magistrate convicts any person for an offence for exploring for, or mining, minerals on any land, without a licence in that behalf, he may in addition to any fine or imprisonment, imposed on such person, order such person to restore or rehabilitate such land to the state it was in, prior to the commencement of such exploration or mining operation.

• Construction

In terms of section 38 of the Construction Industry Development Act No.33 of 2014 (the “Construction Act”), every identified construction work must be carried out by a registered contractor. A contractor that fails to obtain a certificate of registration prior to carrying out any identified work will be guilty of an offence.

Identified construction works have been defined in the Construction Act to mean all buildings, structures or landscapes that consist of facilities for public use exceeding a value of ten million rupees and all buildings, structures or landscapes which need approval of environmental, geological, and cultural heritage regulatory bodies.

Therefore any contractor that seeks to engage in construction works of the kind identified above must be registered with the Construction Industry Development Authority (“CIDA”).

The Construction Industry Development (Registration of Contractors) Regulation No. 1 of 2017 made under section 35 of the Construction Act provides the criteria for registration of the contractors. In terms of the said regulation a contractor must be a company registered under the Companies Act No. 07 of 2007 or an entity registered with the Divisional Secretaries under the Business Names Ordinance for the purpose of carrying out the business of construction works and the majority ownership should
be with Sri Lankan nationals. Further a contractor must not be included in the list of suspended or defaulted contractors and must not be legally insolvent or bankrupt.

Contractors are categorized as main construction contractors and specialized construction contractors. The main construction contractors are graded into eleven grades while the different types of specialized construction contractors are graded into five grades. The regulations impose a financial limit for each grade which is the maximum value of projects that can be handled by a contractor of that particular grade.

The contractors are graded on a point system which is set out in the regulations. The points system is based on factors such as financial capacity, technical capacity, machinery and equipment, staff organization, management, safety and health, provision of training and corporate social responsibility.

Any person who contravenes, or fails to comply with, any provision of the Construction Act or any regulation made thereunder is guilty of an offence and will upon conviction after summary trial before a Magistrate, be liable to a fine not exceeding Rs. 100,000 or to imprisonment for a period not exceeding two years or to both such fine and imprisonment. Where an offence is committed by a body of persons, then (a) if that body of persons is a body corporate, every director and officer of that body corporate; or (b) if that body of persons is a firm, every partner of that firm, will be guilty of the offence unless he proves that he exercised all due diligence to prevent the commission of such offence.

- **Livestock**

The Animals Act No. 29 of 1958 as amended provides that all livestock holdings (including poultry) in Sri Lanka should be registered with the respective divisional veterinary offices.

Any person who manages a livestock holding without being registered is liable to a fine not exceeding Rs. 250 or to simple imprisonment for a term not exceeding two months, and for a second or subsequent offence to a fine not exceeding Rs. 1,000 or to simple imprisonment for a term not exceeding six months.

Further the Animal Disease Act No 59 of 1992 provides that any person who uses a premise as an animal clinic, animal house or hatchery must obtain approval and register with the Department of Animal production and Health. With the application for registration the certification from a veterinary certifying that the premise conforms to health standards stipulated by the Department must be submitted. Once the breeder farm is registered it is subjected to annual renewal.
Every person who contravenes or fails to comply with any provision of the Animal Disease Act is guilty of an offence and will on conviction after summary trial before a Magistrate be liable to imprisonment of either description for a term not exceeding six months or to a fine not exceeding Rs. 5,000 or to both such fine and imprisonment. Where an offence has been committed by a body of persons then if that if that body of persons' is a body corporate, every director, manager, secretary or officer of that body corporate; or (b) if that body is a firm, every partner of that firm, will be guilty unless he proves that the offence was committed without his consent or concurrent and that he exercised all due diligence to prevent the commission of such offence.

**Health care**

**Private medical institutions**

The Private Medical Institutions (Registration) Act No 21 of 2006 ("PMI Act") requires all private medical institutions to register itself under the PMI Act in order to be recognized as a private medical institution. The certificate of registration is issued under section 3 of the PMI Act.

The PMI Act further requires private medical institutions to comply with schemes of accreditation that is issued by the Minister of Health from time to time.

A private medical institution is defined in the PMI Act as any institution or establishment used or intended to be used for the reception of, and the providing of medical and nursing care and treatment for persons suffering from any sickness, injury or infirmity, a hospital, nursing home, maternity home, medical laboratory, blood bank, dental surgery, dispensary and surgery, consultation room, and any establishment providing health screening or health promotion service, but does not include a house of observation, mental hospital, hospital, nursing home, dispensary, medical centre or any other premises maintained or controlled by the State, any private dispensary or pharmacy or drug stores exclusively used or intended to be used for dispensing and selling any drug, medical preparation or pharmaceutical product, or any institution or premises registered for any purpose under the provisions of Ayurveda Act, No. 31 of 1961 and the Homeopathy Act, No. 7 of 1970.

The certificate of registration is valid for such period as may be specified in the certificate and application for renewal must be submitted within one month from the date of expiry.

Any person who establishes, maintains or operates a private medical institution without a certificate of registration is guilty of an offence under the PMI Act and will, upon conviction before a Magistrate be liable for, (i) in the case of the first offence, to a fine not exceeding Rs.
10,000, (ii) in the case of second or subsequent offence, to a fine not exceeding Rs. 20,000 and (iii) in the case of continuing offence, to a further fine of Rs. 1,000 for each day on which the commission of the offence continues after conviction or to imprisonment of either description for a term not exceeding 6 months. Where the offence is committed by a body of persons, then (a) if that body is a body corporate, every person who at the time of the commission of such offence was the Director, General Manager, Secretary or other similar executive officer of that body or (b) if that body is not a body corporate, every person who at the time of the commission of the offence was the Chairman, General Manager, Secretary or other similar executive officer of that body; will be deemed to be guilty of that offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of that offence.

In terms of the Sri Lanka Atomic Energy Act No. 40 of 2014 (“SLAE Act”) no person, can conduct a practice involving ionizing radiation except under the authority of a licence issued by Sri Lanka Atomic Energy Regulatory Council (“SLAERC”) for that purpose. Accordingly, a private medical institution which uses radioactive material or equipment for medical purposes (i.e. operation of X-Ray machines, scanners etc.) are required to obtain authorisation in respect of the use thereof in accordance with the above SLAE Act. A licence issued under the SLAE Act is valid for such period as is specified therein and an application for renewal must be made not less than 3 months prior to the date of expiry of the licence.

A person who conducts the above practice or uses any source for the conduct of the above practice without obtaining a licence for that purpose shall commit an offence and be liable on conviction after summary trial before a Magistrate, to a fine not exceeding Rs. 3,000,000 or to an imprisonment for a term not exceeding seven years or to both such fine and imprisonment.

• Manufacture, importation or retail sale of medicine

In terms of the National Medicines Regulatory Authority Act No. 5 of 2015 (“NMRA Act”), no person can manufacture, import, store, assemble, re-pack, distribute, transport or sell any medicine without obtaining a licence for that purpose from the National Medicines Regulatory Authority. Further, any person proposing to manufacture or register any medicine must register such medicine with the National Medicines Regulatory Authority Act.

The licences and registrations under the NMRA Act must be sought by submitting applications therefor and all applications for renewal must be submitted six months prior to the expiry date specified in such licence or certificate of registration.
Every person who contravenes any of the provisions of the NMRA Act or any regulation made thereunder will be guilty of an offence and shall on conviction be liable for the first offence, to a fine not exceeding Rs. 100,000 or to imprisonment for a term not exceeding three months or to both such fine and imprisonment for a second or subsequent offence, to a fine not exceeding Rs. 200,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

- **Tourism**

Section 48 of the Tourism Act No. 38 of 2005 (“Tourism Act”) provides that certain businesses and services operating within the tourist and travel industry may be classified by an order published in the Gazette as Tourist Enterprises and Tourist Services and all such enterprises and services must be registered with the Sri Lanka Tourism Development Authority (“SLTDA”) and should carry on business only under a licence issued by SLTDA.

- **Hotels and guest houses**

The Tourism (Registration and Licensing of Tourist Hotels) Regulations No. 03 of 2016 provides the guidelines for the registration and licensing of tourist hotels. The regulations provide that no person can use any premise to carry on the business of a tourist hotel unless such premise and the person who seeks to carry on the business are registered as a registered tourist hotel and registered proprietor in accordance with the said regulations. Furthermore, it provides that every registered proprietor must for the purpose of carrying on a tourist hotel, within sixty days of registration, apply and obtain a licence from SLTDA. An application for registration must be made to the Director General of SLTDA in the prescribed together with the registrations fees.

Section 50 of the Tourism Act provides that the Minister may categorize the classes of Tourist Enterprises and Tourist Services and prescribe the standards to be maintained.

In this regard the Minister has published regulations cited as the Tourism (Classification of Tourist Hotels) Regulations No. 01 of 2016. The said regulations provide that a hotel registered and licensed by SLTDA will be classified as a star hotel and such hotels must comply with the minimum requirements prescribed for all the categories of tourist hotels by way of regulations. The regulations further provide the minimum and maximum marks required to be obtained by a hotel to qualify for a certain star classification. Thereafter, the regulation prescribes certain mandatory requirements for each star class and further prescribes certain non-mandatory facilities which carry corresponding marks. These marks are computed to determine if a tourist hotel qualifies for a particular star based on the maximum and minimum marks prescribed.
Under the power granted in terms of section 49 of the Tourism Act regulations cited as the Tourism (Code of Conduct of Tourist Hotels) Regulations No. 02 of 2016 have been published which set out guidelines as to the manner in which the business should be carried out.

- **Travel agents and destination management companies**

  In terms of the Tourism Act, no person or entity that carries on business or services that is classified as a “Tourist Enterprise” or “Tourist Service” can carry on business unless such person or entity is registered with the SLTDA in terms of the provisions of the Tourism Act and a licence being issued to such entity for the carrying out of such business or service.

  As per the guidelines issued by the SLTDA in relation to “Tourist Enterprise” or “Tourist Service”, the carrying on of business as a travel agent or destination management company requires registration with the SLTDA under the Tourism Act. Such registration must be sought by submitting and application to the SLTDA.

  A “destination management company” is described in the said guidelines as a professional services company possessing extensive local knowledge, expertise and resources, specializing in the design and implementation of activities, tours, transportation and program logistics related to inbound tourism. No definition has been set out in the law including the tourism laws for the term “travel agent”. However, in the guidelines issued by the SLTDA the term “travel agency” has been described as a retail business, that sells travel related products and services, particularly package tours to customers, on behalf of suppliers, such as airlines, car rentals, cruise lines, hotels, railways, sightseeing tours and tour operators. In addition to dealing with ordinary tourists, most travel agencies have a separate department focused on arranging travel itineraries for business travellers.

  As per the guidelines, an applicant for registration with SLTDA as a travel agent or destination management company must have a capital of at least Rs. 1,000,000/-

Any person who contravenes the provisions of the Tourism Act and regulations issued thereunder (including the carrying on of above businesses without a licence/registration) s guilty of an offence and on conviction after summery trial before a Magistrate be liable to imprisonment not exceeding two years or a fine of not exceeding Rs. 200,000 or both such fine and imprisonment. Where an offence under is committed by a body of persons, then (a) if that body is a body corporate, every person who at the time of the commission of such offence was the Director, General Manager, Secretary or other similar executive officer of that body or (b) if that body is not a body corporate, every person who at the time of the commission of the offence was the Chairman, General Manager, Secretary or other similar executive officer of that body; shall be deemed to be guilty of that offence, unless he proves
that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of that offence.

• Transportation

For purposes of our review of the laws applicable to SMEs that carry on business in the transportation industry, we have only considered transportation of passengers and cargo by land. We have not considered transportation by air given that any companies that engages in such business are unlikely to fall into the SME category. We have also not considered transportation by water given that any companies that transports goods and passengers in ships and vessels by are unlikely to fall into the SME category and it appears carriage of passengers and goods by inland water are currently carried out only by hotels and other tourism services as part of their business in the tourism industry. We have also considered shipping agents and freight forwarders, under this category of transportation.

• Transportation of passengers by land

The National Transport Commission Act No. 37 of 1991 as amended (“NTC Act”) regulates the omnibus service in Sri Lanka while the Motor Traffic Act No. 14 of 1951 as amended (“MTA”) is the key legislation on transport law in Sri Lanka. In terms of the MTA, the Minister in charge of the subject of transport is authorized to make regulations for all matters which may be prescribed by the Minister under the MTA.

The NTC Act established the National Transport Commission (“NTC”) which is the main authority on omnibuses.

The regulation of road passenger carriage services and the carriage of goods by motor vehicles is a concurrent subject in terms of the Constitution of Sri Lanka, which in effect means that the provincial councils are empowered to enact regulations in relation to road passenger carriage services for their respective provinces.

These provincial statutes empower a provincial transport authority set up under the statute to make rules, regulations, orders and directions in terms of the statute.

• Motor Coach

A motor coach is defined as a motor vehicle, not being a motor ambulance or motor hearse, having a seating capacity of more than thirty three persons (including the driver) and their effects and includes a trailer so constructed or adapted which does not exceed seven hundred and fifty kilograms.
In terms of the MTA, all vehicles in possession of any person or any vehicle used by a person must be registered and the person who possesses or uses the vehicle must be registered as the owner of the vehicle and with regard to motor coaches, the MTA provides that the only instance where a motor coach can be registered is where the person in possession of the motor coach has a passenger service permit granted under the NTC Act or any other written law.

The NCT Act provides that no person can use an omnibus for the carriage of passengers at a fare except under the authority of a passenger service permit granted by the NTC. A passenger service permit so granted entitles the holder thereof to use the omnibus for the carriage of passengers on such route and routes as are specified in such permit, in accordance with the conditions attached thereto.

Therefore, where a person wishes to register a motor coach and use the said motor coach as an omnibus in the carriage of passengers at a fare, a passenger service permit must be obtained from the NTC.

The NTC Act provides that an application for the permit can only be made by the registered owner of an omnibus and should specify the particulars of the route or routes on which it is proposed to use the omnibus.

The NTC has the power to grant or reject the application for the permit depending on the omnibus capacity for the route i.e. depending on whether the grant will lead to over allocation for the particular route. Permits so granted are not transferable.

In addition to the power of the NTC Act to grant passenger service permits, the provincial councils are also empowered to issue permits pertaining to the respective province given that the subject of road passenger carriage services is a devolved subject as explained above.

With regard to the Western Province, the Western Province Provincial Road Passenger Carriage Service Statute No. 1 of 1992 as amended (“Statute”) requires an omnibus or any authorized vehicle engaged in the regular passenger carriage service within the Western Province to obtain a valid passenger service permit. The statute and the regulations made thereunder provides that the aforementioned requirement does not apply to omnibuses that operate under the authority if a permit issued by the NTC.
A permit under the Statute can be obtained only by a registered owner of an omnibus and is not transferable. Such a permit is valid only for a period of 12 months.

- **Motor Car and Light Motor Coaches**
  
  A Motor car is defined as a motor vehicle, not being a motor cycle, motor tricycle, motor ambulance, motor hearse or invalid carriage, which is constructed or adapted for the carriage of not more than nine persons (including the driver). A light motor coach is defined as a motor vehicle, not being a motor ambulance or motor hearse, having a seating capacity of ten or more persons and less than thirty four persons including the driver's seat and their effects and includes a trailer so constructed or adapted which the authorized tare weight does not exceed seven hundred and fifty kilograms.

The MTA does not provide for any specific permits/licenses in relation to motor cars and light motor coaches that engage in the pickup of passengers from fixed stops en route for a fare. However, it is noted that the 2003 amendment to the Statute, provides that an omnibus or any authorized vehicle cannot engage in the regular passenger carriage service within the Western Province without a valid passenger service permit. Any authorized vehicle is defined in the amendment as any vehicle used in the regular carriage of persons within the province for a fare or reward.

The Passenger Carriage Services Regulations using Three Wheelers and Taxis (Cabs) issued under the authority of the Statute recognizes taxi (cabs) as authorized vehicles that require a passenger service permit. The regulation allows a company occupying cabs for passenger transport services which does not belong to the company to apply for a passenger service permit provided legal documents are furnished certifying that the owner of the cab is transferring the vehicle to the company for passenger transport service.

Therefore, if a motor car or light motor coach is used to pick-up and drop passengers en-route on a regular basis in the Western Province, a permit is required. Furthermore, a driver of a cab used for passenger transport service under a permit must register himself with the Western Province Provincial Road Transport Authority.

Any person who acts in contravention of any of the provisions of the NTC Act or any regulation made thereunder, is guilty of an offence and will on conviction after summary trial before a Magistrate be liable to a fine not exceeding Rs. 200,000 or to imprisonment for a period not exceeding ten years.

- **Transportation of cargo by land**
The MTA and regulations made thereunder regulate the carriage of goods by motor vehicles.

Section 122 of the MTA classifies the vehicles for the purpose of issuing driving licence and according to the said provision, heavy motor lorry is defined as combination of motor lorry and trailer(s) including articulated vehicles and its trailer(s) of which maximum authorized tare of the trailer exceeds 750kg and gross vehicle weight exceeds 3500kg. Therefore the vehicles used for cargo transportation fall within the heavy motor lorry category.

In terms of the MTA, the Minister of Transportation (the “Minister”) has the authority to make regulations to prohibit, restrict or control the use of motor vehicles generally or any specified class.

Furthermore, section 19 (s) provides that the Minister is authorized to regulate the transport of chemicals, hazardous waste, petroleum products, gas or other dangerous goods.

Accordingly, an SME that wishes to carry on business related to transportation of cargo may require specific licences and permits to transport cargo depending on the nature of the cargo and other than that, such SME does not require any general licence to carry on the business of transportation of cargo.

• **Shipping agents and freight forwarders**

  In terms of section 3 of the Licensing of Shipping Agents, Freight Forwarders, Non Vessel Operating Common Carriers, and Container Operators Act No. 10 of 1972 (the “Shipping Agents Act”) no person can carry on business as shipping agent except under the authority, or otherwise than in accordance with the terms or conditions, of a licence issued under the Shipping Agents Act.

  The term “shipping agents” has been defined in the Shipping Agents Act to mean any individual, firm or company engaged in the husbanding of ships and provision of services to shipping in Sri Lanka on behalf of owners, principals, charterers and masters, and includes:

  • arrangement for provision of 'port services' through the Sri Lanka Ports Authority, Customs and other Government or semi-Government institutions, firms or private individuals;
  • attending to and compliance with the requirements stipulated for shipping by these and other bodies;
• making arrangements for the provision of all other services to shipping through any other organization, firm or private individual including crew matters, ships' stores and supplies, ship repairing and servicing; and
• arrangements connected with cargo loading and unloading, cargo documentation, cargo procurement and disposal, and financial and other or allied matters connected with all the above-mentioned services to shipping.

The person applying for the licence as a shipping agent must specify the owner, principal, charterer or master, as the case may be, on behalf of whom he intends to carry on such business as shipping agent. Such licence is valid for a period of 12 months and must be renewed prior to the expiry.

The Shipping Agents Act also regulates freight forwarders. A freight forwarder within the meaning of the Shipping Agents Act is a person who is engaged in the business of international freight forwarding which includes undertaking the carriage or the procurement of the carriage by air, sea, or land and the provision of other services connected with such carriage, but does not include any services provided by a person for the carriage of goods or services provided solely as the agent of an airline or ship owner or charterer of a ship.

Regulations which are cited as the Freight Forwarders and Non Vessel Operating Common Carriers (Licensing) Regulations, 2014 was published by the Minister in charge of the subject under section 10 read with section 3 of the Shipping Agents Act.

In terms of the aforementioned regulations a company is required to obtain a licence from the Director General of Merchant Shipping (“Director General”) to carry on the business of a freight forwarder or a non vessel operating common carrier and no company is eligible for a licence to carry on the business of a freight forwarder or non-vessel operating common carrier unless it is a limited liability public or private company incorporated in Sri Lanka in which a majority of directors are citizens of Sri Lanka and not less than 60% of the issued shares carrying voting rights are held by citizens of Sri Lanka.

Furthermore in terms of the said regulation there are two classes of licenses, namely, Class A and Class B. A freight forwarder that furnishes a document of carriage or a forwards cargo receipt or provides all other connected services with respect to international carriage of goods, including total logistical services, is issued a “Class A” category licence while a freight forwarder carrying on freight and transport related services excluding the issuance of documents of carriage for international freight transportation such as Bill of Lading, House Bill of Lading, Seaway Bill, Airway Bill, House Airway Bill, Multi Modal Transport Documents Forwarders Cargo Documents, is issued a “Class B” Category license.

In order to obtain a “Class A” category licence the following conditions must be fulfilled:

• a bank guarantee to the value of Rs. 500,000 should be provided in favour of the Director-General;
• a staff officer who has a minimum of five years’ experience in the field of international transportation services should be employed on the staff;
• the applicant should be registered as a freight forwarder with the Central Bank of Sri Lanka;
the applicant should possess a forwarders “all risk liability” insurance cover for a minimum of USD 100,000 and minimum cover of USD 50,000 for errors and omissions, from an insurance company recognized by the Director-General;

there should be in its permanent staff a minimum of two persons who have completed professional training and are holding valid certification in cargo handling, by air or sea, including handling of dangerous cargo from a recognized Institute;

the “Standard Trading Conditions” as accepted by insurance companies in Sri Lanka for the issuance of Liability Insurance Covers or the issuance of International Federation of Freight Forwarders Association Bills of Lading, specified by the Director-General should be complied with.

In order to obtain a “Class B” category licence the following conditions must be fulfilled:

• a bank guarantee for Rs. 250,000 should be provided in favour of the Director-General;
• the applicant should be registered as a freight forwarder with the Central Bank of Sri Lanka;
• the “Standard Trading Conditions” as accepted by insurance companies in Sri Lanka for issuance of liability insurance covers or the issuance of International Federation of Freight Forwarders Association Bills of Lading as specified by the Director-General.

Any person who acts in contravention of any of the provisions of the Shipping Agents Act or any regulation made thereunder, will be guilty of an offence and on conviction after summary trial before a Magistrate, be liable to a fine not exceeding Rs. 5,000 or to imprisonment of either description for a period not exceeding one year, or to both such fine and imprisonment. Where an offence is committed by a body of persons, then, (a) if that body of persons is a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of that body corporate; or (b) if that body of persons is a firm, every person who at the time of the commission of the offence was a partner of that firm, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and in all the circumstances.

Printing Industry

In terms of the Printing Presses Ordinance No. 16 of 1902 any person who keeps in his possession any press for the printing of books or papers must make a declaration prescribed in law before a Magistrate specifying his name and a true and precise description where the place is situated. Upon the making of such declaration, the Magistrate must forward the same for registration to the Director of the Department of National Archives. A new declaration is necessary when there is a change in the location of the press.

Any person who keeps in his possession any such press without making such a declaration will be guilty of an offence, and will be liable on conviction thereof to a fine not exceeding Rs. 1,000, or to imprisonment of either description for a term not exceeding six months or to both such punishments. For this purpose, the occupier of any premises in which any such press is found will be deemed to have kept the same in his possession, unless he proves the contrary.

In terms of Printers and Publishers Ordinance No. 1 of 1885, every printer or publisher must forward to the Director of the Department of National Archives, five printed or lithographed copies of the
whole of every book printed or lithographed in Sri Lanka, for registration. Any person who
contravenes this requirement is found guilty of an offence and will, on conviction, be liable to a fine
not exceeding Rs. 2,500 notwithstanding that such fine may exceed the amount of the fine which the
court may in the exercise of its ordinary jurisdiction impose.

There are no other licensing or registration requirement for persons operating printing presses.

• **Foundry Industry**

There are no specific laws that govern the foundry industry and accordingly an SME that wishes to
carry on business in foundry industry does not require any licence to specifically carry on such
business.

• **Coconut and coir industry**

The Coconut Development Act No. 46 of 1971 as amended (the “Coconut Development Act”) and the
Coconut Product Ordinance No. 13 of 1935 (the “Coconut Product Ordinance”) are the main
legislations that regulate and govern the coconut industry.

The one of the main objectives of the Coconut Development Act was to establish the Coconut
Development Authority (“CDA”) and the Coconut Development Board (which, we understand, is
currently inactive and the powers of thereof are vested with the CDA at the present.). In terms of the
Coconut Development Act and the Gazette No. 15009/01 of 1972, the coconut plantations and
proprietors of such plantations, millers and other manufacturers of coconut products, auctioneers and
brokers engaged in the purchase and sale of coconut product and dealers in and shippers of coconut
products must be registered with and licensed by the CDA. Every application for a licence must be
made to the CDA in prescribed form and containing the prescribed particulars. The licence is valid for
the period specified therein.

The Coconut Products Ordinance which defines the Coconut Products as coconuts, copra, desiccated
cocnut, coconut oil, coconut poonac, and charcoal made from coconut shells, makes provisions for
regulating the marketing of coconut product industry. It also provides that no coconut products shall be
offered or put up for sale at a sales room except through a registered auctioneer.

In terms of Coconut Fibre Regulations No. 2 of 1971 issued under the Coconut Fibre Act No. 17 of
1967 and the Coconut Development Regulations No. 1 issued under the Coconut Development Act, no
person can carry on the business of a “miller” (manufacturer of coconut fibre) unless he has been
registered by the Coconut Processing Board (which operates subject to the control of the CDA).
Further, no person can carry on the business of a dealer of coconut fibre unless he is registered with the Coconut Marketing Board (which also operated subject to the control of the CDA).

The Coconut Development Regulations provide that (i) registration as manufacturer of coconut fibre is not necessary, if the daily average business calculated on the basis of transactions entered into by such person in a period of 6 months prior to the date of registration is less than 100 weight (equivalent to 112 Pounds of coconut fibre) and (ii) registration as dealer of coconut fibre is not necessary, if the daily average business calculated on the basis of transactions entered into by such person in a period of 6 months prior to the date of registration is less than 100 weight (equivalent to 112 Pounds of coconut fibre).

Any person who contravenes the aforementioned provisions in the Coconut Development Act is guilty of an offence and will, on conviction after summary trial before a Magistrate, be liable to imprisonment of either description for a period not exceeding six months, or to a fine not exceeding Rs. 1,000 or to both such imprisonment and fine.

Any person who contravenes the aforementioned provisions in the Coconut Fibre Act and regulations issued thereunder is guilty of an offence and will, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding Rs. 1,000 or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.

- Deep sea fishing and related industries

Section 6 of the Fisheries and Aquatic Resource Act No 2 of 1996 (the “Fisheries Act”) provides that no person can engage in, or cause any other person to engage in, any prescribed fishing operation in Sri Lanka waters except under the authority, and otherwise than to accordance with the terms and conditions, of a licence issued by the Director of Fisheries and Aquatic Resources (“Director of Fisheries”). A licence so granted is valid for a period of 12 months.

Regulations have been published setting out the criteria to obtain the licence under Gazette No. 109 dated 3rd October 1980, No. 1055/13 dated 26th November 1998, and No. 948/24 dated 7th November 1996 which provides that an application in the form prescribed together with a certificate of insurance, certificate of seaworthiness and the prescribed fee must be forwarded to the Director of Fisheries.
The regulations also stipulate the manner in which the registration numbers are assigned together with the code demarcating the area and the placement of the name board on the boat.

Any person who contravenes or fails to comply with the abovementioned requirements is guilty of an offence and will on conviction after summary trial before a Magistrate, be liable to a fine not exceeding Rs. 25,000.

- **Natural Rubber and Rubber Products**

The principal legislation for Rubber Industry is Rubber Control Act No. 11 of 1956 as amended (the “Rubber Control Act”). The Rubber Control Act makes provisions for licensing and issuing permits for conducting of activities related to the rubber industry.

The Rubber Control Act provides that any person who plants or replants rubber on any land or plant rubber for the purposes of a nursery should do so under the authority of a permit issued by the Rubber Controller. Every application for a permit should be in the prescribed form. Upon the payment of prescribed fee the Controller has the power to issue, or to refuse to issue, a permit or has the power to issue a permit to plant or replant rubber on only a portion of the land to which the application for the permit relates.

Sections 10, 11 and 12 of the Rubber Control Act provides that only licensed dealers can possess, sell or purchase the rubber exceeding the prescribed quantity subject to conditions set out in the Rubber Control Act. In addition, such licensed dealer should take the delivery of rubber only from licensed premises, should make the delivery only to licensed premises and should store only in licensed premises in terms of section 18. Every application for such licence must be in prescribed form and shall be made to the Controller and is valid for the period specified therein.

Furthermore, section 19 of the Rubber Control Act authorizes the Controller to issue a licence to any person manufacturing, or to any body of persons carrying on in partnership the business of manufacturing, any articles made wholly or partly of rubber, authorizing the purchase of rubber required for the manufacture of such articles subjected to conditions set out in the Rubber Control Act. Every manufacturer's licence should be in the prescribed form and unless it ceases to be in force earlier, will be in force during the period specified in it or, if no such period is so specified, until it is revoked by the Controller.
Section 23 of the Rubber Control Act also provides that, except under the authority of a permit issued by the Controller and except in accordance with such conditions as may be prescribed, no person can export from Sri Lanka to any other country any seed, root, stump, or bud of any rubber plant, or any such cutting from any living portion of any rubber plant as may be capable of being used for propagation. Every application for an export permit should be in the prescribed form and should be made to the Controller. The Controller may refuse to issue and may revoke an export permit. Every export licence unless it ceases to be in force earlier, will be in force during the period specified in it or, if no such period is so specified, until it is revoked by the Controller.

Any person who contravenes or fails to comply with the abovementioned requirements is guilty of an offence and will, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding Rs. 1,000 or to imprisonment of either description for a period not exceeding six months, or to both such fine and imprisonment.

- **Gems and Jewellery**

The legislation that makes provision for licensing of the gem industry is the National Gem and Jewellery Authority Act, No. 50 of 1993 (the “Gem Act”).

Section 15 of the Gem Act provides that no person can carry on the gem industry except under the authority of a licence issued by the National Gem and Jewellery Authority (the “Authority”) whether such industry is, or is proposed to be, carried on in or over any State or private land. Such licence is non-transferable and valid for a period of 12 months.

In terms of the Gem Act, “gem industry” is defined as any trade or business of all or any of the following classes or descriptions:

- mining for gems or gemming;
- importing gems into or exporting gems from Sri Lanka;
- selling, purchasing or supplying gems;
- valuing gems;
- cutting, polishing, engraving or carving gems;
- heat treatment of gems and any other method of enhancing the value of gems;
- examination and certification of gems and assaying of precious metal; and
- lapidary training.

There are no Gazette Notification published in relation to the licence fees and the procedure for licensing.
Further a licence obtained under the Mining Act does not authorize a person to mine for gems which specifically requires a licence in terms of the Gem Act.

Section 16 of the Gem Act also provides that no person can export any gems from Sri Lanka except with the approval of the Authority.

Section 17 makes provision requiring a licence to be obtained from the Authority to carry on the jewellery business in any premises and requiring registration of any premise where a jewellery industry is being carried on.

Jewellery industry is defined as any trade or business relating to the assaying of precious metals or the manufacture of ornaments from precious metals or precious stones, for personal adornment, or the export of such ornaments.

Any person who contravenes or fails to comply with the abovementioned requirements is guilty of an offence and will, on conviction after trial before a Magistrate, be liable to a fine not exceeding Rs. 1,000,000 or to imprisonment for a period not exceeding five years or to both such fine and imprisonment. Where an offence is committed by a body of persons, then, (a) if that body of persons is a body corporate, if that body of persons is a body corporate every director or officer of that body corporate; or (b) if that body of persons is a firm, every person who at the time of the commission of the offence was a partner of that firm, will be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions and in all the circumstances.

- **Tea industry**

Tea Control Act No. 39 of 1974 (the “Tea Control Act”) regulates and governs the tea industry. The Tea Control Act authorizes the Tea Controller to register the estates, small holdings and tea manufacturers under the Tea Control Act.
Section 9 of the Tea Control Act provides that no person can manufacture made tea except in a registered factory. Further, any person who plants or replants tea on any land or plant tea for the purposes of a nursery should carry out such planting or replanting under the authority of a permit issued by the Controller in accordance with such conditions as may be prescribed. Every application for a permit should be in the prescribed form and should be made to the Controller. Upon the payment of prescribed fee the Controller has the power to issue, or to refuse to issue, a permit or has the power to issue a permit to plant or replant tea on only a portion of the land to which the application for the permit relates.

In terms of the section 15 of the Tea Control Act, only a licensed dealer in made tea or green leaf tea or a registered manufacturer, or a registered proprietor of an estate or small holding or a person duly authorized in writing to act on behalf of such licensed dealer or registered manufacturer can possess any quantity of made tea in excess of the prescribed quantity or any quantity of green leaf tea. Section 16 provides that, only a licensed dealer in made tea or green leaf tea or a registered manufacturer, or a registered proprietor of an estate or small holding or a person duly authorized in writing to act on behalf of such licensed dealer or registered manufacturer can sell or deliver any quantity of made tea exceeding the prescribed quantity or any quantity of green leaf tea to any other person and only such person can purchase or take delivery of any quantity of made tea in excess of the prescribed quantity or any quantity of green leaf tea from any other person. Furthermore, the Tea Control Act provides that only such person can transport or cause to be transported from one place to another any quantity of made tea in excess of the prescribed quantity or any quantity of green leaf tea. Every application for a licence should be in prescribed form and the licence will be valid for a period specified therein.

The Tea Control Act also provides that except under the authority of a permit issued by the Controller, and except in accordance with such conditions as may be prescribed, no person can export from Sri Lanka any seed, root, stump, or bud of any tea plant, or any such cutting from any living portion of any tea plant as may be capable of being used for propagation. Every export licence should be in the prescribed form, and unless it ceases to be in force earlier, will be in force during the period specified in it or, if no such period is so specified, until it is revoked by the Controller.

Any person who contravenes or fails to comply with the abovementioned requirements is guilty of an offence, and will, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding Rs. 50,000 or to imprisonment of either description for a period not exceeding one year, or to both such fine and imprisonment. Upon the conviction of any person for an offence, the Magistrate may, in addition to any punishment which he may impose (a) where the offence is a contravention of section 15 and section 16 the Tea Control Act, order that the made tea or green tea leaf in respect of which the offence was committed, be forfeited to the State.
• **Trading**

In terms of the Consumer Affairs Authority Act No. 9 of 2003 (the “CAA Act”) every trader must register with the Consumer Affairs Authority. The term “trader” is defined in the CAA Act to mean any person who,

- sells or supplies goods wholesale to other persons;
- sells or supplies goods at retail rates to consumers;
- imports goods for the purpose of sale or supply;
- provides services for a consideration.

Further, traders who carry on certain trading activities (for example, sale of food for human consumption, trade of a butcher etc.) require trade licenses from local authorities (i.e. Municipal Councils, Urban Councils or Pradeshiya Sabhas) constituted for the area in which the business is carried out.

Each local authority has been given the power and the authority by the relevant laws to determine and prescribe, through by-laws passed by such local authorities, the specific trades for which trade licenses are required. However, the carrying on of particular trade, which may require a trade licence within the administrative limits of a particular local authority, may not be considered as a trade that requires a trade licence within the administrative limits of some other local authority.

A trader that engages in the liquor business will require a licence from the Divisional Secretary of the Divisional Secretary's Division in which the business is carried out.

The specific licenses and registrations to be obtained by a trader who trades or deals in products that fall within the ambit of the industries identified by us in this Annexure are specifically identified in our commentary above on such industries.

We have set out below, a summary of the all of the licences, approvals, permits and registrations referred to above, including details of the costs associated, the time taken for issuance and the application form to be submitted to the issuing authority.

<table>
<thead>
<tr>
<th>Ref</th>
<th>Institution</th>
<th>Licence/Permit/Approval/Registration</th>
<th>Cost</th>
<th>Time</th>
<th>Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Department of Agriculture</td>
<td>Seed handler licence</td>
<td>The cost of a licence depends on the crop as follows: Paddy – Rs. 400; Other field crops – Rs. 400; Vegetables – 400; and Potato – Rs. 800.</td>
<td>Generally, it will take 14 days to grant a licence.</td>
<td>Application forms for licence can be obtained from the office of seed certification service of the Department of Agriculture or can be downloaded from the website: <a href="http://www.doa.gov.lk">http://www.doa.gov.lk</a></td>
</tr>
<tr>
<td>1</td>
<td>Department of agriculture</td>
<td>Plant importation permit</td>
<td>Under the regulation 163 made under the plant protection act Rs. 1000 per permit.</td>
<td>It will take approximately 3 weeks to get a permit</td>
<td>Application forms for permit can be obtained from the National Plant Quarantine Service or can be downloaded from the website: <a href="http://www.doa.gov.lk">http://www.doa.gov.lk</a></td>
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<tr>
<td>1</td>
<td>Registrar of Pesticides</td>
<td>Registration of Pesticides</td>
<td>Registration and re-registration fee is Rs. 4,000</td>
<td>It will take approximately 24 weeks for a new pesticides to be registered. After 3 years, evaluation and re-registration should be carried out. For re-registration, it will take approximately 2 weeks.</td>
<td>Application forms for the registration of pesticides can be obtained from the office of the Registrar of Pesticides or can be downloaded from the website : <a href="http://www.doa.gov.lk">http://www.doa.gov.lk</a></td>
</tr>
<tr>
<td>2. 1</td>
<td>Relevant local authority</td>
<td>Trade licence</td>
<td>Licence fee depends on the Depends on the local authority. For example, in Colombo Municipal council it is calculated based on the annual value of the premises. It will vary from Rs. 250 to 5000</td>
<td>The licence can be obtained within 25 days after submission of the duly completed application form.</td>
<td>Application form is available at the relevant local authority</td>
</tr>
<tr>
<td>2. 3</td>
<td>Licence to manufacture, import, sell, offer for sale, deal in, transfer, hire, lease, demonstrate, maintain or Telecommunication regulatory commission</td>
<td>Licence fee will depend on the number of factories or trading outlets. Generally, the licence fee is Rs. 2,500 – Rs. 5,000 per factory/</td>
<td>The time taken to issue a licence will depend on the inspection procedure carried out by the Telecommunic</td>
<td>Application forms can be obtained from the Telecommunication Regulatory Commission and can also be downloaded from <a href="http://www.trc.gov.lk/">http://www.trc.gov.lk/</a>.</td>
<td></td>
</tr>
</tbody>
</table>
|   | Mining licence | Geological Surveys and Mines Bureau | The Geological Surveys and Mines Bureau issues two types of licences: Artisans’ licence which could be obtained for Rs. 9,500 – Rs. 4,000 and Industrial Licence where the fees vary from Rs. 10,000 – Rs. 35,000 | The time taken to issue a mining licence depends on the inspection procedure carried out by the Geological Surveys and Mines Bureau and will also depend on time taken to obtain recommendations from the following institutions:

- Central Environmental Authority (CEA)
- Department of Forest Conservation
- Department of Archaeology
- Department of Wildlife Conservation
- Urban Development Authority
- National Building Research Organization
- Water Resource

<p>|   | Application forms can be obtained from the Geological Surveys and Mines Bureau and can also be downloaded from The website <a href="http://www.gsmb.gov.lk">http://www.gsmb.gov.lk</a> |   |   |</p>
<table>
<thead>
<tr>
<th></th>
<th>License Type</th>
<th>Issuing Authority</th>
<th>Details</th>
<th>Application Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Licencing of contractors</td>
<td>Construction Industry Development Authority</td>
<td>Licencing fee will depend on the main categories of contractors; main contractors and specialist contractors and also depends on the difference grades given to contractors. Therefore, the fee is between Rs. 500,000 (for a highest grade main contractor) and Rs. 6,000.</td>
<td>The time taken to issue a licence is 1 to 2 weeks. Application forms can be obtained from the Construction Industry Development Authority and can also be downloaded from The website <a href="http://www.cida.gov.lk/">http://www.cida.gov.lk/</a></td>
</tr>
<tr>
<td>5</td>
<td>Department of Animal production and Health</td>
<td>Licencing fee is Rs. 2,500</td>
<td>It is take approximately 3 months for the licencing process to complete.</td>
<td>Application forms can be obtained from the Department of Animal Production and Health and can also be downloaded from the website: <a href="http://www.daph.gov.lk/">http://www.daph.gov.lk/</a></td>
</tr>
<tr>
<td>6.1</td>
<td>Private Health Services Regulatory Council</td>
<td>Registration of a private medical institution</td>
<td>The fees are published under the Gazette notification No. 1489/18 dated 22nd March 2007.</td>
<td>The registration process will take approximately one month. Application forms can be obtained from the Private Health Services Regulatory Council and can also be downloaded from the website: <a href="http://www.phsrc.lk/">http://www.phsrc.lk/</a></td>
</tr>
<tr>
<td>6.1</td>
<td>Sri Lanka Atomic</td>
<td>Licence to operations of X-Ray machines,</td>
<td>The fees depends on the type of X-ray machine</td>
<td>The registration process will</td>
</tr>
<tr>
<td><strong>Energy Regulatory Council</strong></td>
<td>scanners</td>
<td>X-ray machines and scanners and it will vary from Rs. 11,550 (for a dental x-ray machine) to Rs. 18250 (for a commercial x-ray unit)</td>
<td>take approximately 1 month and will take longer if the facility in which the x-ray machine be fixed is located outside Colombo district</td>
<td>Lanka Atomic Energy Regulatory Council and can also be downloaded from the website: <a href="http://www.aerc.gov.lk/">http://www.aerc.gov.lk/</a></td>
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<tr>
<td><strong>6.2</strong></td>
<td>National Medicines Regulatory Authority</td>
<td>Licences to manufacture, import, store, assemble, re-pack, distribute, transport or sell any medicine</td>
<td>The fees are published under the Gazette notification No. 2023/30 dated 14th June 2017.</td>
<td>The registration of a drug will take approximately 6 months to 1 year subject evaluation process carried out by the National Medicines Regulatory Authority. Licence to wholesale/retail sale of drugs will approximately take 2 months.</td>
</tr>
<tr>
<td><strong>7.1</strong></td>
<td>Sri Lanka Tourism Development Authority</td>
<td>Registration of hotels and guest houses</td>
<td>The fees depend on the various categories of the tourist hotels and the number of rooms. The licence fee ranges from Rs. 28,152 for a C grade guest house to Rs. 58,650 for a hotel with 50</td>
<td>Once online application is submitted, it will take approximately 1 months for the inspection process to finish.</td>
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<tr>
<td></td>
<td>Organization/Authority</td>
<td>Service/Permit</td>
<td>Fee Details</td>
<td>Processing Time</td>
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</tr>
<tr>
<td>7.2</td>
<td>Sri Lanka Tourism Development Authority</td>
<td>Travel agents and destination management companies registration</td>
<td>Total fee for obtaining licence is Rs. 43,988 payable in two instalments.</td>
<td>Once online application is submitted, it will take approximately 1 months for the inspection process to finish.</td>
</tr>
<tr>
<td>8.1(i)</td>
<td>National Transport Commission</td>
<td>Passenger Transport Services Permits</td>
<td>The permit is issued by a tender process where the permit is going to the highest bidder.</td>
<td>Call for tender will be published on newspapers.</td>
</tr>
<tr>
<td></td>
<td>Western Province Provincial Road Transport Authority</td>
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</tr>
<tr>
<td>8.3</td>
<td>Merchant Shipping Secretariat</td>
<td>Shipping agent licence</td>
<td>The annual fee payable for a license with up to 10 principals is Rs.35,000 and, in addition, Rs. 500 for the inclusion of each additional principal.</td>
<td>Obtaining licence will take approximately two weeks</td>
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<tr>
<td></td>
<td>Merchant Shipping Secretariat</td>
<td>freight forwarders licence</td>
<td>The annual fee payable for a license is Rs. 10,000 and the stamp fee payable for a license is Rs. 1,000</td>
<td>Obtaining licence will take approximately 2 days</td>
</tr>
<tr>
<td>11</td>
<td>Coconut</td>
<td>Registration as a</td>
<td>The fee for</td>
<td>Depends on the</td>
</tr>
<tr>
<td>Developer Authority - Processing Development Division</td>
<td>Manufacturer/Processor</td>
<td>licence depends on product manufactured. The licence fee is from Rs. 586.50 to Rs. 17595</td>
<td>product manufactured or processed. Licence will take approximately 1 to 3 weeks.</td>
<td>be submitted via the website: <a href="http://www.cda.lk/">http://www.cda.lk/</a></td>
</tr>
<tr>
<td>Coconut Development Authority - Marketing Development &amp; Research Division</td>
<td>Registration as an exporter</td>
<td>The licence fee depends on the type of the product exported. The fee varies from Rs. 5,000 to Rs. 500,000</td>
<td>Depends on the product exported. Licence will take approximately 1 to 3 weeks.</td>
<td>Application forms can be obtained from the Coconut Development Authority and can also be downloaded from the website: <a href="http://www.cda.lk">http://www.cda.lk</a></td>
</tr>
<tr>
<td>12 Director of Fisheries and Aquatic Resources</td>
<td>Licence for fishing in high seas</td>
<td>The licence fee depends on the length of the fishing vessel. As per Schedule III of High Seas Fishing Regulation No. 1 of 2014 published in the Gazette Extraordinary No. 1878/12 dated 1st September 2014, the prescribed fee is as follows: For boats more than 24 meters: Rs. 500,000 15 – 24 meters: Rs. 50,000 10.3 – 15 meters: Rs. 5,000 (only boats over 10.3 meters are permitted for high sea fishing licence)</td>
<td>The licencing process will take approximately 2 weeks</td>
<td>The relevant application form is provided in the High Seas Fishing Regulation No. 1 of 2014 published in the Gazette Extraordinary No. 1878/12 dated 1st September 2014.</td>
</tr>
<tr>
<td>No.</td>
<td>Authority</td>
<td>Licence Type</td>
<td>Details</td>
<td>Application Forms</td>
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<tr>
<td>13</td>
<td>Rubber Development Authority</td>
<td>Rubber plant nursery licence</td>
<td>Licence of a rubber plant nursery is done free of charge</td>
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<td>Licence procedure will take maximum 4 weeks – subject to inspection of the premises by an officer Rubber Development Authority</td>
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<td>Application forms can be obtained from the Rubber Development Authority and can also be downloaded from the website: <a href="http://www.rubberdev.gov.lk/">http://www.rubberdev.gov.lk/</a></td>
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<tr>
<td></td>
<td></td>
<td>Licence to sell rubber products</td>
<td>Licence will cost Rs. 100</td>
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<td></td>
<td></td>
<td>Licence to manufacture rubber products</td>
<td>Licence will cost Rs. 100</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td>Licence to export</td>
<td>Licence will take Rs. 1000 and an additional Rs. 100 stamp fee will be applicable</td>
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<td>Licence procedure will take 1 week</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Gem and Jewellery Authority</td>
<td>Gem mining licence</td>
<td>The licence fee is Rs. 5,000 (exclusive of applicable taxes)</td>
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<td>The time period for mining licence depends on the inspection process.</td>
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<td>Gem Export licence</td>
<td>There is no specific licence for gem exports. The licence to trade gems is applicable.</td>
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<td>Gem dealers licence</td>
<td>The licence fee depends on the maximum value</td>
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<td>It will take approximately 1 week to</td>
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<td>Application forms can be obtained from the Gem and Jewellery Authority</td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Authority</td>
<td>Licence Type</td>
<td>Licence Fee</td>
<td>Time to Obtain</td>
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<tr>
<td>15</td>
<td>Sri Lanka Tea Board</td>
<td>Tea factory registration</td>
<td>Licence fee for registration of a factory is Rs. 10,000</td>
<td>It will take approximately 1-2 weeks to obtain the licence</td>
</tr>
<tr>
<td>16</td>
<td>Consumer affairs authority</td>
<td>Trade licence</td>
<td>Trade licence is not currently implemented.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Relevant local</td>
<td>Trade licence</td>
<td>Licence fee</td>
<td>The licence can be obtained.</td>
</tr>
<tr>
<td>Authority</td>
<td>Fee Calculation</td>
<td>Time To Obtain Licence</td>
<td>Application Details</td>
<td></td>
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<td>---------------------------------</td>
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<tr>
<td>Local Authority</td>
<td>Depends on the local authority. For example, in Colombo Municipal council it is calculated based on the annual value of the premises. It will vary from Rs. 250 to 5000.</td>
<td>Be obtained within 25 days after submission of the duly completed application form.</td>
<td>Available at the relevant local authority.</td>
<td></td>
</tr>
<tr>
<td>Divisional Secretary</td>
<td>Licence fee is prescribed by the Excise Notification No. 1004 published in the Gazette Extraordinary No. 2049/4 dated 11th December 2017.</td>
<td>The time to obtain liquor licence will depend on the inspection and approval process that has to be completed.</td>
<td>The specimen application for liquor licence is prescribed by Excise Notification No. 902 published in the Gazette Extraordinary No. 1544/17 dated 10th April 2008.</td>
<td></td>
</tr>
<tr>
<td>Urban Development Authority</td>
<td>The fee for a development permit depends on the floor area of the proposed development. A fee calculator is provided in the Urban Development Authority website <a href="http://www.uda.gov.lk/">http://www.uda.gov.lk/</a></td>
<td>The time taken to issue a development permit depends on the location of the premises. If the premises is located within the area of Colombo Municipal Council, the processing time will be 7 working days. If the premises is located outside the Colombo Municipal Council area, the processing will take 12 working days.</td>
<td>Application for a development permit can be submitted via the online application portal <a href="http://applications.uda.lk/">http://applications.uda.lk/</a>.</td>
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</table>
In addition to the other specific approvals, licences and permits that are specified in other sections of this report, as being necessary for the business and operations of SME (including environmental approvals and licences, import and export licences etc), any SME that proposes to construct any business premises must comply with the provisions of the Urban Development Authority Act No. 41 of 1971 (as amended) (“UDA Act”). The UDA Act provides that, no person can carry out or engage in any development activity in any development area or part thereof, except under the authority, and in accordance with the terms and conditions, of a permit issued in that behalf by the Urban Development Authority (“UDA”).

The UDA Act further states that no development activity can be carried out in contravention of the development permit issued for the same and that upon the completion of the development activity, it is the duty of such person to apply to the authority to obtain a certificate stating that the development activity that was carried out was in conformity with the permit.

Where in a development area any development activity is commenced, continued, resumed or completed without a permit or contrary to any term or condition set out in a permit issued in respect of such development activity, the UDA can, in addition to many other remedy available to the authority under the UDA Act, by written notice require the person who is executing or has executed such development activity, or has caused it to be executed, to discontinue the use of any land or building or demolish or alter any building or work.

In addition to the development permit, other approvals and permit that must typically be obtained from local authorities when constructing business premises include the following:

- Certificate of conformity to be issued by the local authorities based on the development permit
- Non-vesting certificate issued by the local authorities
- Depending on the nature and the location of business premises, the following approvals or confirmation certificates should be obtained.
  - Fire Confirmation from the Fire Department of the relevant local Authority
  - Drainage Certificate from Drainage and Water Supply Division of relevant local Authority
  - Environmental recommendation from Central Environmental Authority
  - Solid waste management confirmation from Central Environment Authority
  - Security confirmation from Ministry of Defence.
  - Any other certificates mentioned in the development permit.

- Access to land, water and other utilities required for the business and operations
  - Access to Land
A SME carrying on or proposing to carry on business can procure land for purposes of its business, with a real and enforceable right over such land, by any one of the following means:

- Purchase or lease of land from private persons;
- Procurement of State land by way of a State grant or a lease.

With regard to the purchase of land from private persons, such purchase should be effected by execution of the seller of a deed of transfer, which should be attested by a notary public as required in terms of section 2 of the PFO and be registered in the manner specified in Item 4 in the Annexure of this report. Stamp duty is payable on every purchase of land, at the rate of 3% for up to first Rs. 100,000 of the transfer consideration and 4% for the balance consideration.

However, if the SME has direct or indirect foreign shareholding of not less than 50%, then restriction on purchase of land, as set forth in the Land (Restrictions on Alienation) Act No. 38 of 2014 (the “Land Alienation Act”) will be applicable to such SME. Section 2 of the Land Alienation Act prohibits, subject to a few exceptions set forth in section 3 thereof, the purchase of land by (a) a foreigner, (b) a foreign company or (c) a company incorporated in Sri Lanka under the Companies Act where any foreign shareholding in such company, either direct or indirect, is 50% or above. In the case of a transfer of land to a company with less than 50% foreign shareholding, the foreign shareholding of such company must remain less than 50% for a minimum period of consecutive 20 years from the date of such transfer and if the foreign shareholding increases to 50% or above, such transfer of land will become null and void.

A lease over private land is effected by the execution of a lease agreement by the lessor and the lessee. The lease agreement should be attested by a notary public as required in terms of section 2 of the PFO and be registered in the manner specified in Item 4 in the Annexure of this report. Stamp duty is payable on every lease, at the rate of Rs. 10/- for every Rs. 1,000/- or part thereof of (i) the total lease rental, if the lease term is not more than 20 years and (ii) the lease rental for the first 20 years, if the lease term is more than 20 years.

With regard to State land, in terms of the State Lands Ordinance (the “State Lands Ordinance”), the term “State land” has been defined to include all land in Sri Lanka to which the State is lawfully entitled or which may be disposed of by the State. Section 2 of the State Lands Ordinance provides that subject to the provisions of the State Lands Ordinance and regulations made thereunder, the President may in the name and on behalf of the State, sell, lease or otherwise dispose of State land. As per section 6 of the State Lands Ordinance, a special grant or lease of State land may be made at a nominal price or rent or gratuitously for any charitable, educational, philanthropic, religious or scientific purpose, or for any other purpose which the President may approve subject to any conditions that may be imposed.

Section 9 of the State Lands Ordinance states that no State grant and no instrument of disposition whereby State land is leased for any term exceeding such period as may be prescribed can be issued under the State Lands Ordinance unless and until that land has been surveyed and demarcated to the satisfaction of the Land Commissioner.

The exact procedure to be followed for the purpose of obtaining a lease over State land is not set out law. However, the Code on State Land (“Code”) available in the website of the Ministry of Lands and Parliamentary Reforms sets out the procedure to be followed in the event that a lease is to be granted under the State Lands Ordinance on a preferential basis. As per the Code, a preferential lease may be granted for commercial projects. The procedure to be followed therefor is set out below:

- The Land Commissioner has to obtain the prior written approval of the relevant Minister in charge of the subject of lands.
- Unless the Minister has ordered otherwise, a notice has to be published in the Gazette recording the intention to grant a preferential lease so that the public may raise objections to
the grant of the said lease, if any. The period made available for the raising of objections is not set out in the Code.

- Thereafter, the Divisional Secretary will be required to send his recommendation along with the draft notice of the land commissioner.
- If any objection arises after the publication of the notice by the Land Commissioner, he will be required to send a report on objections to the Divisional Secretary. If there are any objections raised directly to the Divisional Secretary, he has to send them to the Land Commissioner. The Land Commissioner will then send a report on objections to the Minister.
- If the Minister overrules the objections or if no objections are received within the stipulated period, the Land Commissioner will inform the Divisional Secretary. Thereafter, until a formal indenture of lease is issued, the Divisional Secretary may handover the possession of the property to the applicant, provided that the applicant pays the lease amount due for that year to the Divisional Secretary prior to such handover.
- The Divisional Secretary will thereafter send an application to the Survey Department to survey the property.
- Upon sending the plan of the property to the Divisional Secretary, the Survey Department will send an application for an indenture of lease and lease diagrams to the Land Commissioner.

We have been informed by the Ministry of Land and Parliamentary Reforms that the above procedure has to be followed for the purpose of obtaining a lease under the State Lands Ordinance.

In terms of the State Lands Ordinance and the regulations issued thereunder, every lease agreement for the lease of State land for a term exceeding 50 years must be signed and executed by the President of Sri Lanka. If the lease term is not more than 50 years, the agreement can be signed and executed by the Land Commissioner or the Divisional Secretary of the relevant Divisional Secretary’s division.

In our experience, the time taken for the completion of the process can range from 6 months to 2 years depending on where the land is situated, the extent of the land and the urgency of the requirement for the land.

- **Access to water and other utilities**

The National Water Supply and Drainage Board (the “Water Board”) established under the National Water Supply and Drainage Board Act, No 2 of 1972 as amended (the “Water Board Act”) is the authority that is authorised to provide water connection to the public. A SME who needs access to water at the business premises is required to make an application to the closest Water Board office in the form prescribed by the Water Board. Upon the payment of installation charges (which is estimated at the time of application), the SME can have access to the water subject to an agreement entered with the Water Board which is in accordance with the Water Board Act. As per the information received by us, the process usually takes 7 days.

Ceylon Electricity Board (the “CEB”) established under Ceylon Electricity Board Act No. 17 of 1969, as amended (the “CEBA”) is responsible for providing the electricity connection to the public. A SME that requires electricity at the business premises must make an application to the closest CEB office in the form prescribed by the CEB and is required to submit the Title deed or Lease Agreement, Business registration certificate and certificate of conformity from relevant Local Authority and other documents prescribed by the CEB. Upon the payment of application charges (which is estimated at the time of application), the electricity connection will be provided to the SME subject to an agreement entered with the CEB which is in accordance with the CEBA and Sri Lanka Electricity Act No 20 of 2009. The exact time period taken for the connection to be given will differ on a case by case basis depending on the location of the business and the nature and complexity of the installation.
Relevant registrations pertaining to purchase and lease of immovable property

Registration of Documents Ordinance

Under the Registration of Documents Ordinance No.23 of 1927 ("RDO"), there is no mandatory requirement to register an instrument effecting land. However, as per section 7(1) of the RDO an instrument affecting land which is duly registered in the relevant land registry has the priority over an unregistered instrument notwithstanding the fact that it was prepared before the registered document. An instrument affecting land which is registered prior to another registered deed in relation to the same land has priority over the instrument registered later, in case there is an adverse interest over the same property.

To get the priority, three conditions have to be satisfied:

• the transaction should be done for valuable consideration which has to be in monetary nature;
• adverse interest should exist over the same property at the same time; and
• the instrument should be properly registered according to provisions of the RDO.

In order for an instrument to be registered with a land registry, the original instrument should be submitted together with the relevant fees payable for the registration. The cost of registration of a document with a land registry is approximately Rs. 100 for deeds and Rs. 2,000 caveats. The time taken for the registered document to be returned is can range from 2 weeks to 2 months.

Registration of Title Act

Registration of Title Act, No. 21 of 1998 (the “Registration of Title Act”) introduced a new regime under which the title of the land can be registered. It is an improvement over the RDO by which only the instruments establishing title of a property can be registered.

Minister of Land and Land Development declares an area as coming within the Registration of Titles Act by a notification published in the Gazette. Then the Commissioner of Title Settlement publishes a notice in the Gazette calling for claims for the land parcels to be submitted to within the prescribed area. All claims so submitted within prescribed areas are investigated by the Commissioner of Title Settlement. If there is a dispute, matter will be submitted to a conciliation board appointed by the Commissioner of Title Settlement. A Cadastral Survey is done and the title of each block of land is investigated.

We understand that the title registration process which is carried out under the “Bim Saviya” programme is only implemented at present in the following 72 Divisional Secretary's Divisions.
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Under the Registration of Title Act, there are four classes of ownership:

- **First class ownership** – where the claimant to a land parcel has absolute ownership such claimant is eligible to be registered as the first class owner of the land;
- **Second class ownership** – where the claimant does not qualify for absolute ownership but is in possession of the land he is eligible to be registered as the second class owner of the land parcel and if his title can be converted to a first class title upon completion of the uninterrupted and unchallenged possession for 10 years from the date of registration of the second class title;
- **Title for the part of the land** – if a claim to a part of a land parcel is made, the claimant can be registered as first class or second class owner of such part of the land; and
- **Co-ownership** – where the claims of two or more co-owners cannot be recognised without reducing the land parcel below the prescribed extent of land, the claimants are declared as co-owners according to the extent of their claims. When registration of title of co-ownership, a manager is appointed with the consent of the majority of the co-owners to function in a similar position as a trustee as per section 15 of the Registration of Title Act.

As per section 43 of the Registration of Title Act, once a land is duly registered thereunder, all subsequent transactions regarding that land and interests in that land must be dealt with in accordance with the provisions of the Registration of Title Act. A disposition otherwise effected is deemed to be void.

The prescribed forms must be used when conveying the land or any interest therein and those forms must be signed by two witnesses and must be attested by a notary public.

The cost of registration of title is approximately Rs. 1,000 and the time that is usually taken for the completion of registration, if there are no anomalies in the chain of title, can range from 3 weeks to 2 months.

- **Registration of trademarks, trade names and other intellectual property**


- **Patents**

In terms of section 62(1) of the IP Act, a patent is granted for an invention (an idea of an inventor which permits in practice the solution to a specific problem in the field of technology). Section 62(3) of IP Act provides that the following invention cannot be patented:
discoveries, scientific theories and mathematical methods;
plants, animals and other micro-organism other than transgenic micro-organisms;
schemes, rules, or methods for doing business, performing purely mental acts or playing
games;
methods for the treatment of the human or animal body by surgery or therapy, and diagnostic
methods practiced on the human or animal body;
inventions which are useful in the utilization of special nuclear material or atomic energy in
an atomic weapons; or
any invention, the prevention within Sri Lanka of the commercial exploitation of which is
necessary to protect the public order, morality including the protection of human, animal or
plant life or health or the avoidance of serious prejudice to the environment.

Under section 63 of the IP Act, three conditions have to be satisfied for a grant of a patent:

• the product or process should be new;
• there should be an inventive step from the previously available knowledge in relation to the
  matter; and
• the product or process should be industrially applicable and scalable.

For the obtaining of a patent for an invention, an application has to be made to the Director-General of
Intellectual Property in the prescribed form (Form P01 in the First Schedule of the Intellectual Property
Regulations No. 01 of 2006 published in the gazette extraordinary No. 1445/10 dated 17th May 2006)
and the prescribed fee (in the Second Schedule of the Intellectual Property Regulations No. 01 of
2006) has to be paid. The fees payable currently is approximately Rs. 8,000 and the time usually taken
for the completion of the process is 4 to 5 years.

A patent is valid for the period of 20 years. The rights of the owner of the patent is given in section
84(1) of the IP Act and in terms thereof, the owner has the entitlement to exploit the patented
invention, assign or transmit the patent and conclude licence contracts in respect of the patent.

• Trademarks and service marks

A trademark means any visible sign serving to distinguish the goods of one enterprise from those of
another enterprise. As per section 102(1) of the IP Act, the exclusive right to use a mark shall be
acquired by a person upon its registration and under section 102(2) of the IP Act, the registration is
granted to a person who has tendered a valid application or who has validly claimed the earliest
priority for the application.

The restriction to the registration of marks on objective grounds as set out in section 103(1) are as
follows:
• marks consisting of shape, form or inherent function of the goods and services;
• marks descriptive of the kind, quality, quantity, intended purpose, value, place of origin or time of production, or of supply, of the goods or services concerned;
• marks which have become a customary designation for goods;
• marks lacking distinctiveness from one enterprise to another;
• marks being contrary to morality and public order;
• marks which are misleading the public on character of goods;
• marks not representing in a special or particular manner the name of an individual or enterprise;
• marks which indicates the geographical location of the goods;
• marks imitating state, government or international organizations;
• marks imitating official sign of state;
• marks which have not completed the grace period of two years after becoming expired; and
• marks registering goods or services prohibited in Sri Lanka.

Once tendered for the registration, the Director-General has the discretion not to register a mark as per section 104 of the IP Act if:

• the mark resembles a mark already validly filed by third party or person with priority registration, in case of identical or similar goods that may likely to mislead the public;
• the mark resembles in a way likely to mislead the public unregistered mark used earlier in Sri Lanka by 3rd party in connection with identical or similar goods or service;
• the mark resembles in a way likely to mislead the public, a trade name already used in Sri Lanka; or
• the mark is identical with or misleadingly similar to a well-known mark.

For registration an application has to be made to the Director-General of Intellectual Property in the prescribed form (Form P01 in the First Schedule of the Intellectual Property Regulations No. 01 of 2006 published in the gazette extraordinary No. 1445/10 dated 17th May 2006) and the prescribed fee (in the Second Schedule of the Intellectual Property Regulations No. 01 of 2006) has to be paid. The fees payable currently is ranges from Rs. 4,000 to Rs. 8,000 depending on the nature of the trademark and the time usually taken for the registration is 4 to 5 years.

Once registered, a mark will be valid for 10 years and can be renewed for consecutive periods of ten years each on payment of the prescribed fee.

• Trade names

A “trade name” is defined as the name or designation identifying the enterprise of a natural or legal person. There is no separate registration requirement imposed under the IP Act for trade names.

However, under section 143 of the IP Act, if the trade name is contrary to morality or public order or is likely to offend the religious or racial susceptibilities of any community or is likely to mislead trade
circles or the public as to the nature of the enterprise identified by that name, it will not be admissible as a trade name.

The trade name of a business entity is considered as part and parcel of such business entity and as per section 145 of the IP Act, the trade name will be assigned with the assignment or transmission of that business entity to another party.

- **Industrial designs**

While a patent protects the inventive technical improvement of a product or a process, the shape and external appearance of a product is protected under industrial designs. As defined by section 30 of the IP Act, an industrial design is any composition of lines or colours or any three dimensional form, whether or not associated with lines or colours, that gives a special appearance to a product of industry or handicraft and is capable of serving as a pattern for a product of industry or handicraft.

The protection given to industrial designs are not extended to existing designs or to designs that are scandalous or are contrary to morality or public order or public interest. As per section 45 and 46 of the IP Act, an industrial design will be valid for 5 years from the date of registration and can be renewed for two five year terms.

For registration an application has to be made to the Director-General of Intellectual Property in the prescribed form (Form P01 in the First Schedule of the Intellectual Property Regulations No. 01 of 2006 published in the gazette extraordinary No. 1445/10 dated 17th May 2006) and the prescribed fee (in the Second Schedule of the Intellectual Property Regulations No. 01 of 2006) has to be paid. The fees payable currently is approximately Rs. 3,000 and the time usually taken for the registration is 2 to 3 years.

- **Taxation**
  - **Income Tax**

The Inland Revenue Act No. 24 of 2017 (the “2017 IRD Act”) came into effect on 1st April 2018 repealed and replaced the Inland Revenue Act No. 10 of 2006 as amended (the “2006 Act”)

All businesses who have not already registered, should register with the Commissioner-General not later than thirty days after the end of the basis period for that year, by submitting an application for registration in the form and manner specified by the Commissioner-General and provide such information to the Commissioner-General as may be required by him under the 2017 IRD Act. Every business that is registered will be assigned a unique Taxpayer Identification Number (TIN). The registration process can be completed within one day if all supporting documentation are in order (i.e. If the applicant is a company, the incorporation certificate, the articles of association, certified copies of Form 1/Form 20 and copies of national identity cards/passports of the directors should be submitted.
If the applicant is a sole proprietorship or a partnership, the business registration certificate and copies of national identity cards of proprietor/partners should be submitted).

In terms of section 2 of the 2006 Act, where a person is a resident in Sri Lanka for income tax purposes, income tax is charged in respect of the profits and income of such person wherever arising. Therefore, income tax is charged on the profits and income of such person at the rate specified in the 2006 Act. When computing the taxable income of a trade, business, profession or vocation, all expenses incurred in the production of income subject to certain restrictions, is deducted from the profits and income.

In terms of section 2 of the 2017 IRD Act, income tax will be payable for each year of assessment by (i) a person who has taxable income for that year or (ii) a person who receives a final withholding payment during that year. The income tax payable by a person referred to in (i) above is calculated by (a) applying the relevant rates of income tax set out in the First Schedule to the 2017 IRD Act to that person’s taxable income, (b) deducting any foreign tax credit claimed by and allowed to the person for the year under section 80 of 2017 IRD Act, and (c) deducting any other tax credit granted or allowed to the person for the year under the 2017 IRD Act. The income tax payable by a person referred to in (ii) above is calculated by applying the relevant rate set out in the First Schedule to the 2017 IRD Act to each final withholding payment.

The taxable income of a person for a year of assessment is equal to the total of the person’s assessable income for the year from each employment, business, investment and other sources, as determined in accordance with the 2017 IRD Act.

As per the First Schedule to the 2017 IRD Act, small and medium enterprises, as taxed at the rate of 14% of the taxable income. However, the definition of the term “small and medium enterprises” set out in the 2017 IRD Act is different to the definition set out in the National Policy Framework Small Medium Enterprise Development. A “small and medium enterprises” is defined in the 2017 IRD Act to mean a person:

• who conducts business solely in Sri Lanka other than an individual who is engaged in providing professional services individually or in partnership being an individual who is professionally qualified;
• who does not have an associate that is an entity; and
• with an annual gross turnover of less than Rs. 500,000,000.

Accordingly, the taxable income of any SME that satisfies the criteria for a “small and medium enterprise” within the meaning of the 2017 IRD Act will be taxed at the rate of 14% and the taxable income of other SMEs will be taxed at different rates set forth in the First Schedule to the 2017 IRD Act as applicable to each such SME.

Further, the taxable income of any company that predominantly conducts the business of (i) exporting goods and services, (ii) agricultural business or (iii) undertaking for the promotion of tourism (i.e. hotels, guest houses, restaurants, travel agents etc), will be taxed at the rate of 14%. The term “predominantly” is defined to mean 80% or more calculated based on gross income.

A person who wilfully evades or attempts to evade the assessment, payment or collection of tax or who wilfully and fraudulently claims a refund of tax to which the person is not entitled, is guilty of an
offence and will be liable on conviction to a fine not exceeding Rs. 10 Million or to imprisonment for a term not exceeding two years or to both such fine and imprisonment

- **Value added tax ("VAT")**

Section 2 (1) (a) of the Value Added Tax Act No. 14 of 2002, as amended ("VAT Act") provides that VAT at the rate of 15 per centum (15%) is charged at the time of supply, on every taxable supply of goods or services, made in a taxable period, by a registered person in the course of the carrying on, or carrying out, of a taxable activity by such person in Sri Lanka, unless such supply is exempted in terms of the provision of VAT Act.

Registration under the VAT Act requires the submission of an application for registration in the specified form to the Commissioner-General not later than fifteen days from the date on which a liability to be registered has arisen under the VAT Act. Upon registration, the business is issued a certificate of registration and a unique registration number. If the applicant is a company, the TIN certificate, the incorporation certificate, the articles of association, certified copies of Form 1/Form 20, copies of national identity cards/passports of the directors and documents/financial statements evidencing receipts of business income should be submitted as supporting documentation. If the applicant is a sole proprietorship or a partnership, the TIN certificate, the business registration certificate, copies of national identity cards of proprietor/partners and documents/financial statements evidencing receipts of business income should be submitted as supporting documentation). The application can be made online through the e-services portal maintained by the Department of Inland Revenue.

According to the VAT Act, the term “taxable activity” means inter alia any activity carried on as a business, trade, profession or vocation other than in the course of employment or every adventure or concern in the nature of a trade.

Section 83 of the VAT Act defines the term “taxable supply” to mean any supply of goods or services made or deemed to be made in Sri Lanka which is chargeable with tax under the VAT Act unless exempted.

In terms of section 2 (1) (b) of the VAT Act, VAT is charged on the importation of goods into Sri Lanka, by any person, at the rate 15% on the value of such goods imported. The value of goods imported for purposes of the VAT Act will be the aggregate of the value of goods determined for the purpose of custom duty increased by 10% and the amount of any custom duty payable in respect of such goods with the addition of any surcharge, cess, any Port and Airport Development Levy and any excise duty.

Any person who (a) gives any false answer whether orally or in writing to any question or when requested to furnish information in accordance with the provisions of VAT Act (b) omits from a return made under the VAT Act, any particulars which he should have included in such return; or (c) makes any false return or false entry in any return made under the VAT Act, and thereby evades or attempts to evade tax or assists any other person to evade or to attempt to evade tax is guilty of an offence, and will be liable, after summary trial before a Magistrate, to a fine consisting of (i) a sum equal to twice the amount of tax so evaded or attempted to be evaded for which he is liable under the VAT Act for the taxable period in respect of which the offence was committed; and (ii) a sum not exceeding Rs. 25,000 or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.
• Nation Building Tax (“NBT”)

In terms of the Nation Building Tax Act No. 9 of 2009 as amended (“NBT Act”), NBT is payable at the rate of 2% in respect of the liable turnover of any person who carries on the business of providing a service of any description.

The term “liable turnover” is defined to mean the sum receivable whether received or not from the provision in Sri Lanka of any service in a quarter other than any service which is exempted under the provisions of the NBT Act.

In terms of the NBT Act, NBT is payable by any person who imports any article into Sri Lanka other than an excepted article, at the rate of two per centum (2%) of the value of the good imported.

• Port and Airport Development Levy (“PAL”)

In terms of the Port and Airports Development Levy Act No. 18 of 2011 (“PAL Act”), PAL is and levied on the cost, insurance and freight value of every article originating from outside Sri Lanka and imported into Sri Lanka at the rate of 7.5%. Any SME that imports any goods will therefore be required pay PAL on the cost, insurance and freight value of all goods imported.

• Economic Service Charge (“ESC”)

In terms of the Economic Service Charge Act No. 13 of 2006 as amended (“ESC Act”), ESC is chargeable on every person at a rate of 0.5% where the relevant turnover of such person exceeds Rs. 12,500,000 per quarter. The “relevant turnover” means the aggregate turnover for that relevant quarter of every trade, business, profession or vocation carried on or exercised by such person or partnership, as the case may be, in Sri Lanka whether directly or through an agent and the term “turnover” in relation to any trade or business means the total amount receivable, whether actually received or not, from every transaction entered into in that relevant quarter in the course of such trade or business.

• Capital Gains Tax (“CGT”)

The 2017 IRD Act imposes the CGT on the realization of investment assets. The capital gain is calculated as the consideration received for the asset or liability in excess of the cost of the asset or liability at the time of realisation. CGT will be charged on the gain arising from realization of an investment asset at the rate of 10%. The investment assets subjected to CGT are land or buildings, a membership interest in a company, partnership or trust, a security or other financial asset and an option right, or other interest in an asset referred and according to the 2017 IRD Act. Any person who is required to accept, register or approve the transfer of an asset is required to be satisfied that the applicable CGT has been paid prior to accepting, registering or approving such transfer. A tax on capital gain has to be settled within one month of the realization of the asset. The tax payer is also required to file a tax return within the same period.
• **Withholding Tax**

According to the 2017 IRD Act, withholding tax is imposed on number of payments such as dividends and royalties. The proposed withholding rates that will applicable to a SME is summarised in below.

<table>
<thead>
<tr>
<th>Relevant payment</th>
<th>Withholding Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dividends</td>
<td>14%</td>
</tr>
<tr>
<td>Profit remittances by a non-resident</td>
<td>14%</td>
</tr>
<tr>
<td>Interest on corporate debt securities</td>
<td>Resident person -5%</td>
</tr>
<tr>
<td></td>
<td>Non-resident –14%</td>
</tr>
<tr>
<td>Interest on loans</td>
<td>Resident person (other than a financial institution) –5%</td>
</tr>
<tr>
<td></td>
<td>Non-resident –14%</td>
</tr>
<tr>
<td>Royalty</td>
<td>14%</td>
</tr>
<tr>
<td>Management fees</td>
<td>Residents –Not applicable</td>
</tr>
<tr>
<td></td>
<td>Non-residents –14%</td>
</tr>
<tr>
<td>Fees for technical services</td>
<td>Non-residents –14%</td>
</tr>
<tr>
<td>Fees for other services</td>
<td>Resident individuals (specified services) –5%</td>
</tr>
<tr>
<td></td>
<td>Non-residents –14%</td>
</tr>
<tr>
<td>Rent</td>
<td>Residents –10%</td>
</tr>
<tr>
<td>Allocation of share of profits to partners of a partnership</td>
<td>Non-residents –14%</td>
</tr>
<tr>
<td></td>
<td>8%</td>
</tr>
</tbody>
</table>

• **Labour**
The labour related laws applicable to SMEs from a compliance point of view are as follows:

- **Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 (the “Shop and Office Act”)**

The Shop and Office Act sets out the requirements to be complied with by shops and officers with regard to conditions of employment and remuneration of employees.

The term “Office” is defined to mean any establishment maintained for the purpose of the transaction of the business of any bank, broker, insurance company, shipping company, joint stock company, estate agent, advertising agent, commission agent or forwarding or indenting agent, or for the purposes of the practice of the profession of any accountant, and includes:

- the office or clerical department of any shop, factory, estate, mine, hotel, club, or other place of entertainment, or of any other industrial business or commercial undertaking (including the business of transporting persons or goods for fee or reward and any undertaking for the publication of newspapers, books or other literature); and
- such other establishments, being establishments maintained for the purposes of any profession or trade or business, as may be declared by regulation to be offices for the purposes of the Shop and Office Act.

The term “Shop” is defined to mean premises in which any retail or wholesale business is carried on, and includes a residential hotel and any place where the business of the sale of articles of food or drink or the business of a barber or hairdresser or any other prescribed trade or business is carried on.

The compliances of employers under the Shop and Office Act include the following:

- A person who has not attained the age of fourteen years cannot not be employed in or about the business of a shop or office;
- A person who has attained the age of fourteen years and who being a male, has not attained the age of eighteen years or is a female cannot be employed in or about the business of an office before 6 a.m. or after 6 p.m. on any day;
- The working hours on any day cannot be more than 8 hours and on any week cannot be more than 45 hours;
- Where work is carried on between 11.00 a.m. to 2 p.m. an interval of one hour should be given. If work is carried on between 4.00 p.m. to 6.00 p.m., an interval of half an hour must be given. If work is carried on between 7.00 p.m. to 10.00 p.m., an interval of one hour should be given;
- Employees are entitled to take 7 days casual leave within an year;
- The annual leave entitlement of employees are as follows -
  - if the date of commencement is between 1st January and 1st April, the employee is entitled to 14 days of annual leave in the first year of employment and 14 days of annual leave in every year thereafter;
• if the date of commencement is between 1\textsuperscript{st} April and 1\textsuperscript{st} July, the employee is entitled to 10 days of annual leave in the first year of employment and 14 days of annual leave in every year thereafter;
• if the date of commencement is between 1\textsuperscript{st} July and 1\textsuperscript{st} October, the employee is entitled to 7 days of annual leave in the first year of employment and 14 days of annual leave in every year thereafter;
• if the date of commencement is after 1\textsuperscript{st} October, the employee is entitled to 4 days of annual leave in the first year of employment and 14 days of annual leave in every year thereafter.

Before the date of termination of services any holiday not taken to which the employee was entitled to should be taken in the year during which the termination takes place. Where the period of work during such year is less than 10 months, the leave entitlement is 7 days. Where the period of work is more than 10 months, the leave entitlement is 14 days.

• Overtime payments should be made after 8 hours of work a day or after 45 hours of work a week, at the rates prescribed in the law. The number of hours that any employee can be required to work overtime cannot exceed 12 hours in any week;

• The employment of any male under 18 years and any female for any period (including overtime and an interval for rest or for a meal) exceeding 9 hours a day is prohibited. However, this restriction of a total of 9 hours in the case of males under 18 years and females does not apply in the case of employees in any shop situated at an airport or in any office maintained by an airline at an airport;

• Female employees are entitled to maternity leave of 84 working days on full pay after the birth of the first or second child. The 84 days leave referred to must be counted only against the working days and therefore all holidays are excluded. The quantum of leave for a subsequent child is 42 working days. Such employee should not be given work which would be injurious to her condition both three months before confinement and three months after confinement;

• 1 ½ days paid holidays must be allowed to office workers who work for not less than 28 hours (exclusive of overtime and intervals for means, etc) in any week. Weekly holidays (1 ½ days) must be allowed in the same week, or the week following, but the Commissioner of Labour may give permission for the accumulation of one month’s weekly holidays (i.e. 6 days altogether) where he considers it necessary, either due to the nature of the business or due to unforeseen circumstances;

• All employees are entitled to a holiday on the full moon poya day falling in each month. In the case of monthly rated employee, they will be entitled to their wage for that day which would be included in their monthly salary. If any such employee works on this day, he should be paid an extra day’s remuneration in addition to his normal monthly salary irrespective of the number of hours worked during the normal working hours;

• The full moon poya day will be an unpaid holiday for all daily rated employees. If any such employee is required to work on this day he should be remunerated at 1 ½ times his normal daily wage, irrespective of the number of hours worked during the normal working hours. Where a monthly rated employee is employed on a full moon poya day
which falls on a Saturday and such employee is employed on that day up to the normal time of closing on a Saturday, he will be entitled to an extra half day’s wage as remuneration but no alternate half holiday in lieu need be allowed. If he is employed on this day beyond the normal closing time on Saturday, he will, in addition, be entitled to the benefits normally available to him for work beyond the normal closing time on a Saturday. In the case of five day week employees, they will be entitled to the normal benefits for work on a Saturday if they are employed on that day. Where a daily rated employee for whom the full moon poya day is an unpaid holiday is employed on the full moon poya day which falls on a Saturday beyond the hours normally worked on a Saturday, he should be remunerated for such work at the normal overtime rates, i.e. 1 ½ times the normal hourly rate but no alternate half holiday need be given; and

- Subject to special arrangement, the Saturday is deemed to be a full weekly holiday (and not a half holiday), especially where the working hours on the Saturday have been wholly or largely distributed over the week days. If a statutory holiday falls on the Saturday a full holiday in lieu should be granted, but this consequence does not arise where it is a poya day that falls on the Saturday. When an employee works on Saturday he is entitled to a 1 ½ times the normal hourly rate plus a full paid holiday in lieu irrespective of the number of hours he worked on the Saturday.

- The Employees Provident Fund Act No. 15 of 1958 (the “EPF Act”)

Practically every employment in Sri Lanka is covered by the EPF Act irrespective of the number of persons employed by the employer.

Every employee in a covered employment must contribute 8%, and the employer must contribute 12%, of the employee’s total earnings each month to the provident fund of the employee.

Contributions by both employer and employee must be on the employee’s total earnings, which include:

a. Basic wages or salary,

b. Cost of living allowance, special living allowance and other similar allowances,

c. Payment in respect of holidays. This would include payments made in respect of weekly, public and annual holidays as well as casual and privilege leave.

d. The cash value of any cooked or uncooked food provided by the employer to employee and any such commodity used in the preparation of or composition of any food as is so provided. The employer must assess the monthly value of the food so supplied and include it in the total earnings. The Commissioner of Labour is empowered to revise the assessment of the value of the food where such assessment is considered to be low, and his decision is final.

e. Remuneration paid to employees by way of commission for any services rendered to the employer.
(f) Payments made by way of an incentive and payments made at piece-rate.

Total earnings do not include the following:-

a. Rent allowance, children’s allowance, travelling allowance, entertainment allowance.

a. Overtime payments, but certain payments will not be classified as overtime payments, e.g. payments made for work done on a public or weekly holiday, in which event the payment is deemed to be an enhanced rate of wages for that day and not as overtime.

Contributions as aforesaid by the employer and the employee should be made either to the Employees Provident Fund established by the Government or to an approved Private Provident Fund. An approved Private Provident Fund is a fund established with the approval of the Commissioner of Labour but at present the Department of Labour does not usually allow contributions in respect of new members to be made to approved Private Provident Funds nor does it generally approve any more the establishing of new Private Provident Funds.

Payment of monies contributed as aforesaid should be made by the fund concerned to the employee in accordance with the provisions of the EPF Act or the rules of the approved Private Provident Fund as the case may be.

Any employer who contravenes the provisions in the EPF Act relating to such contributions is guilty of an offence and is liable on conviction before a Magistrate, to a fine not exceeding Rs. 2,500 or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment, and will in addition be liable to a fine not exceeding Rs. 75 a day for each day on which the offence is continued after conviction. Where the offence is committed by a body of persons, then if that body of persons is (i) a body corporate, every director, manager, secretary, or officer of that body corporate or (ii) if that body is a firm, every partner and every manager of that firm, will be guilty of that offence unless he proves that the offence was committed without his consent or concurrence and that he exercised all due diligence to prevent the commission of such offence.

• The Employees Trust Fund Act No. 46 of 1980 (the “ETF Act”)

Every employer is required by the ETF Act to contribute to the trust fund established under the ETF a sum equivalent to three per centum of the total earnings of every employee from his employment under such employer. Earnings have the same meaning as in the EPF Act.

Contributions due for a particular month, should be remitted to the Employees’ Trust Fund before the end of the following month. Money lying to the credit of the employee in the Trust Fund will be paid to him on the termination of his employment and in the event of the death of the employee prior to such payment the monies will be paid to the nominees of the deceased employee.
Any employer who contravenes the provisions in the ETF Act relating to such contributions is guilty of an offence and is liable on conviction before a Magistrate, to a fine not exceeding Rs. 1,000 or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment. Where the offence is committed by a body of persons, then if that body of persons is (i) a body corporate, every director, manager, secretary, or officer of that body corporate or (ii) if that body is a firm, every partner and every manager of that firm, will be guilty of that offence unless he proves that the offence was committed without his consent or concurrence and that he exercised all due diligence to prevent the commission of such offence.

• Payment of Gratuity Act No. 12 of 1983 (the “Gratuity Act”)

The Gratuity Act applies to an employer employing fifteen or more persons in Sri Lanka.

Under the Gratuity Act every employer who employs or has employed fifteen or more workmen on any day during the period of twelve months immediately preceding the termination of the services of a workman shall, on termination (whether by the employer or workman, or on retirement or by the death of the workman, or by operation of law or otherwise) of the services, of a workman who has a period of service of not less than five completed years under that employer, pay within a period of thirty days of such termination to that workman in respect of such services, and where the termination is by the death of that workman, to his heirs, a gratuity computed in the manner given below.

Such an employee is entitled to receive as gratuity, a sum equivalent to –

• half months salary for each year of completed service computed at the rate of wage or salary last drawn by the workman, in the case of a monthly rated workman; and

(i) in the case of any other workman, fourteen days’ wage or salary for each year of completed service computed at the rate of wage or salary last drawn by that workman.

“Completed service” means uninterrupted service and includes service which is interrupted by approved leave on any ground whatsoever, a strike or lock out or cessation of work not due to any fault of the workman concerned.

The above provisions shall, inter alia, do not apply to or in relation to a workman entitled to a pension under any non-contributory pension scheme.

An employee who fails to qualify for pension and has a period of service not less than 5 completed years with the employer is entitled to receive a gratuity on termination (by him or the employer) in respect of such service.
“Wage or salary” means –

(i) the basic or consolidated wage or salary;

(ii) cost of living allowance, special living allowance or other similar allowance; and

(iii) piece rates.

If an employee qualifies for gratuity and his services are terminated for reasons of fraud, misappropriation of funds of the employer, wilful damage to property of the employer, or causing the loss of goods, articles or property of the employer, he will forfeit such gratuity to the extent of the damage or loss caused by him.

Any employer who fails to comply with the Gratuity Act is guilty of an offence and is liable on conviction before a Magistrate, to a fine not exceeding Rs. 500 or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment. Where the offence is committed by a body of persons, then if that body of persons is (i) a body corporate, every director, or officer of that body corporate or (ii) if that body is a firm, every partner and every manager of that firm, will be guilty of that offence unless he proves that the offence was committed without his consent or concurrence and that he exercised all due diligence to prevent the commission of such offence.

• Pay AS You Earn Tax

An employer is required by law to deduct from the wages of an employee the tax payable by such employee and remit the sum so deducted to the State.

• Wages Board Ordinance No. 27 of 1941 (the “Wages Board Ordinance”)

There are specific provisions that apply to certain trades due to the State setting up Wages Boards for such trades under the Wages Board Ordinance. In terms of the Wages Board Ordinance such Boards are empowered to decide the terms and conditions including the minimum wages payable to employees in the particular trade.

• Budgetary Relief Allowance of Workers Act No. 4 of 2016 (the “BRAW Act”)

In terms of section 3 of the BRAW Act, an employer is required to pay every worker employed by him a Budgetary Relief Allowance (“the allowance”) computed on the following basis in respect of each month, with effect from 1st May 2015:

• to every worker earning a monthly wages or salary of Rs. 40,000/- or below, the allowance payable is up to a maximum of Rs. 1,500/-;
• in the case of a worker paid a daily rate not exceeding Rs. 1,600/-, the allowance shall be a sum of Rs. 60/- per day for each day he has worked during the month. However the total allowance payable should not exceed Rs. 1,500/- per month;
• in the case of a worker employed on a piece-rate basis, the allowance payable for a month should not be less than 15% of the monthly wage or salary paid to such worker. However the total allowance payable should not exceed Rs. 1,500/-;
• in the case of a worker whose monthly wages or salary for the relevant month exceeds Rs. 40,000/- and does not exceed Rs. 41,500/-, the allowance payable is the difference between Rs. 41,500 and the amount of wages or salary for the month;
(v) in the case of a worker who is paid a daily rate of a sum exceeding Rs. 1,600/- and not exceeding Rs. 1,660/- for the relevant month, the daily allowance payable will be 1/25th of the difference between Rs. 41,500/- and the total wages for the relevant month.

An employer is required to pay every worker employed by him another allowance computed on the following basis in respect of each month, with effect from 1st January 2016:

- to every worker earning a monthly wages or salary of Rs. 40,000/- or below, the allowance payable is up to a maximum of Rs. 1,000/-;
- in the case of a worker paid a daily rate not exceeding Rs. 1,600/-, the allowance shall be a sum of Rs.40/- per day for each day he has worked during the month. However the total allowance payable should not exceed Rs.1,000/- per month;
- in the case of a worker employed on a piece-rate basis, the allowance payable for a month should not be less than 10% of the monthly wage or salary paid to such worker. However the total allowance payable should not exceed Rs.1,000/-;

It may be noted that under section 3(3), workers who have received a wage or salary increment between 1st October 2014 and 30th April 2015 are entitled to the allowance which shall be the difference between Rs.1,500/- and the amount of the wage or salary increment. This entitlement however shall not extend to those employees who have received an increment of Rs.1,500/- or more.

Any employer in any industry or service who fails to pay the above allowances will be guilty of an offence and will be liable on conviction by a Magistrate to a fine not exceeding Rs. 25,000 or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

• The Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 (the “TEW Act”)

The TEW Act applies to terminations of employment, other than on disciplinary grounds.

The TEW Act states that no employer can terminate the scheduled employment of any workman without –

1. the prior consent in writing of the workman or
2. the prior written approval of the Commissioner of Labour.

The scheduled employment of any workman shall be deemed to be terminated by his employer if for any reason whatsoever, otherwise than by reason of a punishment imposed by way of disciplinary action, the services of such workmen in such employment are terminated by his employer and such termination shall be deemed to include –

- Non-employment of the workman in such employment by his employer, whether temporarily or permanently, or
- Non-employment of the workmen in such employment in consequence of the closure by him employer of any trade, industry or business.

“Scheduled employment” means employment in –
any trade, in respect of which a notification has been published in the Gazette under subsection (2) of section 6 of the Wages Board Ordinance of an Order made under subsection (1) of that section and includes the work of any worker referred to therein but excluded from the provisions of such order;

• every shop and every office within the meaning of the Shop and Office Act; or

• every factory within the meaning of the Factories Ordinance.

The provisions of the TEW Act do not apply

a. to an employer by whom less than fifteen workmen on an average have been employed during the period of six months preceding the month in which the employer seeks to terminate the employment of a workman; or

b. to the termination of employment of any workman who has been employed by an employer for a period of less than one year; or

c. to the termination of employment of any workman who has been employed by an employer where such termination was effected by way of retirement in accordance with the provisions of –

• any collective agreement in force at the time of such retirement, or

• any contract of employment wherein the age of retirement of such workman is expressly stipulated or

d) To the termination of employment of any workman who has been employed by an employer in contravention of the provisions of any law for the time being in force.

A “Workman” means any person who has entered into a contract with an employer in any capacity, whether the contract is express or implied, oral or in writing, and whether it is a contract of service or of apprenticeship, or a contract personally to execute any work or labour, and includes any person ordinarily employed under any such contract whether such person is or is not in employment at any particular time and for the purposes of any proceedings under the TEW Act in relation to any industrial dispute, includes any person whose services have been terminated.

Termination of the scheduled employment of any workman in contravention of the Act is null and void and accordingly will be of no effect whatsoever. Therefore, the liabilities of the employer to the employee in such a situation shall continue as if a termination has not taken place.

The Commissioner of Labour may order an employer who terminates the scheduled employment of the workman in contravention of the TEW Act to continue to employ such workman, with effect from a date specified in such order in the same capacity in which the workman was employed prior to such “termination” and to pay the workman his wages and all other benefits which the workman would have otherwise received if his employment had not been terminated and it is the duty of the employer to comply with such order.

The Commissioner of Labour must hold an inquiry into an application for prior written approval to terminate the scheduled employment of an employee.

The proceedings of any inquiry held by the Commissioner of Labour for the purposes of the TEW Act must be conducted by the Commissioner in a manner that is not inconsistent with the principles of natural justice, such as hearing both parties, offering each party the opportunity to challenge the
veracity of the case of the other etc. Sometimes several Trade Unions represent different groups of employees in the same case or each employee is represented by his own lawyer. All of them must be heard. These inquiries therefore do often take a considerable length of time, sometimes extending to well over one year or more and the employer has in the meantime to keep in employment the employees whose employment is to be terminated paying to them all their wages and other benefits in full.

After such an inquiry the Commissioner of Labour may, in his absolute discretion, grant or refuse such approval, decide the terms and conditions subject to which his approval, if any, is granted, including the payment of compensation for the termination of such employment.

Any such decision made by the Commissioner will be final and conclusive and will not be called in question in any court, or in any tribunal or other institution established under the Industrial Disputes Act. However, orders made by Commissioner of Labour in such cases are often challenged by the dissatisfied party to the proceedings by invoking the writ jurisdiction of courts. Thus the proceedings do not always end with the Commissioner of Labour as provided in the TEW Act and go on for quite a long time sometimes for several years more in the higher courts of Sri Lanka. All that time the employees will receive their remuneration in full.

Failure to comply with an order made by the Commissioner of Labour is an offence and where a body corporate commits such an offence every director and officer of such body corporate shall be deemed to be guilty of the offence, the penalty for which is imprisonment of either description, for a term not less than six months and not exceeding two years.

• **Enforcement of Contracts**

Sri Lankan contract law imposes a duty to perform the respective obligations of the parties under a contract. Any failure by a party to render complete performance of a contract would entitle the other party to rescind the contract and refuse the performance of his obligations or receive damages, depending on whether the breach is material or not.

Where a time has been fixed for performance of the contract, performance must take place at or before such time. Where no time has been fixed by the parties for completion of the contract, the contract must be performed within a reasonable time which must be decided according to the circumstances of each particular case. If the contract specifies a place of performance or payment, the performance or payment must be effected at such place unless the parties agree to the contrary.

A contract may be terminated or discharged in the following manner:

• by performance;
• by agreement of the parties
  • Release or waiver
  • Compromise
  • Novation
The remedies under Sri Lankan law for breach of contract are as follows:

- **Damages**
  The mere fact of breach does not entitle the aggrieved party to claim damages in the absence of actual loss sustained. The right to claim damages for breach of contract may be excluded by express provision to that effect in a contract.

- **Specific performance**
  Specific performance is a discretionary remedy which takes the form of an order by court requiring performance in terms of a contract where a party fails or refuses to render such contract. Specific performance will not however be granted by court if damages are an adequate remedy for the breach of the contract.

- **Injunctive relief granted by court**

- **Rescission**
  A party to a contract may upon repudiation or breach by one party, may elect to treat the contract as being alive or to accept such discharge and then rescind the contract. A party electing to claim rescission is also entitled to claim damages arising out of a breach. A person claiming rescission is however obliged to make restitution to the other party of that which he has received under the contract.

- **Restitutio in integrum**
  A claim for rescission and restitution on a ground such as fraud, mistake or incapacity is described as a claim for *restitutio in integrum*. This remedy is invoked to set aside contracts shown to have been based upon total misconception and to grant relief in cases of want of capacity, error or fraud.

The enforcement of contracts will be through Court decision obtained by the institution of legal action in the relevant Court or where the contract provides for resolution of disputes by arbitration, by arbitral award by referring dispute to a sole arbitrator or panel of arbitrator as specified in the contract.

The most common forms of dispute resolution methods in Sri Lanka in the context of commercial transactions are institution of proceedings in Court and institution of arbitration proceedings.

Every commercial dispute (such as disputes arising from a construction contract) with a claim of over Rs. 3 Million is heard before the High Court of the Western Province (Commercial High Court) and all other commercial disputes are heard before the District Court. The time that is usually taken for a case to be concluded could range from 3 to 7 years and there are instances where the conclusion of cases have taken an even longer time. The costs that are typically associated with the court process (excluding legal fees) would approximately range from Rs. 6,000 to Rs. 15,000.
Court decisions are enforced by issuing writs of execution to officers of state (i.e. fiscal) who execute such orders.

The Arbitration Act No. 11 of 1995 provides the legal framework relating to arbitration proceedings in Sri Lanka. Arbitration proceeding may be ad hoc or institutional. Institutional arbitration, at a national level, is conducted by the Institute for the Development of Commercial Law and Practice (the “ICLP”). The ICLP has its own rules governing arbitrations.

The Arbitration Act allows an arbitration to proceed in accordance with institutional rules agreed on by contracting parties, which could be those of other international arbitration centers.

The enforcement of an arbitral award (whether it is made by a local or foreign arbitral tribunal) will be through Court. Enforcement may be refused by a Sri Lankan court:

- if the court finds that the subject matter of the dispute is incapable of arbitration;
- if the recognition or enforcement of the award would be contrary to public policy;
- on the objection of the party against whom it is invoked, upon proof that, a contracting party was under some incapacity;
- if the arbitration agreement is invalid under its governing law or the law of the country in which the award was made;
- if the party against whom it is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was denied the opportunity to present his case;
- if the award is beyond the scope of the matters submitted to arbitration or the composition of the panel;
- the procedure adopted was contrary to the agreement or to the law of the country where it took place or the award is not binding or has been set aside by a court of the country in which or under the law of which it was made.

The Courts cannot however, revisit or adjudicate on the merits of the award.

The time that is usually taken for arbitration proceedings to be concluded could range from 2 to 5 years and there are instances where the conclusion of proceedings have taken an even longer time. The costs that are typically associated with arbitration proceedings are split between the parties to the dispute and the costs (which is the arbitrators’ fees but excludes legal fees and charges of the arbitration centers) would range from Rs. 20,000 to Rs. 50,000 per sitting.

- **Insurance and other social security schemes**

  The insurance industry in Sri Lanka is governed and regulated by the Regulation of Insurance Industry Act No. 43 of 2000 (the “RII Act”) and the relevant regulatory authority is the Insurance Regulatory Commission of Sri Lanka (the “Insurance Commission”).

  In terms of the RII Act, no person can carry on insurance business in Sri Lanka unless such person is for the time being registered or deemed to be registered under the RII Act to carry on such business. Accordingly, any SME that wishes to effect insurance in respect of its business and operations (including in respect of its
directors, officers and employees) must obtain such insurance coverage from an insurer registered with the Insurance Commission under the RII Act. The time that is taken and the costs associated with the obtaining of an insurance policy will depend on the nature of the policy, the coverage sought and the requirements of each insurer, which could differ on a case by case basis.

Based on information gathered by us during our study, there does not appear to be any special insurance or social security schemes mandated by the Insurance Commission for the benefit of SMEs.

- **Compliance with environmental laws**

  The National Environmental Act No. 47 of 1980 (as amended) (the “NEA”) provides for the protection, management and enhancement of the environment and the regulation of matters pertaining thereto. The NEA also established the Central Environmental Authority (the “CEA”). Every SME must comply with the provisions of the NEA and other relevant environment related laws as detailed in the commentary below.

  - **Project approvals for prescribed projects**

    Section 23Z of the NEA requires approval to be obtained for “prescribed projects” from the relevant “project approving agency”. As per the Gazette Extraordinary No. 772/22 dated 24th June 1993 published under the NEA, the prescribed projects include:

    - projects and undertakings described in Part I of the Schedule of the Gazette Extraordinary No. 772/22 if located wholly or partly outside the coastal zone as defined by the Coast Conservation Act;
    - all projects and undertakings described in Part I of the Schedule of the Gazette Extraordinary No. 772/22 regardless of being located in the coastal zone or not, if located wholly or partly within the areas specified in Part III of the Schedule of the Gazette Extraordinary No. 772/22; and
    - industries as described in Part II of the Schedule of the Gazette Extraordinary No. 772/22 if located wholly or partly within the areas specified in part III of the Schedule of the Gazette Extraordinary No. 772/22.

    The projects and undertakings described in Part I of the Schedule of the Gazette Extraordinary No. 772/22 for which approval is required include the following:

    - all river basin development and irrigation projects excluding minor irrigation;
    - reclamation of land, wetland area exceeding 4 hectares;
    - extraction of timber covering land area exceeding 5 hectares;
    - conversion of forests covering an area exceeding 1 hectare into non-forest uses;
    - clearing of land areas exceeding 50 hectares;
    - mining and mineral extraction;
    - transportation systems;
    - power generation and transmission;
    - construction of hydroelectric power stations exceeding 50 megawatts;
    - construction of thermal power plants having generation capacity exceeding 25 megawatts;
    - construction of nuclear power plants;
    - all renewable energy based electricity generating stations exceeding 50 megawatts;
    - transmission lines;
    - housing and building;
    - involuntary resettlement exceeding 100 families;
• water supply;
• pipelines;
• hotels;
• fisheries;
• all tunnelling projects;
• disposal of waste construction of any solid waste disposal facility and waste treatment plants;
• development of all industrial estates and parks exceeding an area of 10 hectares;
• iron and steel industries;
• non-ferrous basic metal industries;
• basic industrial chemicals;
• pesticides and fertilizers;
• petroleum and petrochemicals;
• tyre and tube industries;
• sugar factories;
• cement and lime;
• paper & pulp;
• spinning, weaving and finishing of textiles;
• tanneries and leather finishing; and
• industries which involve the manufacture, storage or use of radioactive material.

Industries described in Part II of the Schedule of the Gazette Extraordinary No. 777/22 include the following:

• iron and steel;
• non-ferrous basic metal;
• basic industrial chemicals;
• pesticides and fertilizer;
• synthetic resins, plastic materials and man-made fibres;
• other chemical products;
• petroleum and petro-chemical products;
• tyres and tubes;
• manufacturing and refining of sugar;
• alcoholic spirits;
• malt liquors and malt;
• cement and lime;
• non-metallic mineral products;
• paper, pulp and paperboard;
• spinning, weaving and finishing of textiles;
• tanneries and leather finishing;
• shipbuilding and repairs;
• railroad equipment;
• motor vehicles; and
• aircraft.

In order to obtain the relevant approval, a form has to be made to the CEA providing the preliminary information relating to the project. The CEA will then designate the relevant project approving agency and the project proponent must thereafter carry out an Initial Environmental Examination (IEE) or Environmental Impact Assessment (EIA) depending on the significance of the environmental impact and the determination of the project approving agency is given once the report of the IEE or the EIA is submitted. The time taken for the determination is given from the time of submission of the preliminary information to the CEA could range from 4 months to 1 year depending on how long it takes for the project proponent to complete the IEE/EIA.
Every person who contravenes or fails to comply with the above be guilty of an offence and on conviction before a Magistrate will be liable to imprisonment of either description for a term not exceeding two years or to a fine not exceeding Rs. 10,000 or to both such imprisonment and fine

- **Environmental Protection Licence**

Section 23A of the NEA, prohibits any person from carrying on of any “prescribed activity” being activities which involve or result in discharging, depositing or emitting waste into the environment causing pollution, without Environmental Protection Licence (“EPL”) under the authority of the CEA. Industries and activities which requires an EPL are listed in Gazette Notification No. 1533/16 dated 25th January 2008. Industries are classified under 3 lists i.e., List "A", "B" and "C".

As described in the Gazette Notification No. 1533/16, the procedure for obtaining EPL is as follows:

Step 1: submission of application  
Step 2: pre-evaluation of the application  
Step 3: determination and payment of inspection fee  
Step 4: field inspection  
Step 5: inspection report with recommendations  
Step 6: approval for issuing EPL  
Step 7: payment of licence fee  
Step 8: issue of EPL

In order to obtain the EPL, an application has to be made to the CEA in the prescribed form. Application forms can be obtained free of charge from the CEA or downloaded from the CEA website [www.cea.lk](http://www.cea.lk). Duly filled application has to be submitted to the CEA 30 days prior to the commencement of the prescribed industry/activity. The fees charged for the granting of the licence are as follows:

- Industrial activities in List A- Rs: 7,500 (exclusive of taxes) (valid for only one year)  
- Industrial activities in List B- Rs: 6,000 (exclusive of taxes) (valid for 3 years).  
- Industrial activities in List C - Rs. 4,000 (exclusive of taxes) (valid for 3 years) – This is issued by local authorities.

Every person who carries on any prescribed activity without obtaining and EPL, is guilty of an offence and on conviction be liable to a fine not less than ten thousand rupees or to a term of imprisonment not less than one year or to both such fine and imprisonment.

- **Restriction, regulation and control of pollution of inland waters**

Section 23G of NEA provides that subject to the provisions of section 23A, “no person can deposit or emit waste into the inland waters of Sri Lanka, except in accordance with such standards or criteria as may be prescribed” under the NEA.

Section 23H of the NEA provides that “no person can pollute any inland waters of Sri Lanka or cause or permit to cause pollution in the inland waters of Sri Lanka so that the physical, chemical or biological condition of the waters is so changed as to make or reasonably expected to make those waters or any part of those waters unclean, noxious, poisonous, impure, detrimental to the health,
welfare, safety or property of human beings, poisonous or harmful to animals, birds, wildlife, fish, plants or other forms of life or detrimental to any beneficial use made of those waters.”

A person will be deemed to contravene the above provisions if he:
• places any matter prohibited under the NEA in or on any waters or where it may gain access to any waters;
• pollutes waters by placing matter in any state (solid, liquid or gaseous) either directly or indirectly, knowingly or through negligence, causes or permits to place such matter in such a position;
• pollutes river beds; or
• causes a change in the temperature of waters from the prescribed limits.

Such contravention constitutes an offence under the NEA and if convicted, the liability is fine not less than Rs. 10,000 and not exceeding Rs. 100,000, and thereafter in the event of the offence being continued to be committed, a fine of Rs. 500 for each day on which the offence is so continued to be committed.

• Restriction, regulation and control of pollution of the atmosphere

Section 23J of the NEA provides that subject to the provisions of section 23A, “no person can discharge or emit waste into the atmosphere except in accordance with such standards or criteria as may be prescribed” under the NEA.

Section 23K of the NEA provides that “no person can pollute the atmosphere or cause or permit the atmosphere to be polluted so that the physical, chemical or biological condition of the atmosphere is so changed as to make or reasonably be expected to make the atmosphere or any part thereof unclean, noxious, poisonous, impure, detrimental to the health, welfare, safety, or property or human beings, poisonous or harmful to animals, birds, wildlife, plant or all other forms of life or detrimental to any beneficial use of the atmosphere.”

A person will be deemed to contravene the above provision if he,
• places in or in any manner that it may be released to the atmosphere any matter that is prohibited under the NEA;
• causes or permits the discharge of odours which are detrimental to the senses of human beings;
• burns, wastes otherwise than at times of in the manner or places prescribed;
• uses internal combustion engines or fuel burning equipment contrary to prescribed regulations; or
• uses or burns any fuel which is prohibited by regulations under the NEA.

Such contravention constitutes an offence under the NEA and if convicted, the liability is fine not less than Rs. 10,000 and not exceeding Rs. 100,000, and thereafter in the event of the offence being continued to be committed, a fine of Rs. 500 for each day on which the offence is so continued to be committed.

• Restriction, regulation and control of pollution of the soil

Section 23J of the NEA provides that subject to the provisions of section 23A, “no person can discharge or deposit waste into the soil, except in accordance with such standards or criteria as may be prescribed” under the NEA.

Section 23N of the NEA provides that “No person shall pollute or cause or permit to be polluted any soil or the surface of any land so that the physical, chemical or biological condition of the soil or surface is so changed as to make or be reasonably be expected to make the soil or the produce of the
soil poisonous or impure, harmful or potentially harmful to the health or welfare of human beings, poisonous or harmful to animals, birds, wildlife, plants or all other forms of life or obnoxious or, unduly offensive to the senses of human beings or so as to detrimental to any beneficial use of the land.”

A person shall be deemed to contravene the above provision if he,

• places in or on or in any place where it may gain access to any soil, any matter that is prohibited under the NEA; or
• establishes a waste disposal site, dump or injection well which is detrimental to any human beings or animals or any beneficial use of the oil or the surface of the land.

Such contravention constitutes an offence under the NEA and if convicted, the liability is fine not less than RS. 10,000 and not exceeding Rs. 100,000, and thereafter in the event of the offence being continued to be committed, a fine of Rs. 500 for each day on which the offence is so continued to be committed.

**Restriction, regulation and control of emission of noise**

Section 23P of the NEA provides that subject to the provisions of section 23A, “no person can permit the emission of excessive noise, unless he complies with such standards or limitations as may be prescribed” under the NEA.

Section 23Q of the NEA requires a licence to be obtained to “make or emit or cause or permit to be made or emitted noise greater in volume, intensity or quality than the levels prescribed for tolerable noise.” The licensing procedure is the same as set out in 10.2 above. The Gazette Extraordinary No. 924/12 dated 21st May 1996 published under the NEA prescribes the tolerable noise levels for various areas.

**Provincial environmental regulations**

Under the 13th Amendment to the Constitution, the Provincial Councils are granted certain powers within their respective provinces. Provincial Council may, subject to the provisions of the Constitution, make statutes applicable to the Province for which it is established, with respect to any matter set out in List I of the Ninth Schedule of the Constitution.

Protection of environment within the Province to the extent permitted by or under any law made by Parliament is included in the List I of the Ninth Schedule and the North Western Provincial Council, had adopted the North Western Province Environmental Statute No. 12 of 1990 for the purpose of Establishing North Western Provincial Environmental Authority, for making provisions relating to the protection, management and enhancement of the environmental and for the regulation, maintenance and control of the quality of the environment. The said regulations apply only to the North Western Province.

**Prevention of marine pollution**

The Marine Pollution Prevention Act No. 35 of 2008 (the “MPP Act”) is a law enacted for the prevention, reduction and control of pollution in Sri Lankan waters and to give effect to international conventions for the prevention of pollution of the sea. In terms of the MPP Act and regulations issued thereunder, certain actions that could potentially pollute the sea require permits, approvals or licences from the Marine Environment Protection Authority.

**Coast conservation**
In terms of the Coast Conservation Act No. 57 of 1981 (the “Coast Conservation Act”), if any development activity, other than a prescribed activity, is carried out within a coastal zone, a permit must be obtained therefor from the Coast Conservation Department.

The term “coastal zone” is defined in the Coast Conservation Act to mean the area lying within a limit of 300 meters landwards of the Mean High Water line (plus 0.6 metres from the Mean Sea Level) and a limit of two kilometres seawards of the Mean Low Water line (minus 0.6 metres from the Mean Sea Level) and in the case of rivers, streams, lagoons, or any other body of water connected to the sea either permanently or periodically, the landward boundary shall extend to a limit of two kilometres measured perpendicular to the straight base line drawn between the natural entrance points thereof and shall include the waters of such rivers, streams and lagoons or any other body of water so connected to the sea, and shall also include the area lying within a further extended limit of one hundred metres inland from the Zero Mean Sea Level along the periphery.

The term “development activity” is defined in the Coast Conservation Act to mean any activity likely to alter the physical nature of the coastal zone in any way and includes the construction of buildings and works, the deposit of waste or other material from outfalls, vessels or by other means, the removal of sand, sea shells, natural vegetation, sea grass and other substances, dredging and filling, land reclaiming and mining or drilling for minerals, but does not include fishing.

The activities that have been prescribed so far as development activities within a coastal zone that do not require a permit under the Coast Conservation Act are cultivation of crops and planting of trees and other vegetation.

In order to obtain the development permit, an application has to be made to the Coast Conservation Department in the prescribed form (which can be downloaded from the Coast Conservation Department website). The permit fees for small scale projects will range from Rs. 500 to Rs. 500,000 depending on the nature of the development and the constructions carried on. The time taken for the processing of the application will also depend on the nature and complexity of the development and whether an IEE or EIA is required therefor.

Any person who carries out any development within the coastal zone without a permit in contravention of the Coast Conservation Act is guilty of an offence and will on conviction, after summary trial before a Magistrate, be liable-

(a) in the case of a first offence, to a fine of not less than Rs. 5,000 and not more than Rs. 25,000, or to imprisonment of either description for a term not exceeding one year, or to both such fine and imprisonment; and

(b) in the case of a second or subsequent offence, to a fine of not less than Rs. 50,000 and not more than Rs. 100,000, or to imprisonment of either description for a term not less than one year and not exceeding three years, or to both such fine and imprisonment.

Further, the authorized constructions and developments are also liable to be demolished.

• Import and export related matters
  • Imports and exports control

The Imports and Exports (Control) Act No. 1 of 1969 (the “Import and Export Act”) sets out the legal framework relating to the importation of goods to Sri Lanka and exportation of goods from Sri Lanka.
Section 4 of the Import and Export Act provides that subject to other provisions thereof and regulations made thereunder, no person can import into and export from Sri Lanka, any goods, except under the authority or otherwise than in accordance with conditions of a licence issued by the Controller of Imports and Exports. The Import and Export Act further states that regulations may be made exempting a specified class or classes of persons or goods from the requirement to obtain a licence as aforementioned.

Regulations have been promulgated from time to time under the Import and Export Act making provision for specific matters relating to import and export of goods including the procedures and fees payable for the obtaining of import and export licences and the exemptions from the requirement to obtain import and export licences.

In order to obtain the licence, an application has to be made to the Controller of Imports and Exports in the prescribed form and the fees referred to above has to be paid. The licence fees payable depends on the type of goods imported or exported, as the case may be. If application and the relevant supporting documentation are in order, the licence can be obtained within one day.

Further, the Minister in charge of Trade is empowered, by regulations published in Gazette to prescribe the standards and quality that the articles to be imported into Sri Lanka should conform to and also prescribe other restrictions on import and export of goods.

Any person who acts in contravention of the Import and Export Act is guilty of an offence and will be liable, on conviction after summary trial before a Magistrate, to a fine not exceeding Rs. 5,000 or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment and in the case of any offence relating to the import of any goods in contravention of any regulations relating to standards or quality control the Magistrate shall make order that such goods be forfeited to the State.

- **Customs duties on importation**

The Customs Ordinance No. 17 of 1869 as amended (the “Customs Ordinance”) regulates the payment of customs duties on importation of goods.

Custom duties include levies imposed for revenue or protection purposes and determined on a specific or ad valorem basis as long as they are restricted to imported goods or services.

The Customs Ordinance provides that subject to other provisions thereof the duties of customs set forth in figures in the table of duties in Schedule A of the Customs Ordinance and as the same are respectively inserted, described, set forth by regulations made thereunder shall be levied and paid upon all goods, wares, and merchandise imported into Sri Lanka.

The imports duty rates applicable for each and every article imported identified under Harmonized Commodity of Description Numbers for custom purposes, as mentioned in the Customs Tariff guide.

In addition to the charges mentioned in the Tariff guide, Rs. 250 is charged for each and every customs declaration as computer charges and Rs. 100 per containerized cargo as seal charges and Rs. 1,600 as overtime charges are applicable only for full container load (FCL) cargo.

Any employee of an importer or exporter who is assigned to transact business that relate to the entry or clearance of any. ship, or of any goods, or of any baggage, in any of the port's or places in Sri Lanka should obtain a licence issued under section 115 of the Customs Ordinance and such licensed employee is deemed to be a Customs house agent. Every such licence be valid for a period of one year and may be renewed, at the end of the period. A cash guarantee of Rs. 50,000 should also be paid and
the application should be supported by extensive supporting documentation which includes police reports and Grama Niladhari certificates.

- **Duties on excisable articles**

The Excise (Special Provisions) Act No. 13 of 1989 ("Excise (Special Provisions) Act") provides for the levy and charge of excise duty on articles produced or manufactured in or imported into Sri Lanka. The official in charge of the administration of the Excise (Special Provisions) Act is the Director-General of Excise.

In terms of the Excise (Special Provisions) Act, an excise duty is charged, levied and paid on every article manufactured or produced in Sri Lanka or imported into Sri Lanka at such rate specified by the Minister by Order published in Gazette. Every article in respect of which an Order is made as aforesaid is referred to in the Excise (Special Provisions) Act as an “excisable article”.

The excise duty levied on an excisable article under the Excise (Special Provisions) Act must be paid in the prescribed manner:-

- if the article has been produced or manufactured in Sri Lanka, after its removal from the factory or other place in which such excisable article was produced at or manufactured within one calendar month from the last date of each quarter in the year in which such removal takes place;
- if the article has been imported into Sri Lanka, before its removal from the customs warehouse or other place where such excisable article was stored immediately after its importation into Sri Lanka.

Any person fails to pay the excise duty will guilty of an offence and will on conviction after summary trial before a Magistrate be liable to a fine not exceeding Rs. 1,000,000 or to imprisonment of either description for a term not exceeding five years or to both such fine and imprisonment. Where the offence is committed by a body of persons then (a) if that body is a body corporate, every person who at the time of the commission of the offence was the Director, Secretary or other similar officer of that body; or (b) if that body is not a body corporate, every person who, at the time of the commission of the offence was a member or partner of that body will be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of that offence.

- **Quality and standards**

The quality and standards requirements that are applicable to goods and products are of two types, *viz*, mandatory and voluntary.

- **Mandatory standards**
Under section 12 of the CAA Act, the CAA is empowered to, by gazette notification, adopt the standards prescribed by the Sri Lanka Standards Institution (“SLSI”) relating to goods and services.

The following standards are currently prescribed as mandatory for the below products:

<table>
<thead>
<tr>
<th>Product</th>
<th>Standard</th>
<th>Gazette No. and Date</th>
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<tbody>
<tr>
<td><strong>Food Products</strong></td>
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<tr>
<td>Brown Sugar</td>
<td>SLS 883</td>
<td>746/4 – 1992-12-21</td>
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<tr>
<td>Canned Fish</td>
<td>SLS 591</td>
<td>746/4 – 1992-12-21</td>
</tr>
<tr>
<td>Condensed Milk</td>
<td>SLS 179</td>
<td>746/4 – 1992-12-21</td>
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<tr>
<td>Fresh fruit cordials</td>
<td>SLS 214</td>
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<tr>
<td>Fruit Cordial concentrates, Fruit squash</td>
<td>SLS 730</td>
<td>746/4 – 1992-12-21</td>
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<td>concentrates and fruit syrup concentrates</td>
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<tr>
<td>Ready-to-Serve fruit drinks</td>
<td>SLS 729</td>
<td>746/4 – 1992-12-21</td>
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<tr>
<td>Synthetic cordials</td>
<td>SLS 221</td>
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<tr>
<td><strong>Electric Products</strong></td>
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<tr>
<td>Domestic hotplates</td>
<td>SLS 646</td>
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<tr>
<td>Electric bulbs</td>
<td>SLS 984</td>
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<tr>
<td>Household electric lamp holders</td>
<td>SLS 138</td>
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<tr>
<td>Household electric plugs &amp; socket outlets</td>
<td>SLS 948</td>
<td>746/4 – 1992-12-21</td>
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<tr>
<td></td>
<td>SLS 734</td>
<td></td>
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<tr>
<td>Household electric switches</td>
<td>SLS 1000</td>
<td>746/4 – 1992-12-21</td>
</tr>
<tr>
<td>PVC Insulated, non-armored cables with copper</td>
<td>SLS 733</td>
<td>1840/52 – 2013-12-13</td>
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<tr>
<td>conductors, for voltages up to and including</td>
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<tr>
<td>450/750 V, for electric power, lighting and</td>
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<tr>
<td>internal wiring.</td>
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<tr>
<td>PVC insulated (tinsel conductors) flexible</td>
<td>SLS 1143</td>
<td>1840/52 – 2013-12-13</td>
</tr>
<tr>
<td>cords; Light duty PVC insulated and sheathed</td>
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<tr>
<td>flexible cords; Ordinary duty PVC insulated</td>
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<tr>
<td>and sheathed flexible cords; Light duty 90 OC</td>
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<tr>
<td>PVC insulated and sheathed flexible cords;</td>
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<tr>
<td>and Ordinary duty PVC insulated and sheathed</td>
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<tr>
<td>flexible cords rated up to 300/500 V, for use</td>
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<td>with appliances and equipment intended for</td>
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<tr>
<td>domestic, office and similar environments</td>
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<tr>
<td><strong>Cement and Cement Products</strong></td>
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<tr>
<td>Cement Blocks</td>
<td>SLS 855</td>
<td>1521/29 - 2007-11-02</td>
</tr>
<tr>
<td><strong>Other products</strong></td>
<td></td>
<td></td>
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<tr>
<td>Toothbrushes</td>
<td>SLS 276</td>
<td>1679/39- 010-11-10</td>
</tr>
<tr>
<td>Clay roofing tiles- flat tiles</td>
<td>SLS 2</td>
<td>1690/8 – 2011-01-26</td>
</tr>
<tr>
<td>Clay roofing tiles-Ridge tiles</td>
<td>SLS 2</td>
<td>1690/8 – 2011-01-26</td>
</tr>
<tr>
<td>Safety matches</td>
<td>SLS 11</td>
<td>1742/27-2012-01-27</td>
</tr>
<tr>
<td>Mosquito Coils</td>
<td>SLS 453</td>
<td>1840/52 – 2013-12-13</td>
</tr>
<tr>
<td>Mosquito Mats</td>
<td>SLS 930</td>
<td>1840/52 – 2013-12-13</td>
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<tr>
<td>Containers made of Polymer Materials for</td>
<td>SLS 1336</td>
<td>1918/18 - 2015-06-11</td>
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<tr>
<td>Packaging of drinking water</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protective helmets for vehicle users</td>
<td>SLS 517</td>
<td>1923/65 – 2015-07-16</td>
</tr>
</tbody>
</table>
• **Voluntary standards**

  In case of voluntary standards, the system is designed to be one with a central authority in establishing, granting and auditing the standards.

  The SLSI is designated as the National Standards Body of Sri Lanka established under Sri Lanka Standards Institution Act No. 6 of 1984. The main objectives of establishing SLSI was inter alia the preparation of standards on structures, commodities, products, material practices and operations, the operation of certification mark scheme and the certification of the quality of commodities, material and finished goods.

• **Available standards and certification**

  The certification and standards can be divided into two areas, viz., product certification and systems certification

  With regard to product specification, SLS Marks Scheme is the most widely used product specification scheme in Sri Lanka.

  With regards to systems specification, SLSI operates the following certification schemes.

<table>
<thead>
<tr>
<th>Scheme</th>
<th>Provider / Accreditor</th>
<th>Applicable Areas</th>
<th>Application and renewal procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quality Systems Certification Scheme (ISO 9001)</td>
<td>Raad Voor Accreditatie (Dutch Board for Accreditation) and Sri Lanka Accreditation Body</td>
<td>Raad Voor Accreditatie provides accreditation for 19 areas including: • Food products, beverages and tobacco • Textile and textile products • Leather and leather product • Pulp and paper products • Publishing • Printing • Chemicals • Pharmaceuticals • Rubber and Plastic • Non-metallic mineral. • Concrete and cement • Basic metals, minerals • Electrical and optical</td>
<td>For acquiring the certification, an application has to be forwarded. Preliminary report and audit of quality should be carried out. Upton making improvements, stage 1 and stage 2 audits are to be carried out. Once the corrective action on the issues highlighted in the audits is submitted to SLSI, certification is issued. Registration has to be done</td>
</tr>
<tr>
<td>Environmental Management System (ISO 14001)</td>
<td>Raad Voor Accreditatie and Sri Lanka Accreditation Body</td>
<td>Raad Voor Accreditatie provides accreditation for 15 sectors including food products, textile products, leather products, repair of leather and leather products, wood and wood products, rubber and plastic products, concrete, cement, lime, plaster, machinery and equipment, repair of machinery and equipment, electrical and optical equipment and their repair, wholesale trade and repair of motor vehicles, wholesale and retail trade except motor vehicles, hotels and restaurants.</td>
<td>Sri Lanka Accreditation Body provides accreditation for the manufacture of food, beverages and tobacco products, textiles, wearing apparels, leather products, paper products, printing, chemicals, pharmaceuticals, rubber and plastic products, basic metal products, computers, electronic and optical products, electrical equipment. Further, the accreditation is provided for construction, finishing of buildings, transportation related activities, publishing activities, financial services, education and public administration.</td>
</tr>
<tr>
<td>Scheme</td>
<td>Accreditation Authority</td>
<td>Applicable Areas</td>
<td>Certification Process</td>
</tr>
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<td>--------------------------------------------</td>
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</tbody>
</table>
| HACCP (SLS 1266) and Food safety management Scheme - FSMS (ISO 22000) | Raad Voor Accreditatie (Dutch Board for Accreditation) and Sri Lanka Accreditation Body | Both HACCP and ISO 22000 are accredited by Raad Voor Accreditatie and by Sri Lanka Accreditation Body. The applicable areas are:  
  - food and feed processing;  
  - catering;  
  - retail, transport and storage; and  
  - bio-chemicals. | To acquire these certification, HACCP plan and FSMS plan has to be submitted.  
  Upon improvement to the systems, after two stages of audit process, the certificate will be issued.  
  Registration has to be done annually and re-certification should be carried out every 3 years. |
| Good Manufacturing Practices Scheme - GMP (SLS 143) | SLSI | The following areas in a process are monitored.  
  - Establishment - Design, facilities, equipment and maintenance  
  - Control of operations  
  - Cleaning and sanitation  
  - Personal hygiene  
  - Transportation  
  - Training  
  - Product certification  
  - Pest control  
  - Waste management  
  - Packaging and labelling | Certification fee ranges from LKR 10,000 to LKR 60,000 and will be determined by the value of the assets of the applying organization. |
| Occupational Health and Safety Scheme (OHSAS 18001) | SLSI | Applicable to any organization with the aim to control its occupational health and safety risk | Certification process is similar to ISO 9001.  
  Registration has to be done annually and re-certification should be carried out every 3 years. |
Other system certification schemes are as follows:

- Energy Management Certification Scheme (ISO 50001)
- Super Market Management System-SLS 1432
- Organic Certification Scheme- SLS 1324
- Vegetarian System Certification- SLS 1460

- **SME specific standards – Vidatha Certification**

The Vidatha Certification system is a certification scheme specially designed for SMEs. Vidatha certification assures adherence to the good practices during manufacturing and processing of goods. The certification is open to any industry.

The annual certification fee ranges from LKR 1,000 – LKR 25,000 and will depend on the value of fixed assets of the applicant.

- **Compliances under the Measurement Units Standards and Services Act No 35 of 1995**

Measurement Units Standards and Services Department was established in 1997 under the Measurement Units Standards and Services Act No 35 of 1995 (“MUSS Act”). The Department is the successor to the weight & measures division, which was, established in 1952 under the Weight and Measure Ordinance No 37 of 1946. The department is entrusted with the implementation of the MUSS Act upgrading necessary laws and promulgating regulations while safeguarding the interest and protecting the rights of the consumer.

The objective of the Department is to provide credible and traceable calibration service to the country through implementing and administering the laws and regulations assigned to it. The Measurement Units Standard and Services Department has the following powers;

- Realization, establishment, maintenance and dissemination of national measurement standards of the country;
- Maintenance of the national measurement system of units of the country;
- Develop regional and international co-operation in the field of metrology;
- Provision of calibration facilities to trade, industry, health, environmental protection, safety on the road/air and sea which are traceable to international standards;
- Provide advisory services to required organization;
- Prevention of violation of measurement law of the country by way of conducting inspection and raids; and
- Registration of manufacturers, repairers and sellers of measuring devices.

According to the law it is mandatory that all measuring or weighing instrument used in trade are verified once in twelve months to ensure that individual instrument is still within their limits of error.
and satisfy all other metrological and technical requirements prescribed by regulations. Any instrument which is repaired must be verified and stamped with the mark of verification even when the period of validity of its previous verification has not been expired. District secretary provides calibration facilities to trade and industry at district level. With prior approval of the secretary they setup verification centers at divisional secretaries, police station and other office buildings which belongs to the government. Traders are informed through the Gramaseva Niladari to get their weighing or measuring equipment verified at these verification centers.

It is also mandatory for every person who sells, repairs or manufactures or intends to sell, repair or manufactures any weight, measure or weighing or measuring instrument to be registered under the MUSS Act. The fees for registration to sell or repair or manufacture and sell any weight or measure or any weighing and measuring instruments is are provided. Registration fee of a seller of weights, measures or weighing and measuring instrument is Rs. 600 while the registration fee of a repairer varies from Rs. 600 to Rs. 3000.

Inspection or conduction of raids is the control exercise performed in order to check whether the measurement law and regulations are properly complied with. Raids are conducted by inspectors at district level without notice to traders and very often initiated as a result of complains from the public. When dealing with complains inspectors at reasonable time enter into any factory shop, store, or vehicle for the purpose of investigations. At the end of investigations inspectors report their finding to District Secretary who has the authority to decide whether to prosecute the offenders.

Any person who fails to have a measure or measuring instrument calibrated in terms of the MUSS Act, shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding five thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment. Any person who commits a breach of any other provision of MUSS Act or of any regulations made thereunder for which no punishment is expressly provided for shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding Rs. 500.

- Accreditation by the Sri Lanka Accreditation Board for Conformity Assessment

The Sri Lanka Accreditation Board for Conformity Assessment (‘’SLAB’’) is established under the Sri Lanka Accreditation Board for Conformity Assessment Act. No. 32 of 2005 (‘’SLAB Act’’). SLAB functions under purview of the Ministry of Science, Technology and Research and is governed by a Council of thirteen (13) members appointed in terms of the SLAB Act. No. 32 of 2005. The Director is the Chief Executive of the SLAB.
SLAB, has the responsibility to promote accreditation activities and provide the necessary accreditation services to facilitate conformity assessments in the provision of goods and services for domestic and export markets. This covers the Accreditation of Laboratories, Certification and Inspection Bodies, GHG Validation/Verification Bodies providing various types of services to the Industry and the Business community and to the Government and the Consumer Public.

The general procedure of accreditation is as follows:

• **Enquiry and Formal Application** - Duly filled application (applications are publicly available) and all the supporting documents should be submitted to SLAB along with nonrefundable application fee. Applicants will be acknowledged further information/clarifications will be requested if necessary.

• **Document and Record Review** - Application and supporting documents submitted by the applicant will be reviewed in order to verify compliance in accordance with the relevant Standard by a competent Lead Assessor appointed by SLAB and a detailed feedback report will be issued. The applicant must take necessary corrective actions on the deficiencies indicated in the report within specified time period (two to six months) and submit to the SLAB.

• **Pre-Assessment** - Pre-assessment is conducted by Lead assessor /Assessment team in order to verify whether documented procedures are in place. A detailed feedback report will be issued. The applicant must take necessary corrective action on the deficiencies indicated in the report within specified time period (two to six months) and submit to the SLAB.

• **Initial Assessment** - This is the final audit for the grant of accreditation. A team consisting SLAB assessor and/or technical experts will conduct the initial assessment. A detailed feedback report will be issued. The applicant must take necessary corrective action on the deficiencies indicated in the report within specified time period (two to six months) and submit to the SLAB.

• **Submission of Corrective Actions** - The applicant submit objective evidence for corrective actions taken before or not later than six months. After six months, a fresh application along with related documents shall be submitted to the SLAB. An additional fee will be charged for processing of applications. This is applicable to all stages where corrective actions are involved.

• **Recommendation by Assessment Team** - The assessment team will make a recommendation to Accreditation Committee regarding Grant of accreditation.

• **Grant of Accreditation** - If the Accreditation Committee is satisfied with the recommendations of the assessment team, the applicant will be granted accreditation with the approval of the Governing Council.
The time taken to receive accreditation would depend on a number of factors, such as the degree of an organization’s compliance with requirements, complexity of scope of the accreditation applied for, availability of evidence and clearance of incidences of non-conformance highlighted during the assessment. A reasonable time frame is between two to six months. Once accredited, an accreditation certificate is issued.

There will also be follow-up surveillance which consists of periodic assessments being carried out to ensure continued compliance to the requirements and scope of accreditation. The accreditation will also require periodic renewal and the renewal period will depend on the terms and conditions of the accreditation scheme.

Any person who willfully contravenes the SLAB Act or resists or obstructs a member of the Council or an officer of SLAB or an Assessor appointed under this Act in the exercise by such officer or Assessor, of the powers conferred on him by the Act or willfully makes any false statement in, or omits any material particular from, any return or information furnished by him is guilty of an offence. Fines would be charged for the contravention of the provisions under the SLAB and the state may also forfeit such products or part of to the state or dispose in a manner the court directs.

• Access to equity and debt financing

In the case of businesses in Sri Lanka including SMEs, the methods that are typically and more commonly used to raise financing for the businesses are equity financing and debt financing. The salient information relating to equity and debt financing and the legal framework applicable thereto are as follows:

• Equity financing

This is essentially relevant where the business is carried out through a company incorporated in Sri Lanka with the identified funders/investors of the business providing financing by investing in the share capital of the company or through partnerships where the partners will finance the working capital requirements of the partnership by investing in the equity of the partnership.

The procurement by SMEs of equity investments from local investors are not subject to any specific restrictions under the law and SMEs which are companies can raise equity financing by the issue of shares to local investors by adhering to the procedures set forth in the Companies Act and the articles of association.

The issuance of shares in companies to investors resident outside Sri Lanka is however restricted under the Foreign Exchange Act No. 12 of 2017 (the “Foreign Exchange Act”).

The Foreign Exchange Act provides that the Minister in charge of the subject of the Central Bank can, in consultation with the Monetary Board of Central Bank of Sri Lanka and with the approval of the cabinet of ministers, authorise by regulations, the class or classes of capital transactions in foreign exchange. The regulations so published may specify the limit up to which capital transactions may be authorised and the terms and conditions subject to which foreign exchange may be dealt with for the class or classes of capital transactions so authorised.
In terms of the Regulations made by the Minister published in Gazette Notification No. 2045/56 dated 17th November 2017 (the “FE regulations”), any person resident outside Sri Lanka including country funds, regional funds, investment funds and mutual funds established outside Sri Lanka are permitted, subject to the exclusions and limitations set forth therein, to invest in, acquire or hold of all classes of shares or an entitlement to shares (including any subsequent shares devolving on such investor by virtue of a corporate action by the issuer, exercise of a right, entitlement or conversion) issued by companies incorporated in Sri Lanka:

(1) The permission granted in terms of the FE Regulations does not apply in respect of shares of a company proposing to carry on or carrying on any of the following businesses:
   • pawn broking;
   • coastal fishing; and
   • retail trade where a capital contributed by persons resident outside Sri Lanka will be less than US$ Five Million.

(2) The permission granted in terms of the FE Regulations applies in respect of shares in a company carrying on or proposing to carry on any of the following businesses only up to 40% of the stated capital of such company, or if approval has been granted by the Board of Investments of Sri Lanka for a higher percentage of foreign investment in any company only up to such higher percentage.
   • production of goods where Sri Lanka’s exports are subject to internationally determined quota restrictions;
   • growing & primary processing of tea, rubber, coconut, cocoa, rice, sugar and spices;
   • mining and primary processing of non-renewable national resources;
   • timber-based industries using local timber;
   • deep sea fishing (as defined by the Ministry assigned the subject of Fisheries);
   • mass communications;
   • education;
   • freight forwarding;
   • travel agencies; and
   • shipping agencies.

(3) The permission granted in terms of the FE Regulations will apply in respect of shares of a company carrying on or proposing to carry on any of the businesses set out below only up to the percentage of the stated capital of the company for which percentage either general or special approval has been granted by the Government of Sri Lanka or any legal administrative authority set up for the approval of foreign investment in such businesses. These businesses are regulated by government agencies that evaluate foreign investment proposals before granting approval therefor:
   • Air transportation;
   • Coastal shipping (as defined by the Ministry assigned the subject of Fisheries);
• Industrial undertaking in the second schedule of the Industrial Promotion Act No. 46 of 1990, namely:

  • Any industry manufacturing arms, ammunitions, explosives, military vehicles and equipment, aircraft and other military hardware;
  • Any industry manufacturing poisons, narcotics, alcohols, dangerous drugs and toxic, hazardous, or carcinogenic materials;
  • Any industry producing currency, coins or security documents;

• Large scale mechanized mining of gems; and
• Lotteries.

The Conditions subject to which the permission has been granted (“FE Investment Conditions”) are as follows:

(a) all funds required for capital investments must be made through an Inward Investment Account (“IIA”) opened and maintained in any foreign currency designated by the Central Bank or Sri Lankan Rupees with a licensed commercial bank as an authorized dealer.

(b) all income received from such investments and proceeds of disposal, liquidation, maturity of the investments must be credited to the IIA through which the investment was made.

(c) all income, proceeds on disposal, liquidation, maturity of the above investments (including any subsequent shares devolving on such investor by virtue of a corporate action by the issuer, exercise of a right, entitlement or conversion) transferred from a person who is non-national (excluding emigrants) to a person who is non-national (excluding emigrants) by way of inheritance or gift may be repatriated through an IIA opened by the beneficiary, if the investment has been made via an IIA of the initial investor in compliance with the Foreign Exchange Act or by way of an inward remittance through a Securities Investment Account (re-designated as Inward Investment Account) or any other account prior to the date of operation of the FE Regulations.

• all income, proceeds on disposal, liquidation, maturity of the investments (including any subsequent shares devolving on such investor by virtue of a corporate action by the issuer, exercise of a right, entitlement or conversion) made prior to the effective date of this regulation may be repatriated through an IIA opened by the investor subject to the submission of evidences of the
inward remittance for the investment. In the event of evidence of the inward remittance for the investment are not available for investments made prior to January 1, 2010, the said proceeds and any income of the investment may be repatriated through an IIA opened by the non-resident investor upon satisfying with the bona fide of the underlying transaction by the licensed commercial bank as an authorized dealer.

- resident entities involved with the capital transactions, including investee company, company secretaries and all intermediaries including stockbrokers, unit trusts, mutual funds and financial institutions will be responsible to ensure that persons resident outside Sri Lanka carries on such capital transactions in compliance with all requirements specified under the FE Regulations.

If any investment does not fall within the general permission in terms of the FE Regulations, the special approval of the Monetary Board of the Central Bank of Sri Lanka must be obtained for such investment under section 7(10) of the Foreign Exchange Act, which is to be granted by the Monetary Board by taking into consideration, the existence of any exceptional circumstances and in accordance with such directions as may be issued by the Minister of Finance in conformity with the approvals made under the Foreign Exchange Act and the regulations issued thereunder.

- **Debt financing**

Businesses generally raise funding through loans obtained from local banks and financial institutions as well as foreign banks and financial institutions. It is also usual for financing to be raised through shareholder loans.

Debt financing by banks and financial institutions in Sri Lanka is subject to the laws and regulations that such banks (i.e. Banking Act No. 30 of 1988 and rules, regulations, directions, determinations and orders made thereunder) and financial institutions (i.e. Finance Business Act No. 42 of 2011, Finance Leasing Act No. 56 of 2000, Microfinance Act No. 6 of 2016 and rules, regulations, directions, determinations and orders made thereunder) are governed by. The constraints that debt financing by such banks and financial institutions are subject to include the requirement to obtain collateral as security for loans granted, single borrower exposure limits, interest rates etc.

All the public sector banks and most of the private commercial banks in Sri Lanka have introduced special loan schemes for SMEs. These loan schemes appear to be specifically catered to industries such as agriculture, dairy, fisheries, micro SME, self-employment and small enterprises. The common eligibility criteria appear to be citizenship of Sri Lanka, being a customer of the relevant bank, being a permanent resident of the area and being able to provide the collateral required by the bank. The criteria and the type of security required vary depending on the bank and the Loan scheme. Some banks have introduced several schemes for same industry which will set out different eligibility criteria. Therefore, a SME has the opportunity to select a scheme that suits for the financial necessity and capability.

Debt financing by foreign lenders is subject to the provisions of the Foreign Exchange Act and in terms of the FE Regulations, persons resident outside Sri Lanka are permitted to invest in debt securities or grant loans with a tenure of 3 or more years to companies incorporated in Sri Lanka in foreign exchange or in Sri Lankan Rupees. Such permission is also subject to the FE Investment Conditions.

Accordingly, foreign lenders can grant loans or debt securities to companies in Sri Lanka under the general permission granted under the FE Regulations only if the tenure of the loan or the debt securities is 3 or more years. In the event any foreign loan does not fall within the general
permission in terms of the FE Regulations, the special approval of the Monetary Board of the Central Bank of Sri Lanka must, as aforesaid, be obtained for such investment under section 7(10) of the Foreign Exchange Act, which is to be granted by the Monetary Board by taking into consideration, the existence of any exceptional circumstances and in accordance with such directions as may be issued by the Minister of Finance in conformity with the approvals made under the Foreign Exchange Act and the regulations issued thereunder.

Financiers of businesses in Sri Lanka usually require the following security and contractual safeguards to protect their investments:

- **Financiers who provide funding in the form of equity investments—**
  - Negative pledges by the investee companies undertaking not to carry out or engage in certain activities which have an impact on the assets, solvency and financial health of the investee companies;
  - Consent rights in investment agreements/documentation which require investee companies to obtain the consent of the financier to carry out certain activities which could have an impact on the assets, solvency and financial health of the investee companies;
  - Exit mechanism in investment agreements/documentation (i.e. put options, buy back rights, redemption rights etc.) entitling the financier to recover its investments at any given time or at the occurrence of certain events;
  - Maintenance of reserves such as redemption reserve funds to facilitate the due repayment of the investment.

- **Financiers who provide funding in the form of debt—**
  - Security over assets (i.e. land, plant and machinery, book debts) in the form of a mortgage;
  - Corporate guarantees and bank guarantees;
  - Negative pledges by the borrower undertaking not to carry out or engage in certain activities which have an impact on the assets, solvency and financial health of the borrower;
  - Consent rights in the lending documentation which require the borrower to obtain the consent of the financier to carry out certain activities which could have an impact on the assets, solvency and financial health of the borrower;
  - Provisions for the acceleration of repayments on the occurrence of certain events;
  - Maintenance of reserves such as redemption reserve funds to facilitate the due repayment of the investment.

The power of companies to raise finances in any manner such companies deem fit and also to carry out any other transaction in the course of conducting its business is subject to the provisions of section 185 of the Companies Act which deal with major transactions. In terms thereof, a company must obtain the approval of shareholders by way of a special resolution if the transaction is construed to be a major transaction within the meaning of section 185 of the Companies Act. A major transaction is defined in the Companies Act to mean,

- the acquisition of or an agreement to acquire (contingent or not) the assets of a value greater than half the value of the assets of the company before the acquisition;
- the disposition or an agreement to dispose (contingent or not) of the whole or more than half the value of the assets of the company;
- transaction having or likely to have the effect of the company acquiring rights/interests or incurring obligations/liabilities of a value greater than half the value of the assets of the company before the acquisition;
- a transaction or a series of related transactions which have the purpose or effect of substantially altering the nature of the business of the company.

The following transactions have been excluded from this definition:-
- transaction by a company giving a floating charge over all or part of its property;
- transactions by a receiver appointed pursuant to an instrument creating such a floating charge;
- transactions by an administrator or a receiver.

**Regulated financiers**

Financiers who carry on regulated financing business must essentially adhere to and conform to the laws and regulated that are applicable to such regulated businesses.

**Banks**

The primary law that regulates the banking industry is the Banking Act No. 30 of 1988 (the “Banking Act”). The Banking Act provides *inter alia*, for the licensing of persons carrying on banking business and the business of accepting deposits and investing such money, supervision and regulation of such licensed entities and their operations by the Central Bank (including restrictions on the purchase of shares in a company, capital requirements, reserve funds and maintenance of liquid assets applicable to licensed banks), regulation of off-shore banking business, preparation of accounts/audit, requirements to furnish information and carry out inspections, matters pertaining to the fitness of directors and secretaries of licensed banks, revocation of licenses, liquidation of banks incorporated in Sri Lanka and closure of local branches of banks incorporated outside Sri Lanka.

The Banking Act also empowers the Minister in charge of the implementation of the Banking Act, to make regulations under the Banking Act. The Banking Act also empowers the Monetary Board to issue directions to licensed commercial banks or licensed specialized banks regarding the manner in which any aspect of the business of such bank/s is to be conducted.

**Non-bank financial institutions**

The non-bank financial institutions in Sri Lanka may be categorized as finance companies, finance leasing companies and micro finance companies. The entities mentioned above, are regulated under the Finance Business Act No. 42 of 2011 (“Finance Business Act”), the Finance Leasing Act No. 56 of 2000 (“Finance Leasing Act”) and the Microfinance Act No. 6 of 2016 (the “Microfinance Act”), respectively.

As per the Finance Business Act, any person other than a licensed bank or a co-operative society registered under a Statute of a Provincial Council or any other institution exempted from the application of the Finance Business Act, must obtain a license to carry on finance business. As per the definition provided in the law, the term ‘finance business’ means the business of acceptance of deposits and (a) the lending of money, or (b) the investment of money in any manner whatsoever. The Monetary Board has the power under the Finance Business Act to give directions to finance companies or to any group or category of finance companies regarding the manner in which any aspect of the business and corporate affairs of such finance companies are to be conducted. A ‘finance company’ is a company licensed to carry on finance business under the Finance Business Act. Most of the directions issued by the Monetary Board relate to interest rates, loan to value ratios which apply in respect of motor vehicle loans and advances and minimum core capital requirements. The Director of Non-Banking Financial Institutions also has power under the Finance Business Act to suspend or wind up the operations of a finance company in specific circumstances. The Minister, under whose purview the implementation of the Finance Business Act comes, also has power to make regulations and to issue directions to the Monetary Board for the purpose of giving effect to the principles and provisions of the Finance Business Act.
The Finance Leasing Act provides for the regulation and monitoring of finance leasing business, rights and duties of lessors and lessees and suppliers of equipment, and for matters incidental thereto. As per the Finance Leasing Act, no person can carry on finance leasing business unless a certificate of registration has been issued in respect thereof by the Director of Non-Banking Financial Institutions. The persons eligible to apply for registration to carry on finance leasing business, are licensed banks in Sri Lanka, finance companies and public companies with the prescribed capital. As per the Finance Leasing Act, the Director has the power to suspend or cancel a registration of an entity and to issue general directions, as he may consider necessary for the purpose ensuring that registered establishments maintain efficient standards in carrying out their duties. Where the Director has reason to believe that a person is carrying on finance leasing business without obtaining a registration, the Director may call on such person to furnish requisite information and take legal action where necessary. The Minister charged with the implementation of the Finance Business Act, has the power to issue regulations under the Finance Leasing Act.

The Microfinance Act was enacted to provide for the licensing, regulation and supervision of companies carrying on microfinance business, the registration of non-governmental organizations (‘Microfinance NGOs’) and for the setting up of standards for the regulation and supervision of such Microfinance NGOs and micro credit non-governmental organizations. As per the Microfinance Act, no person other than a licensed microfinance company, a Microfinance NGO or an institution exempted from the application of the provisions of the Microfinance Act can carry on microfinance business. Microfinance business is defined in the Microfinance Act as ‘accepting deposits and providing (a) financial accommodation in any form, (b) other financial services; and (c) financial accommodation in any form and other financial services, mainly to low income persons and micro enterprises in conformity with the schedule to the Microfinance Act. The licence to carry on microfinance business is issued by the Monetary Board. The Monetary Board also has power under the Microfinance Act to issue directions to licensed microfinance companies or to any single licensed microfinance company or to any group or category of microfinance companies. Whilst the Monetary Board has the power to issue rules on certain aspects under the Microfinance Act, it also has the power to take action where license holders are engaging in unsound or improper activities and to cancel any licenses granted.

Such regulations, directions and orders issued by the regulator to banks and non-bank financial institutions from time to time to regulate the activities of such institutions including with regard to the parameters within which the banks and non-bank financial institutions may grant loans and other financial accommodations. Accordingly, the ability of banks and non-bank financial institutions to provide financing is subject to the constraints imposed under such regulations, directions and orders which are essentially formulated with the objective, inter alia, of protecting the interests of financial consumers who deposit monies in and contribute to the capital of these institutions.

The banks and non-bank financial institutions are regulated by the Central Bank of Sri Lanka established by the Monetary Law Act No. 58 of 1949 (the “Monetary Law Act”). The Monetary Law Act was enacted to establish the monetary system of Sri Lanka and the Central Bank to administer and regulate the monetary system and to confer and impose upon the Monetary Board of the Central Bank powers, functions and responsibilities necessary for the purposes of such administration and regulation. The Monetary Law Act presently contains provisions relating to inter-alia:

- the principles governing domestic and international monetary stabilization which should be followed by the Monetary Board;
- operations in gold and foreign exchange;
- regulation of foreign exchange operations of commercial banks;
- credit operations with banking institutions;
- open market operations;
- credit operations with the Government; and
• Central Bank’s activities as fiscal agent, banker and financial advisor of the Government.

Accordingly, the financing activities of banks and non-bank financial institutions are regulated by the Central Bank and the Monetary Board within the broad framework of the Monetary Law Act.

• Technology transfer/innovation

Technology transfer is a process that facilitates the transfer of technology from one entity to another. There are several stages in this transfer process namely, the creation of technology, protection of technology and distribution of technology. Each stage is considered in light of the SME sector.

• Creation of Technology

New technology is created when the existing scientific knowledge used for practical purposes or applications and is primarily through research and development. Research and development can be carried out by private entities, government academic institutions (including universities) and other government entities specifically established for research. Except for the National Research Council of Sri Lanka which coordinates and facilitates research between universities, public institutions and private entities, all the other institutions are designated to address practical issues in a particular field.

Government research institutions that play a key role in the creation of technology are listed below:

• National Research Council of Sri Lanka

Created as a special agency by the President of Sri Lanka under the powers vested in him by Article 33 of the Constitution, the National Research Council is created with the objective of assisting the government to plan, coordinate and facilitate research in Science and Technology.

The Presidential Directive dated 24th of July 2007 has initiated the National Research Council with the objective of enabling Sri Lanka to achieve the status of a knowledge and science based, newly developed country more particularly:

• bringing in private sector and industry representation;
• promotion of fundamental and applied research and facilitate human resource development in all disciplines of science;
• planning and coordination of research efforts of research in scientific research institutions of public sector;
• promotion of collaborative research programmes between public sector researchers and universities; and
• promotion and facilitation of partnerships among industries, universities and public sector research institutions.
The Hector Kobbekaduwa Agrarian Research and Training Institute

The Hector Kobbekaduwa Agrarian Research and Training Institute was established in 1972 under the Agrarian Research and Training Institute Act No. 05 of 1972. It functions as a statutory body under the Ministry of Agriculture. It was established mainly for the promotion of policy-oriented research and training needs of the agrarian and rural sector.

Sri Lanka Council for Agricultural Research Policy

This institution is established under the Sri Lanka Council for Agricultural Research Policy Act No. 47 of 1987. It is mandated to:

- formulate national agricultural research policy and priorities;
- define the overall aims and scope of agricultural research with a view to furthering national development objectives;
- review institutional and departmental agricultural research programmes and make recommendations with regard to their priorities and funding to the Ministry of the Minister in charge of the subject of Finance and Planning;
- promote and facilitate excellence in agricultural research;
- arrange for and fund inter-institutional agricultural research projects; and
- arrange for and fund special scientific services for the entire agricultural research sector.

Sugarcane Research Institute

The Sugarcane Research Institute is a statutory body established by the Sugarcane Research Institute Act No. 75 of 1981 to conduct research on cultivation and processing of sugarcane to cater to technical and technological needs of the development of the sugar industry of Sri Lanka. Presently, the institute is under the purview of the Ministry of Plantation Industries.

Rubber Research Board

Under the Rubber Research Ordinance, a Rubber Research Board is established for the purpose of furthering and developing the rubber industry. The Rubber Research Board governs the Rubber Research Institute of Sri Lanka with the view of managing, conducting, encouraging and promoting scientific research in respect of rubber cultivation, processing, product manufacture and all problems connected with the rubber industry.
• **Tea Research Institute of Sri Lanka**

Under the Tea Research Board Act, No. 52 of 1993, the Tea Research Board was established to engage in, and to encourage, foster and facilitate, research into the planting and manufacturing of tea. The Tea Research Institute of Sri Lanka is administered by the Board.

• **The Coconut Research Institute**

The Coconut Research Institute was set up to conduct scientific research in cultivation of coconut palm and processing and utilisation of coconut products and value addition. Furthermore, this institute is mandated to give advice to the coconut industry in all matters relating to technical nature and to conduct research and development in oil palm industry. The institute is managed by the Coconut Research Board which is established under the Coconut Development Act.

• **Protection of Technology (including Patents)**

A Patent confers the right to secure the enforcement power of the state in excluding unauthorized persons, for the effective period, from making commercial use of a clearly identified invention. Patents grant their owner a set of rights exclusively over an invention. Our commentary on Patents which elaborates on how an invention can be patented, the conditions to be satisfied for the grant of the Patent, the Patent registration process and the rights conferred on the Patent holder is set out in Item 5 in the Annexure of this report.

Sri Lanka Inventors Commission is a statutory body established by Sri Lanka Inventors Incentives Act No 53 of 1979. The main objective of the Commission is to provide technical, financial and legal assistance to inventors. As per section 11(c) of the Sri Lanka Inventors Incentives Act, the Commission has put special emphasis on representing inventors in filing Patent applications and protecting their patents from infringement. Under section 11(d), the Commission is required to help inventors to find market for their inventions.

• **Distribution of technology**

The Vidatha programme is initiated by the Ministry of Science and Technology to facilitate and assist SMEs in improving the quality of their productions. It is a mechanism by which the technologies developed in government research institutions are transferred into rural areas to solve the technical problems of small and medium entrepreneurs in those areas.

At present, more than 200 Vidatha Resource Centres are established throughout the country. Vidatha Technology Transfer Program based on the availability of local resources and the need of the relevant community. Currently there are 5 main technologies for transfer namely; food and beverages, chemical based technology, material based technology, electronic/electrical technology and computer training.
Technology transfer in relation to Intellectual Property rights mainly focused on the Patents and Industrial Designs. Patents and Industrial Designs can be assigned and transmitted from one party to another. The Patent rights can also be licensed by the owner to another person by licence contracts. In assignment and transmission of Patents, Patent applications and Industrial Designs, registration is mandatory with the Director-General of Intellectual Property. However, licence contracts can be registered with the discretion of the parties to the contract.

**Assignment and Transmission of Patents and Patent applications.**

IP Act has given provided for transfer of Patents and Patent applications. As per section 88(1) of the IP Act, a Patent application or Patent can be assigned or transmitted by a written agreement signed by the contracting parties.

Every such transmission or assignment should be registered in the Register kept by the Director-General of Intellectual Property. As per section 88(2), any person becoming entitled to a Patent or Patent application by assignment or transmission will apply to the Director-General in the prescribed form (Form M 08) to register such assignment or transmission in the Register upon payment of the prescribed fee. The fee for registration of an assignment or transmission of a patent application or patent is Rs. 1,500 (exclusive of taxes). Unless recorded in the Register in the prescribed manner, no assignment or transmission of Patent or Patent application will have effect against third parties.

**Assignment and Transmission of Industrial Designs**

Similar to the assignment or registration of Patents, as per section 49(1) of IP Act, industrial designs can only be assigned in writing signed by or on behalf of the contracting parties (assigner and assignee / transferor and transferee). As per section 49(2), any person becoming entitled to the industrial design by way of an assignment or transfer shall apply to the Director-General of Intellectual Property by the prescribed form (Form D 06) to have such assignment or transfer registered in the Register maintained by the Director-General for such purposes. The fee for an application to enter name of a new owner by assignment or transmission is Rs. 1,000 (exclusive of taxes).

According to section 49(4), any such assignment or transmission shall not have effect against third parties unless recorded in the Register.

**Licence contracts**

Licence contracts are agreements by which the owner of a patent grants a licence to another person to use patent rights. As per section 91(1) of the IP Act, a licence contract must be in writing signed by or on behalf of the contracting parties.
The registration of licence contract is not mandatory. However, upon request by or on behalf of the contracting parties to the licence contract and upon payment of prescribed fee, the Director-General will record particulars relating to the contract that the parties wish to have so recorded. The fee for a request to record particulars of a licence contract is Rs. 1,000 (exclusive of taxes).

Section 92 sets out the rights of the licensee. The licensee is entitled to all the rights of the licensor except the right to assign or transmit his rights under the licence contract or grant sub-licences to third parties.

Under section 96 of IP Act, the Director-General must also record expiry, termination or invalidation of licence contracts.

• **Closure of business**
  • **Closure of SMEs which are companies**

A company incorporated under the Companies Act, may close its business in one of two ways, namely, by winding up the company or by requesting the Registrar General of Company to strike off the name of the company from the Register.

Section 267 of the Companies Act provides for three modes of winding up, namely,

- Winding up by court
- Voluntary winding up; and
- Winding up subject to the supervision of court.

However, the modes that are commonly used are winding up by court and voluntary winding up, which are discussed in the commentary below.

**Winding up by court**

Under and in terms of section 270 of the Companies Act a company may be wound up by the court in any one of the following circumstances:

- the company has by special resolution resolved that the company be wound up by the court;
- the company does not commence its business within a year from its incorporation or suspends it business for one year;
- if the number of the members falls below the minimum number required under subsection (2) of section 4 of the Companies Act;
- the company has no directors;
- the company is unable to pay its debts; or
- the court is of opinion that it is just and equitable that the company should be wound up.

Section 271 provides that a company is unable to pay its debt when;

- a creditor to whom the company is indebted a sum exceeding fifty thousand neglected to pay the sum within 3 weeks from the date of leaving a demand at the Registered office;
• execution issued on a judgment, in favour of a creditor of the company is returned unsatisfied; or
• it is proved to the satisfaction of the court that the company is unable to pay its debts.

Under and in terms of section 272 of the Companies Act an application must be made to the court for the winding up of a company by way of a Petition either by the company or by the creditor/creditors, contributory or contributories (i.e. shareholders) of the company.

The Court may appoint a liquidator provisionally at any time after presenting the winding up petition and before the making of a winding up order upon an application being made by the petitioner company. A provisional liquidator is often appointed for the protection of the petitioner company’s assets during the winding up proceedings and the powers of a provisional liquidator are limited to the scope set out in the order appointing the same by the court.

When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding (other than an execution process or attachment against any property by or for the benefit of a creditor, who is entitled to a charge in respect of such property) can be proceeded with or commenced against the company except by leave of court and subject to such terms as the court may impose.

After an Order for winding up has been made by Court, the court will appoint a liquidator (such a liquidator maybe nominated by the petitioner company) for purposes of conducting the proceedings in winding up a company and performing such duties as the court may impose in connection with the winding up.

Where a winding up order has been made and a liquidator has been appointed, the liquidator must take into his custody and control all the property and things in action to which the company is or appears to be entitled. On the application of the liquidator, the court may by order direct any property which is not in the custody and control of the liquidator but belonging to the company to be vested in the liquidator.

The liquidator has the power, under the Companies Act to do all things as may be necessary for the winding up of the affairs of the company and distribution of its assets including the matters specifically set forth in section 292 of the Companies Act. The liquidator acts in a fiduciary capacity and must exercise his powers in the interests of the company and its creditors.

Where the affairs of a company have been completely wound up and the liquidator has made an application for the dissolution of the company, the court must make an order that the company be dissolved from the date of such order and the company will be dissolved accordingly.

In our experience, a winding up of a company by court typically takes 6 to 18 months to complete. The costs will entirely depend on the exact time taken and the fees charged by the liquidator.

Voluntary winding up
A voluntary winding may be a shareholders’ voluntary winding up or a creditors’ voluntary winding up.

The grounds for voluntary winding up which is applicable to both shareholders’ voluntary winding up and creditors’ voluntary winding up is set out in section 319 of the Companies Act, which stipulates that a company may be wound up voluntarily:

- when the period if any, fixed by the articles expires or the event if any, occurs on the occurrence of which the articles provide that the company is to be dissolved, and the company at a general meeting has passed a resolution requiring the company to be wound up voluntarily,
- where the company resolve by special resolution that the company be wound up voluntarily
- where the company resolve by special resolution to the effect that it cannot by reason of its liabilities continue its business and that it is advisable to wind up.

The winding up is deemed to commence from the time of the passing of the above resolution. The effect of the commencement of the winding up is that:

- The company ceases to carry on its business except so far as may be required for the beneficial winding up. The corporate state and corporate powers of the company will however continue until the company is dissolved; and
- Any transfer of shares without the sanction of the liquidator and any alteration in the status of the shareholders of the company will be void.

One or more liquidators must be appointed for the purpose of winding up the affairs and distribution of assets of the Company. Notice of appointment shall be published in the gazette and delivered to the Registrar-General of Companies for registration within 14 days from the date of such appointment. Upon such appointment, all powers of the directors will cease unless the company at a general meeting or the liquidator sanctions the continuance thereof.

The winding up commences upon the passing of the resolution to that effect at a general meeting of the Company. Notice of the passing of the resolution must be given by publication in the Gazette within fourteen (14) days from the date of the passing of the resolution. In a shareholders voluntary winding up, the directors of the company are required to make a statutory declaration, to the effect that the company will be able to pay its debts in full within such period not exceeding 12 months, from the date of commencement of the winding up. Such declaration must be delivered to the Registrar-General of Companies within the 5 weeks immediately preceding the date of the passing of the resolution for winding up the company with a statement of the assets and liabilities as at the latest practicable date before the making of such declaration.

In the event that the directors are not able to make the above declaration or the liquidator is of the opinion that the company will not be able to pay its debts, in full within the time stated in the declaration, during a shareholders’ voluntary winding up, he may summon a meeting of the creditors
and lay before the meeting a statement of the assets and liabilities of the company. The winding up will then, in effect, take the form of a creditor’s voluntary winding up.

In terms of section 331 of the Companies Act, upon the completion of the winding up process the liquidator must call a general meeting of the company by a notice published in the Gazette and must submit his final account of the winding up indicating how the winding up was conducted and how the property of the Company was disposed of.

Within one week of the above meeting a return of the meeting and a copy of the final account must be submitted to the Registrar General of Companies for registration. The company will then be deemed dissolved on the expiration of three months from the date of registration of the return.

In terms of section 343 of the Companies Act and the articles of association of the company, the property of the company must first be applied in the satisfaction of the liabilities of the company (i.e. dues to the Government including taxes, dues to employees, claims of secured creditors and unsecured creditors) and thereupon be distributed among the shareholders according to their rights and interests in the company.

In our experience, a voluntary winding up of a company, whether by shareholders or creditors, typically takes 6 to 12 months to complete. The costs will entirely depend on the exact time taken and the fees charged by the liquidator.

Striking off names of companies from the register maintained by the Registrar-General of Companies

Under section 394 of the Companies Act, the Registrar-General of Companies can exercise his discretion to strike off the name of the company from the register maintained by him where he has reasonable cause to believe that the company is not carrying on business or is in operation. However, this discretion is exercised only in relation to companies that have no assets or liabilities and which have not done business for a period of at least two years.

According to section 394, "whenever the Registrar-General of Companies has reasonable cause to believe that a company is not carrying on business or in operation, he may send to the company a letter inquiring whether the company is carrying on business or in operation" with a view to striking off such company name from the register.

If the registrar receives no reply for the aforementioned letter within one month, he must within 10 days send a second letter and if no reply is received for the second letter within one month a notice will be published in the gazette with a view to striking off the name of the company from the register. A similar notice will be published in the event the company responds that to the effect that the company is not carrying on business or in operation. Upon the expiration of the period specified in the notice the Registrar-General of Companies may strike off the name of the company from the register, and must publish notice thereof in the Gazette, and upon such publication the company will be dissolved.

A practice has however evolved over the years for defunct companies to request the Registrar-General of Companies to strike off the name of the company from the register. In order to facilitate such striking off, a resolution needs to be passed by the board of directors of the company to remove the company's name from the register. Thereafter the company can write to the Registrar of Companies requesting him to remove the name of the defunct company, in order for the Registrar-General of
Companies to exercise his power and discretion under section 394 of the Companies Act. In our experience, the time that is usually taken for the completion of this process is 3 to 4 months. The costs are minimal.

- **Closure of SMEs which are partnerships and sole proprietorships**

  In terms of the BNRO, every registered partnership or individual or if the individual is dead his personal representative must deliver to the Registrar a notice in the prescribed form within 3 months of cessation of business. No fee is payable on this notice.

  Each partnership and sole proprietorship, when closing business, should settle all statutory liabilities such as dues to the Government (including taxes) and due to employees (such as unpaid salary, EPF, ETF and gratuity).