



**DEPARTMENT OF FOREIGN EXCHANGE
CENTRAL BANK OF SRI LANKA**

DIRECTIONS No. 20 of 2021 UNDER FOREIGN EXCHANGE ACT, No. 12 of 2017

Directions issued to Authorized Dealers on issuance and renewal of guarantees in respect of current and capital transaction.

In terms of the Foreign Exchange (Classes of Miscellaneous Capital Transactions) Regulations No. 4 of 2021 (the regulations) and Section 9 of the Foreign Exchange Act, No. 12 of 2017 (FEA), Authorized Dealers (ADs) are permitted to issue and renew guarantees (*i.e.* bank guarantees, bonds, standby letters of credit) from the Domestic Banking Unit, as the case may be, in respect of current transactions and capital transactions stipulated below and make payments being claims of such bank guarantees, bonds, standby letters of credit and corporate guarantees subject to the following.

1. Guarantees permitted in respect of current transaction.

- (a) ADs are permitted to issue and renew guarantees in respect of current transactions permitted under the Directions on Current Transactions.

2. Guarantees permitted in respect of capital transaction.

- (a) In the event where a company incorporated in Sri Lanka (*i.e.* investor) requires to provide a guarantee to enable a company incorporated outside Sri Lanka (*i.e.* investee) in which the said investor is a shareholder, to enable the investee to raise facilities from a financial institution, a guarantee subject to a maximum limit of USD 1,000,000 may be issued if the investment in said investee has been made in compliance with the provisions of the repealed Exchange Control Act or the FEA. The guarantee value shall be proportionate to the percentage shareholding of the investor in the said investee at any given time;
- (b) In the event where a company incorporated in Sri Lanka (*i.e.* investor) requires to provide a guarantee to enable a branch or project office established outside Sri Lanka by the said investor, to raise facilities from a financial institution, a guarantee up to USD 500,000 may be issued per branch or project office established outside Sri Lanka by the investor, if the investment in said branch or project office has been made in compliance with the provisions of the repealed Exchange Control Act or the FEA.
- (c) In the event the investor does not have the capacity to provide the guarantees specified under subparagraph 2(a) and 2(b) of these Directions on behalf of its investee, the parent

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company or a fully owned subsidiary of the investee in Sri Lanka (i.e. guarantor) may request to issue such guarantee through an AD with the consent of the investor on the same. Such guarantee may be issued by the AD subject to the limits applicable to the guarantees permitted in subparagraph 2(a) and 2(b) of these Directions. This permission will not be applicable in the event where the investment in overseas has been made out of a Business Foreign Currency Account of the investor.

- (d) In the event where a company incorporated in Sri Lanka act as an agent of a company incorporated outside Sri Lanka (*i.e.* the principal) subject to an agreement entered into between both parties (agency agreement), a guarantee may be issued on behalf of the agent in favor of the principal up to the amount stipulated in the said agency agreement.
- (e) A guarantee on behalf of a person resident outside Sri Lanka (*i.e.* investor) against the funds lying to the credit of an Inward Investment Account, of the said investor, in connection with the purchases of shares of companies listed at Colombo Stock Exchange in Sri Lanka.

3. Other guarantees

- (a) A guarantee on behalf of a Business Foreign Currency Account holder in favor of another AD, to enable such Business Foreign Currency Account holder to obtain accommodations under the Direction No. 09 of 2021, from such AD.
- (b) A guarantee on behalf of a property developer (*i.e.* seller of the property) in favor of an Inward Investment Account holder (*i.e.* purchaser of the property) up to the 50% of the payments made through the same Inward Investment Account for the purpose of purchasing an apartment from the seller, for the construction period of such property.

4. Other terms and conditions

- (a) ADs shall evaluate and ensure on the contingent liabilities of the company on guarantees provided to third parties so far and the financial strength of the company to meet any contingent liability arising out of the guarantee to be issued and the ability of the beneficiary of the guarantee to meet its obligations which to be secured by the said guarantee by the company in Sri Lanka.

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- (b) In the event of issuing guarantees in subparagraphs (a), (b) and (c) of paragraph 2 of these Directions, the following conditions are also applicable;
- i. The investor/ guarantor shall make appropriate legal agreement with the investee to recover the value of the claim (to be made in the event of a default), prior to issuing the said guarantees.
 - ii. Such recoveries as stated in sub paragraph (i) above, shall be brought into the same Outward Investment Account or Business Foreign Currency Account of the investor or rupee account of the investor/ guarantor, through which the payment of the claim was made.
 - iii. If the investment in the investee has been made through a Business Foreign Currency Account of the investor, the proposed guarantee shall be issued subject to the condition that any outward remittance arising from such guarantee shall be claimed out of the funds in the Business Foreign Currency Account of the investor.
 - iv. ADs shall obtain documentary evidence,
 - a) on the compliance with subparagraph (b)(i) above.
 - b) a resolution passed by the Board of Directors of the company (i.e. investor and guarantor) which is certified by the company secretaries or an affidavit/s or any other legally acceptable document on undertaking to comply with subparagraph 4(b)(ii) and 4(b)(iii) of these Directions, to the satisfaction of AD.
- (c) When executing guarantees permitted under paragraph 2 and 3 of these Directions, ADs shall obtain a resolution passed by the Board of Directors of the company which is certified by the company secretaries on,
- i. the approval for the proposed guarantee and to the effect that no guarantee has been obtained from any other ADs for the same purpose.
 - ii. ensuring that the company has financial strength to meet any contingent liability arising out of the guarantee to be issued.

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- (d) ADs shall obtain proper legally acceptable documentary evidence (as required) to establish the legality and *bona-fide* of the underlying transaction to be carried out and to ensure the compliance to the regulations and these Directions.
- (e) In the event of issuing a guarantee on behalf of a person resident outside Sri Lanka (*i.e.* principal obligor) who intends to involve in a current transaction with a person resident in Sri Lanka, in favor of such resident person in Sri Lanka, at the request from the principal obligor or its agent in Sri Lanka, such guarantees shall be issued upon obtaining an enforceable counter guarantee from a reputed international bank outside Sri Lanka with a rating acceptable to the ADs.
- (f) In the event of issuing;
- i. Advance payment guarantees,
 - (a) the guarantee value shall be less than or equal to the value of the advance payment received by the resident in Sri Lanka from the person resident outside Sri Lanka, and subject to paragraph 3(b) of these Directions.
 - (b) the guarantee shall include a condition that it will be valid only after the receipt of the advance payment from the resident outside Sri Lanka to an account in Sri Lanka of the person resident in Sri Lanka,
 - ii. Performance bond, it shall be subject to proof of award of the contract and conditions stipulated therein.
 - iii. Bid bond, it shall be subject to the conditions stipulated in the tender or quotation.

5. Outward remittances on valid claims

- (a) ADs are permitted to make outward remittances/payments arising from valid claims in respect of the guarantees permitted in these Directions, Corporate Guarantees permitted under “*the paragraph 11 under schedule I of the Foreign Exchange (Classes of Capital Transactions Undertaken Outside Sri Lanka By a Person Resident in Sri Lanka) Regulations No. 01 of 2021*” and Sovereign Guarantees permitted under “*the Schedule I of the Foreign Exchange (Classes of Miscellaneous Capital Transactions) Regulations No.*

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4 of 2021”, upon satisfying with the *bona-fide* of the underlying transaction, subject to the followings;

- i. The maximum amount of the valid claim under a guarantee shall be limited to the proportion of the outstanding obligation of the underlying transaction.
 - ii. In the event, a valid claim of a guarantee issued under subparagraph 2(a) of these Directions, the maximum amount of the claim shall be proportionated or lower to the percentage of shareholding of the investor in the investee of the outstanding obligation at the time of the claim.
 - iii. Any claim arising from guarantees issued under subparagraph 2(a) and 2(b) of these Directions where the investment has been made through a Business Foreign Currency Account of the investor, shall be made out of the funds in the Business Foreign Currency Account of the investor.
 - iv. Any valid claim arising from guarantees issued under subparagraphs 3(a) and 3(b) of these Directions shall be made only out of the funds available in the Business Foreign Currency Account of the borrower or property developer, as the case may be.
6. ADs shall require prior permission of the Director-Department of Foreign Exchange, for any guarantee for any purpose which falls outside the purview of these Directions.

7. Reporting requirement.

A quarterly Report on guarantees issued and renewed by the ADs as permitted in these Directions as per the Annex I shall be forwarded to the Director- Department of Foreign Exchange on or before 15th day of the following month. The scanned copy of the signed report and Ms Excel version of the same shall be forwarded via dfem@cbsl.lk.

8. For the purpose of these Directions.

- (a) “**Current Transactions**” shall refers to the Foreign Exchange Act No 12 of 2017.
- (b) “**Capital Transactions**” shall refers to the Foreign Exchange Act No 12 of 2017.



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9. Nothing permitted by these Directions shall be construed as exempting, absolving or preventing ADs or any person dealing in foreign exchange under these Directions, from the requirement to comply with the provisions of any other law.
10. Previous Directions issued to ADs under the Directions No. 15 of 2017 dated 20 November 2017 specifying requirements related to issuance and renewal of bank guarantees, bonds, standby letters of credit and corporate guarantees, are hereby rescinded.
11. The revocation of previous Directions referred to in Paragraph 10 above shall not affect any rights accrued on or penalties or liabilities incurred, under them prior to the revocation.
12. These Directions shall come into operation with effect from **22 March 2021**.

Director - Department of Foreign Exchange

18 March 2021

Quarterly Statement on Guarantees

Name of the Authorized Dealer:

Year/Quarter:

Table 1: Guarantees issued

Name of the Company	Type of the Guaranty (Corporate/Advance Payment/ Standby Letter of Credit etc.)	Date Issued	Date of Expiration	Value (In USD)

Table 2: Total Outstanding of guarantees (in USD) at the end of quarter

Opening Balance	Value of Guarantees issued during the quarter	Value of Guarantees released during the quarter		Closing Balance
		Value of Guarantees Retired	Value of Guarantees Claimed	

Table 3: Details of the outward remittances made under claims, if any;

Name of the Company	Remittance Details		Initial value of the Guaranty (In USD)	Type of the guarantee (Corporate/Advance Payment/ Standby Letter of Credit etc.)
	Date	Amount in USD		

Authorized Dealers are required to furnish both scanned copy of the report and MS E xcell version of the same as above

We certify that the above information extracted/generated from the books of accounts of the bank is accurate.

Name & signature of the Authorized Officer :

Signature & Seal:

Date :

Name of the Compliance Officer :

Signature :

Date :