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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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No. 1681/11 - MONDAY, NOVEMBER 22, 2010

(Published by Authority)

PART I : SECTION (I) — GENERAL

Government Notifications

NOTICE UNDER THE EXCHANGE CONTROL ACT (CHAPTER 423 OF THE CLE)

Permission for issue and transfer of debentures of companies incorporated in Sri Lanka to foreign investors

Permission is hereby granted in terms of sections 10, 11, 15 and sub section 5 of section 30 as applicable of the Exchange Control Act (Chapter 423 of the CLE), for the issue and transfer of convertible or non-convertible, redeemable or non-redeemable debentures denominated in Sri Lankan Rupees in a company classified as a specified business enterprise in terms of the Sri Lanka Accounting and Auditing Standards Act, No. 15 of 1995, to foreign institutional investors, corporate bodies incorporated outside Sri Lanka, individuals resident outside Sri Lanka and Sri Lankans resident outside Sri Lanka, subject to the following terms and conditions.

1. Terms and Conditions Applicable to Debentures :

- 1.1 All debentures issued under this Notice shall be listed in the Colombo Stock Exchange, while such issue may be made either by private placement or initial public offer.
- 1.2 The period of redemption or conversion to ordinary shares, of the debentures issued under this Notice shall not be less than five years and such conversion should be subject to the exclusions and limitations stipulated in the Government *Gazette* Notification No. 1232/14 dated 19th April 2002.
- 1.3 The debentures issued shall have a current credit rating from a local rating agency or international rating agency acceptable to the Securities and Exchange Commission of Sri Lanka.
- 1.4 The rate of interest on the debentures shall not exceed the five year secondary market Treasury bond rate published by the Central Bank of Sri Lanka plus 200 basis points at the date of issuance of the debentures.

2. Terms and Conditions applicable to the Debenture-Issuing Company :

- 2.1 The Board of Directors of the debenture-issuing company (hereinafter referred to as the 'company') shall ensure that cash inflows of its business operations are adequate to service the repayment of interest payments on the debentures, so as to prevent any material liquidity risk to the company.
- 2.2 The Board of Directors of the company shall establish a risk management process that ensures the company addresses the possible risks arising from the foreign investment in the debentures of the company and/or the contagion risk of any default and the other risks to the company in the case of such an eventuality.
- 2.3 The company shall make appropriate sinking fund arrangements for the orderly repayment of debentures on the maturity date and these arrangements shall be reviewed by the company's auditors.

- 2.4 Funds for the investment in debentures and the payment for debentures by the non-resident investor shall be made only out of funds received as inward remittances through a “Securities Investment Account” (hereinafter referred to as SIA), or funds available to the credit of a SIA of the foreign investor, opened and maintained in a licensed commercial bank in Sri Lanka in accordance with directions given by the Controller of Exchange to commercial banks.
- 2.5 A commercial bank or any other person entrusted with the payment of the capital amount, coupon, interests and commissions in respect of any transaction permitted hereunder shall make such payments only into or out of a SIA referred to in paragraph 2.4 above.
- 2.6 The company shall furnish a report to the Exchange Control Department within 30 days of receipt of remittances for investment in debentures providing the following details:-
- (a) The total amount received through SIAs.
 - (b) The names and addresses of the Authorized Dealers through whom the remittances were received.
 - (c) A certificate from the Company Secretary confirming that the provisions of the Exchange Control Act and the directions issued under the Act with regard to the issuance of debentures have been duly complied with.
3. Foreign institutional investors, corporate bodies incorporated outside Sri Lanka, individuals resident outside Sri Lanka and Sri Lankans resident outside Sri Lanka shall be permitted under section 11 of the Exchange Control Act to transfer the debentures acquired by them in terms of paragraph 2.
4. Permission is also hereby granted under section 7 of the Exchange Control Act for the making of any payment to or for the credit of a person resident outside Sri Lanka in respect of transactions permitted hereunder.
5. Nothing contained in this Notice shall be construed as affecting or having a bearing on:—
- (a) Enterprises as defined in the Board of Investment of Sri Lanka Law No. 4 of 1978 in respect of which exemption has been granted from the Exchange Control Act, to the extent of such exemption.
 - (b) The provisions of any other law.
6. For the purposes of this Notice “Persons resident outside Sri Lanka” shall have the same meaning as in the Notice published under the Exchange Control Act in *Gazette No. 15007* dated 21.04.1972.

P. H. O. CHANDRAWANSA,
Controller of Exchange.

Colombo,
22nd November, 2010.

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