

Clarifications – Questions & Answers

Liberalization of the Lubricant Market - The Third Round of Inviting Requests for Qualification (RFQ)

Party A

Clarification	Answer
<p><u>Clarification No 1</u></p> <p>If an oil company is qualified for activity A1 license which is "to import, export, blend, produce, supply and distribute or sell lubricants and greases in Sri Lanka" , until the blending plant is set up which will take minimum of 2 -3 years time period, can they engaged in Activity A2 i.e. to "import, supply & distribute" . Since the company is qualified for A1 activity which already covers A2 activities as well (A2 is a subset of A1) and pay the same amount of license fee they should be allowed to operate A2 activities until the plant is set up.</p>	<p>Yes, a party selected to carry out Activity A1 may carry out Activity A2 paying the same registration fees. However in the Intention to Grant Authorization (Annex XVI of the RFQ) it is stated that it is valid for a period of one year. The validity of this may be extended to three</p>
<p><u>Clarification No 2</u></p> <p>If the company decided not to go ahead with setting up the plant due to unfavorable economic factors should the license be changed to Activity A2 to continue business activities covered under A2.</p>	<p>The company initially signs the Agreement A2 they can continue with business. The provisional approval for blending will expire</p>
<p><u>Clarification No 3</u></p> <p>If reputed foreign oil company with all qualifications spelled out in the RFQ applies for the license (for Activity A1 & A2) through a reputed local company as their local representative/agent. Since this foreign company is new to Sri Lanka and to the local representative/agent, the local representative/agent is unable to provide lubricant industry experience that doesn't exist. In such a situations requesting for lubricant industry experience from the local representative/agency company is unfair. Please</p>	<p>Brand owner does not apply through an agent i.e. brand owner or agent applies directly. However, brand owner or agent may apply through a third-party duly appointed through a power of attorney – even so, the selected party remains the brand owner or agent as the case maybe. A company with no experience in lubricant industry is not eligible. To function as the local Nominee no experience is required</p>

clarify this situation.	
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Party A	
Clarification	Answer
<p><u>Clarification</u></p> <p>If a lubricant brand is qualified as per the criteria set out by the GOSL the license is granted to the brand owner.</p> <p>(a) Supposing that brand owner company is a 100% foreign oil company and doesn't have a local agent or local operation in Sri Lanka. To start operations within Sri Lanka if they form a joint venture with majority shareholding (more than 50% of shares for brand owner parent company) and registered as a company in Sri Lanka, can the license originally issued to brand owner company be transferred to the newly formed joint venture company which has majority of stake for brand owner company.</p> <p>(b) If so what is the process of doing this.</p>	<p>(a). The respective agreement maybe assigned to a party that meets the same requisite criteria</p> <p>(b). By way of assignment of the agreement under section 7 of the same</p>

Party B	
Clarification	Answer
Q1: After obtaining license for Category A1, is it mandatory to set up a local blending plant and if so what will be the time frame for setting up blending plant?	Yes. If selected to carry our Activity A1, it is mandatory to construct the blending plant, and the plant must be constructed within 1-year – see Annex XV. This period may be extended to three
Q2: Can the Applicant start other activities like Import, Export, Distribute and Sell immediately after obtaining license under Category A1 but before setting up blending plant?	The party who qualifies for Activity A1 automatically qualify for Activity A2. While carrying out Activity A2, it is expected that the party would commence construction work of the blending plant.
Q3. : What is the minimum investment to be made by the Applicant while setting up the plant?	There is no minimum investment specified, but the party must have a net worth capable of investing 5 million US Dollars.
Q4: Which are the other approvals required to be obtained before commencing the activity and after obtaining license under category A1 or A2? Please provide list of such other approvals.	Upon execution of the relevant agreement, an import license will be issued bi-annually upon payment of the fixed registration fee. Applicants must conduct their own due diligence to identify other approvals required
Q5: What are the timelines for obtaining such other approvals as mentioned in Q4 above?	Applicants must conduct their own due diligence to ascertain time(s) required to obtain other approvals
Q6: We assumed that at least one OEM approval for any one formulation is	One OEM certification for any one formulation under the brand

<p>sufficient to comply the technical Clause No.3.1.2.1. Please clarify?</p> <p>Q7: Can we operate initially with 30% to 40% capacity utilization or is there any compulsion on 100% capacity utilization?</p> <p>Q8: Can we undertake other activities like import, export, distribute and sell while we are doing blending capacity of 30% to 40 %?</p> <p>Q9: GOSL will convey its intention to grant approval, however, the format of Intention to Grant letter (Annexure XVI of RFQ) do not gives any authority to start other activities like import, export, distribute or sell? Please clarify.</p> <p>Q10: What is the minimum investment to be made by the Applicant while setting up the plant?</p> <p>Q11: Is it mandatory to have a Blending plant either own or toll blending for obtaining License under Category A2?</p> <p>Q12: Is it mandatory to make any minimum investment in local business activity for obtaining license under Category A2?</p>	<p>and one formulation meeting API SM or ACEA C 1 certification is required</p> <p>There is no restriction on the capacity utilization of the blending plant</p> <p>Activities of importing, exporting, distribution and sale as well as blending can be done simultaneously if a party qualifies under the category Activity 1. There is no restriction on the capacity utilization of the blending plant</p> <p>Those who qualify under Activity A 1, may sign the Agreement A2 in order to engage in importing, exporting, distribution and sale of the lubricants of approved brand, while constructing the blending plant.</p> <p>See under Q3</p> <p>It is not mandatory but the Blending plant where lubricants are blended must meet the minimum technical specifications specified in the RFQ, for obtaining License under Category A2</p> <p>There is no minimum investment, but to qualify for Activity A 2, the party must show a net worth capable of investing 1 million USD</p>
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Q13: Which are the activities can be carried out by Nominee?	The activities a selected party is authorized to carry out under the relevant agreement may all be carried out by a nominee
Party C	
Clarification	Answer
<p>1. How to make the payment of Rs 2.5 Million as the registration fee? (i.e. By Bank Draft/Cheque)</p> <p>2. Do we need to invite technical expert from the mother company ?</p> <p>3.Are these all applicants (who is eligible after the evaluation) will get the license to import lubricants and other products.</p>	<p>The undertaking to pay is to be issued by a bank draft – see ANNEX VI (Form E)</p> <p>To be decided by the applicant</p> <p>Yes, parties qualifying will be selected without restriction to a predetermined</p>

Party D	
Clarification	Answer
<p>Q1. We would like to participate in the RFQ and propose to apply for license on our Company's Name In view of the above, kindly advise, that for commencing the business operations, whether we are required to transfer the License rights to our selected Partner in SL.</p> <p>Q2. How will the selection process be conducted and how much time will it take to announce the selected applicants. Kindly advise.</p>	<p>No – the relevant agreement will be executed with the selected party, and such party may nominate a Sri Lankan entity to carry out activities</p> <p>Selection process is explained in the Section 5 of the RFQ. Execution of the relevant agreement is envisaged by February 2019 – see Section 5.7 of the RFQ</p>

Party E	
Clarification	Answer
<p>1. Exemption from ANNEX VI - FORM E - Undertaking to Pay: We are already paying the license Fees in accordance to the agreement signed with GOSL on timely basis. Based on this and as already being an approved brand, it is requested to give exemption to this annexure VI – undertaking to pay.</p> <p>2. Annexure XVI: INTENTION TO GRANT AUTHORIZATION TO CARRY OUT BLENDING AND PRODUCTION OF LUBRICANTS</p> <p>Point 1. “The [name of the company] shall construct the lubricants blending plant to meet the Technical Specifications as set out in the aforementioned RFQ, and as set out under the Annex A herewith, within one year of the date hereof”</p> <p>The above clause in the letter of intention has a “ONE YEAR” time limit.</p> <p>We understand that the entire activity of setting up of a Lube plant, from the process of setting up a Local Company in Sri Lanka, acquisition of Land, other approvals from statutory bodies, actual EPC (engineering, procurement and construction) and commissioning of the plant may take anywhere from 2.5 to 3 years and even more considering all external factors.</p> <p>Hence it is requested to consider the “Letter of Intention” letter validity as an open ended one without the time limit or minimum 3 years, with an option of extension based on the review from GOSL.</p>	<p>The undertaking to pay is required. It can be set off against the registration fee, which the company currently pays.</p> <p>Period provided for constructing a plant will be extended from one-year to three-years</p>

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Party F	
Clarification	Answer
<p>1. Questions</p> <p>a. Is it mandatory to nominate a local partner to get a license for Activity A2?</p> <p>b. In due time, 5th November, is it mandatory to have an existing contract signed among the brand owner and the nominee?</p> <p>c. Are the minimum requirements for a blending plant mandatory also for Activity A2? How will they be assessed? What documents are needed?</p> <p>2. Questions related to the selection process a. How many licenses will be granted?</p> <p>3. Questions related to the contractual agreement</p> <p>a. If the application for a license for Activity A2 is presented along with Annex II, that is to say, with a local partner as “nominee”, and granted in this terms to the brand owner; is it possible to change this nominee before the 5- year period ends? If this is possible, is there any procedure to follow?</p> <p>b. Can an international company get a license and not to nominate any local corporation in order to operate in the market?</p>	<p>a. At stage of submitting the application it is not necessary to designate a local Nominee.</p> <p>b. Appointment of a Nominee is not mandatory in due time, 5th November</p> <p>c. Minimum requirement of the blending plant is mandatory. It will be assessed based on the documentation on the blending plant (Piping and instrumentation drawings etc) submitted by the applicant. See Section 5.10.1 and ANNEX III (Form B)</p> <p>Parties qualifying will be selected without restriction to a predetermined number</p> <p>a. Application can be submitted by the Brand owner or his Agent” who has been appointed to carry out Brand owners business in territory covering Sri Lanka through an agreement. This Agent is not the local Nominee. Annex II refer to the information of the Agent if he is making the application. Nominations for the Nominee must be made by the selected party in writing for the consent of the GOSL- See Clause I of the relevant agreement.</p> <p>b. Yes. In this case the Brand owner have to register a company in Sri Lanka and carryout business through</p>

<p>c. Is it possible to appoint two different nominees, covering different segments of the market? For example, one nominee for Automotive and another for Industrial lubricants.</p> <p>d. Once the international company is granted for activity A2, is it possible to change it to Activity A1? What is needed to promote the change?</p> <p>e. Is the license granted to a company or a brand? If a company is granted a license and owns several brands, are they allowed to sell all of them?</p> <p>f. In case the company only owns a brand, but has several agreements to distribute also other brands, can these brands be sold in Sri Lanka although they are not company owned?</p> <p>g. Can a company renounce to the license? Are there any penalties?</p> <p>h. The annual registration fee is the equivalent to Sri Lanka Rupees Five Million (LKR 5,000,000/-) or 0.75% of total invoiced sales (excluding any sales taxes) per annum, whichever is higher, which will be levied bi-annually (1st January and 30th June). In the case that the 0.75% of total invoiced sales is higher, is there a payment for the excess resulting from Five Million Sri Lanka Rupees or how is this second</p>	<p>this company</p> <p>c. Appointment of multiple Nominees are allowed</p> <p>d. A party with Activity A2 authorization can request it to be changed to Activity A1, only at a subsequent selection (licensing) round</p> <p>e. Authorization is granted to both brand and a company . If the company has several brands, all such brands have to be evaluated for the entry criteria. Hence, if the company wishes to market all brands technical data (API and OEM certification) must be submitted with the application for evaluation</p> <p>f. Yes. If the brands that are not owned individually meets requisite criteria and there are valid agencies in respect of the same. Note: Annex I is to be submitted in respect of own brands and Annex II is to be submitted in respect of brands that are not owned.</p> <p>g. Under the Clause 4.4 of the Agreement with the GOSL the company can terminate the Agreement and exit from the market if desired. There is no penalty</p> <p>h. The biannual registration fee of Rs. 2.5 million is payable up-front in January and June each year. The variable registration fee of 0.75 of total sales is computed at the end of each bi-annual period based on the sales revenue of the company. If this amount exceeds Rs. 2.5 million, the excess above Rs. 2.5 million</p>
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option executed? When would this “extra payment” been made?	is to be paid.
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Party G

Clarification	Answer
<p>1. What would be the Activity if we want to import Additives and base oil for local blending. (Without having our own blending plant)</p> <p>2. Under what activity can we blend locally using existing an blending plant in SL. (3rd party blending)</p> <p>3. Can we register under Activity B. For now and upgrade later for activity A. Or can we apply for Activity A without having a blending plant and carry out Activity B and later setup a blending plant.</p> <p>4. Kindly confirm under Activity B, All the below included, Automotive grades, Marine Grades,ATF, Greases,Power-generation & Industrial product will be covered.</p>	<p>Import of Base Oil and Additives is permitted only for Activity A1</p> <p>Local Toll Blending of the selected brands is allowed under Activity A2</p> <p>A party with Activity A2 authorization can request it to be changed to Activity A1, only at a subsequent selection (licensing) round If selected to carry our Activity A1, it is mandatory to construct the blending plant, and the plant must be constructed within 1-year – see Annex XV. This period may be extended to three</p> <p>Activity B is only for Genuine Transmission Oil.</p>

Party H	
Clarification	Answer
<p>Under A ("Activity A2") The Brand is manufactured by a USA Company and import and distribution done by the Sri Lankan Company.</p> <p>1) 3.2.3 If the manufacturing company will have 5 years experience in lubricant business is acceptable because the Sri Lankan Company not done lubricant because they didn't have licence.</p> <p>1) 3.2.4 Financial Please give more details of this investment to import and distribute.</p>	<p>If the Sri Lankan company does not have the operational experience specified in the RFQ, the brand owner/manufacturer must apply</p> <p>There is no minimum investment, but to qualify for Activity A 2, the party must show a net worth capable of investing 5 million USD and 1 million USD respectively for Activity A1 and Activity A2.</p>

Party I	
Clarification	Answer
<u>Intended category to apply – A2</u>	
1) Is it mandatory for the applicant to have registered office in Sri Lanka?	No
2) Can the Nominee, import the lubricants under Nominee's name or is it mandatory for imports to be done under applicant name as the applicant does not intend to have a local office?	Yes. Applicant can import only if he has a local registered office
3) Can the nominee pay the license fees on behalf of Applicant?	Yes
4) Can Nominee provide required bank guarantees requested in RFQ(5.9 – Undertaking to pay) through a local bank on behalf of Applicant.	Yes
5) After getting the License, can applicant change the local nominee? & what are the procedures to follow or any special requirements?	Yes. Apply in writing to GOSL to get approval
6) What are the procedures involved in renewing the License, after completing 1 st 5 years term?	Write to GOSL requesting an extension of the agreement

Party J	
Clarification	Answer
<p>Q1. If the Brand Owner is the primary applicant and we are intending to be the Sri Lankan Nominee for the imported brand, which particular applications should be filled by the applicant and Nominee?</p> <p>Q2. For Laboratory equipment, what are the documents needed to prove that the applicant has them?</p>	<p>If the Brand Owner is the applicant, he has to complete the Form A1 (Annex I). There are no forms to be filled by the Nominee</p> <p>Details of the blending plant including technical drawings and the description of the laboratory with the equipment list have to be provided with the application. (See Annex III Form B of the RFQ)</p>