

SPECIFIC PROBLEMS APPLICABLE TO PROFESSIONALS DUE TO SINGAPORE SRI LANKA FREE TRADE AGREEMENT.

- 1) At the meeting it was stated that the Sri Lankan commitments were not as elaborate as the Singaporean Commitments because we have only opened Modes 1 and 2 for services, and kept Modes 3 and 4 Unbound. However, while this is true for Professional services, other Services such as Telecommunication Services (352), Computer related services (CPC 84), Construction and related engineering services (CPC 51) where the Engineering Professionals are directly impacted, Mode 3 is opened and Mode 4 is opened for the business visitors and intra-corporate transferees. Therefore, our stand that the Schedules of Commitments should have been prepared in consultation with the Professionals is very much valid.
- 2) As per the clauses of this agreement, there is no provision that the foreign professionals have to abide by the ethical practices of the Professional Institutions in Sri Lanka. For example, Professional organizations of Sri Lanka do not allow members to market themselves or their services, but Singapore professionals will not be bound by our Codes of Professional Ethics, and they will be free to market their services.
- 3) According to this agreement, intra-corporate transferees, i.e. Managers, Executives and Specialists can work in Sri Lanka for 5 years and there is no provision to stop them re-applying for visa and coming back for another term of five years. An agreed quota in terms of foreign employee to local employee ratio, is not stated for job categories of Managers, Executives and Specialists. Thus, these posts, which are the ones that can be easily filled by local professionals, will be fully blocked by the foreigners. As such, the expectation of increase in employment for Sri Lankan professionals through this FTA is not a reality.
- 4) Another expectation of a good FTA is the development of the skills of professionals by getting experience in the projects that would result from the FDI's that would come to our country. This should also have been written into the Schedules of commitments, as a horizontal commitment for all sectors in the Services Trade liberalization. When the lack of compulsory technology transfer in Singapore's commitments was pointed out at the meeting with the Minister, the officials responded that the technology transfer is dealt with in Chapter 15. However, Chapter 15 deals with economic and technical cooperation projects, not technology transfer through providing training and skill development to the local professionals in the projects that would be established under Chapter 17. What is required for development of Sri Lanka is the latter, so that the workforce could benefit from the experience of working in the new projects that are anticipated through the liberalization.
- 5) The categories of intra-corporate transferees, Managers, Executives and Specialists are very loosely defined in the Agreement, and may belong to any profession. In the absence of professional organizations in Sri Lanka to scrutinize the qualifications of intra corporate transferees, there can be avenues for unqualified people to enter Sri Lanka, which will have an adverse effect on the job security of Sri Lankan professionals, important projects and resources in our Country and National security. Sri Lanka has not identified the process for authentication of service certificates issued by a Singapore company on those categories of employment.

- 6) The definitions of Managers, Executives and Specialists are very vague and broad. They should be properly defined and specified, in order to limit the influx of foreign professionals to the essentials to run the business, giving room for employment of local professionals at the management, executive and specialist levels.
- 7) Architectural Services (CPC 86711) Advisory and Pre-Designed Architectural Services are opened in Modes 1 and 2. When the Pre Design stage is completed by a Designer, normally the copyright of the preliminary Design lies with that designer. In order for a different designer to use that design for the detailed designs, royalties have to be paid. Otherwise, the same designer will insist on doing the detailed designs. This would give a competitive edge to the Singaporean designer. When a foreign designer has done the design, a Sri Lankan Designer should be able to start and carry out the detailed design work without paying any royalty to the Singapore Designer. However, in this agreement we cannot see any measures to address this issue. Therefore, the expected employment opportunities for Sri Lankan professionals will not be realized.
- 8) Where Pre Designs are concerned, it is not possible for Sri Lankan designers to compete with Singapore Designers, since Sri Lankan Designers could not afford expensive software used by Singapore companies. The Singaporean government has heavily supported their design firms to develop their own, highly sophisticated design software. The Sri Lanka government needs to support the local industrialists to acquire such highly sophisticated software and other required high-tech processes to compete with the foreign designers, otherwise opening Modes 1 and 2 will cause our businesses to collapse.
- 9) Although Singaporean professionals preparing the designs and conveying the same to Sri Lanka is happening now and is not currently restricted, Government could take preventive actions to control such activities in the future. However, since we signed the FTA, the Sri Lankan government will not be able to take such action, if such business activities create a significant impact on the economy or on the income of our people, since the FTA 'legalizes' those activities.
- 10) Under Construction related activities, Mode 4 is opened up ~~to some extent~~ through 'Business Visitors' and 'Intra corporate transferees' and it creates a threat to job security of Sri Lankan Professionals in the same industry.
- 11) Under "Sri Lanka Schedule of Specific Commitments", additional commitments have been promised on CPC 51(Construction related services), CPC 8671 (Architectural Services), CPC 8672 Engineering services etc., where Sri Lanka has to accord additional benefits she may offer to some other country (under a FTA) to Singapore as well. We believe that, this has greater risk in negotiations with China and India since they may also want the same benefits Sri Lanka offered to Singapore under SLSFTA.
- 12) Under the Explanatory Notes in the Singapore's Schedule of Specific Commitments (Annex 7-B) measures affecting Singapore's 'State Land' is excluded while there is no compatible term in the

Sri Lankan schedule. According to our understanding, Singapore has only 10% private lands (approximately amounting to just only 72km² area in the Singapore land. Therefore the opportunities available for Sri Lankans to operate in Singapore is very limited and it does not have any competitive advantage to Sri Lankan investors with this FTA.

- 13) Sri Lanka's territory extends up to boundary of the 'Exclusive Economic Zone' (200 nautical miles away from the shore) its international sea area (approximately 8 times of its land area) that belongs to GOSL while Singapore's territory only extend up to the boundary of its 'Territorial Sea' (which is only 12 nautical miles away from the shore). With this FTA, there will be a threat on our professionals who are willing to work, on offshore projects such as oil or gas mining projects.
- 14) According to article 7.7 (2) under 'Domestic Regulation', each Party shall maintain or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of the other Party, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.
Has such an institution been established by Singapore, and how will our businesses be dealt with?
- 15) When there are disputes due to liberalization of Pre Design Services through Mode 1 and Mode 2, how can they be resolved? If the victimized Party is a Sri Lankan, does he/she need to go to an international arbitration or can he/she continue with Sri Lankan legal system?
- 16) When defining the term 'National' in the Chapter 1 'Objectives & General Definitions' (Article 1.3 (n)) it is 'Citizens only' for Sri Lanka while it is 'Citizens' and 'PR holders' in Singapore. Close to 10% of the Singapore population comprised of PR holders who have moved from China, India, Bangladesh etc. There is a relatively relaxed avenue to get the Singapore PR through startup programs like incubators and accelerators. Through such paths other nationals who are not even medium / large scale investors have got the opportunity to enter into the Sri Lankan job market.
- 17) Under the Article 7.11 'Payments & Transfers' in the 'Trade in Services' chapter there is no restriction on international transfers and payments. There is no any restriction to make an investor to reinvest a portion of the income or profit in Sri Lanka.
- 18) Because of this agreement, are we going to lose the 10% preference that we normally allocate to local companies in internal bidding processes?
- 19) What would be the Tax System applicable to Singapore Investors?
- 20) If the GOSL imposes a new regulation that may affect a Singapore investment in Sri Lanka (started under terms and conditions of SLSFTA), can the Singapore company go before the international arbitration and demand losses under this agreement? As in the classic example, if a Singapore Company invests in Tobacco Industry in Sri Lanka and GOSL imposes a rule to

display a picture/statement indicating the adverse effects of smoking on cigarette packets, should the GOSL pay compensation if the investor claims for the loss of expected returns?

- 21) What is the reason for Sri Lanka to omit detailed explanatory notes similar to that of Singapore as indicated Under Annex 7-b, Singapore schedule of specific commitments? This appears to have been done without a proper in-depth study of the Sri Lankan services industries.
- 22) We consider that the condition 'unbound' is a very uncertain situation as the GATS provides an opportunity to change that condition to 'none' after negotiations between both parties at a later date. The government should include representations from the professional bodies in the Joint Committee established under Chapter 13.

END

The above points were discussed at the meeting held on 26th May 2018 at IESL with the participation of representatives of,

IESL – The Institution of Engineers, Sri Lanka,
SLIA – Sri Lanka Institute of Architects
IIESL – Institution of Incorporated Engineers, Sri Lanka
IQSL – Institution of Quantity Surveyors Sri Lanka