ACTS OF PARLIAMENT
2018

List of Acts

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

FISHERIES (REGULATION OF FOREIGN FISHING BOATS) (AMENDMENT) ACT, No. 1 OF 2018

[Certified on 08th of February, 2018]

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Fisheries (Regulation of Foreign Fishing Boats) (Amendment) Act, No. 1 of 2018

[Certified on 08th of February, 2018]

L.D.—O. 20/2016

AN ACT TO AMEND THE FISHERIES (REGULATION OF FOREIGN FISHING BOATS) ACT, NO. 59 OF 1979

Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Short title.

1. This Act may be cited as the Fisheries (Regulation of Foreign Fishing Boats) (Amendment) Act, No. 1 of 2018.

General Amendment to Act, No. 59 of 1979.

2. The Fisheries (Regulation of Foreign Fishing Boats)Act, No. 59 of 1979 (hereinafter referred to as the "principal enactment") is hereby amended by the substitution for the word "Secretary", wherever that word occurs in the principal enactment or any regulation, rule, notice or notification of the word "Director-General".

Amendment of section 3 of the principal enactment.

3. Section 3 of the principal enactment is hereby amended as follows:-

(1) by the repeal of marginal note to that section and the substitution therefor of the following:-

"Armed forces etc. to co-operate in implementation and enforcement of this Act.";

(2) by the substitution for the words " The commanders of the armed forces shall", of the words "The Commanders of the armed forces, the Director General of Coast Guard of the Department of Coast Guard established under Department of Coast Guard Act, No. 41 of 2009 and any other person designated by name or by office by the Minister in writing shall".

2—PL 010494—2977 (11/2017)

Amendment of section 13 of the principal enactment.

4. Section 13 of the principal enactment is hereby amended as follows:-

(1) by the repeal of subsection (4) of that section and the substitution therefor of the following new subsection:–

"(4) (*a*) Any foreign fishing boat or other thing seized and detained under sub-paragraph (*a*) of subsection (2) or any abandoned foreign fishing boat; and

(*b*) Any person arrested under paragraph (*b*) of subsection (2),

shall be brought to the nearest or most convenient port in Sri Lanka.";

(2) by the repeal of subsection (5) of that section and substitution therefor of the following:–

"(5) Notwithstanding anything to the contrary in any other written law, where any foreign fishing boat or any other thing is seized under this section, the authorized officer who seized such boat or other thing shall as soon as possible produce such boat consisting of any other thing before, or make it available for inspection by a Magistrate in whose jurisdiction the port to which the persons and the foreign fishing boat are brought under subsection (4) who shall make such order subject to the provisions of subsection (1) of section 21 of this Act as he may deem fit relating to the detention or custody of such boat or other thing pending conclusion of a prosecution instituted in respect of that boat or other thing:

Provided however, that when any fish or aquatic plant so seized is subject to speedy

decay, an authorized officer may on the decision of the Director-General or any person authorized by the Director-General shall sell such fish or aquatic plant and shall deposit the proceeds of the sale in the Magistrate's Court.";

(3) in subsection (6) of that section by the substitution for the words "Judge of the High Court" and "from the place of arrest to that Judge.", of the words "Magistrate" and "from the place of arrest to that of Magistrate." respectively.

Insertion of new sections 13A and 13B in the principal enactment.

5. The following new sections are hereby inserted immediately after section 13 and shall have effect as sections 13A and 13B of the principal enactment:–

"Notice to consular officer on detention of foreign ship.

13A. (1) Whenever –

(*a*) any foreign fishing boat seized and detained under this Act; and

(*b*) any action is instituted under this Act against the master, owner, charterer or any person on-board if any, of a foreign fishing boat,

notice shall be forthwith served on the consular officer of the country to which the fishing boat belongs through the Minister to whom the subject of Foreign Affairs has been assigned.

(2) The grounds on which the boat has been seized and detained or on which the proceedings have been taken place, shall be specified in the notice to be served under subsection (1).

Liability for costs and damages.

13B. Notwithstanding anything contained in section 19B of this Act, if an abandoned foreign fishing boat is seized and detained under this Act, the master, owner, charterer or any permit holder if any, of the foreign fishing boat shall be liable to pay to the Government of Sri Lanka the cost and other incidental expenses involved in the detention and survey of the foreign fishing boat.".

Replacement of section 15 of the principal enactment.

6. Section 15 of the principal enactment is hereby repealed and the following sections substituted therefor:–

"Contravention of provisions of section 4 in the territorial waters to be an offence.

15. Where any foreign fishing boat is used in the territorial waters, historic waters, public bays, rivers, lakes, lagoons, estuaries, streams, tanks, pools, ponds, channels or all other public inland or internal waters of Sri Lanka in contravention of the provisions of section 4, the master, owner and charterer or any person on board or any person suspected to have been on board of such boat shall each be guilty of an offence under this Act and shall each be liable on conviction by a Magistrate to an imprisonment for a term not exceeding two years or to a fine not less than the amounts specified in column II of the Schedule I hereto based on the length of the fishing boat specified in corresponding entry in the column I of the Schedule I hereto or to both such fine and imprisonment:

Provided however where such master, owner and charterer or any person on board or any person suspected to have been on board of such boat, commits an offence for the first time under this section, each such person shall be liable on conviction by a Magistrate having regard to the circumstances of the case to an

imprisonment for a term not exceeding one year or to a fine not exceeding the amounts specified in Column II of the Schedule I hereto based on the length of the fishing boat specified in corresponding entry in the Column I of the Schedule I hereto.

Contravention of provisions of section 5 in the territorial waters to be an offence.

15A. Where any foreign fishing boat is used in the territorial waters, historic waters, public bays, rivers, lakes, lagoons, estuaries, streams, tanks, pools, ponds, channels or all other public inland or internal waters of Sri Lanka in contravention of the provisions of section 5, the master, owner and charterer or any person on board or any person suspected to have been on board of such boat shall each be guilty of an offence under this Act and shall each be liable on conviction by a Magistrate to an imprisonment for a term not exceeding two years or to a fine not less than the amounts specified in column II of the Schedule II hereto based on the length of the fishing boat specified in corresponding entry in the column I of the Schedule II hereto or to both such fine and imprisonment:

Provided however where such master, owner and charterer or any person on board or any person suspected to have been on board of such boat, commits an offence for the first time under this section, each such person shall be liable on conviction by a Magistrate having regard to the circumstances of the case to an imprisonment for a term not exceeding one year or to a fine not exceeding the amounts specified in Column II of the Schedule II hereto based on the length of the fishing boat specified in corresponding entry in the Column I of the Schedule II hereto.

Contravention of provisions of section 4 in the Exclusive Economic Zone to be an offence.

15B. Where any foreign fishing boat is used in the Exclusive Economic Zone of Sri Lanka in contravention of the provisions of section 4 the master, owner and charterer if any, or any person on board or any person suspected to have been on board of such boat shall each be guilty of an offence under this Act and shall each be liable on conviction by a Magistrate to a fine not less than the amounts specified in column II of the Schedule III hereto based on the length of the fishing boat specified in corresponding entry in the column I of the Schedule III hereto.

Contravention of provisions of section 5 in the Exclusive Economic Zone to be an offence.

15C. Where any foreign fishing boat is used in the Exclusive Economic Zone of Sri Lanka in contravention of the provisions of section 5 the master, owner and charterer if any, or any person on board or any person suspected to have been on board of such boat shall each be guilty of an offence under this Act and shall each be liable on conviction by a Magistrate to a fine not less than the amounts specified in column II of the Schedule IV hereto based on the length of the fishing boat specified in corresponding entry in the column I of the Schedule IV hereto.

Offence of aiding and abetting.

15D. Any person who aids and abets the commission of or who attempts to commit any offence or does any act in preparation of or in furtherance of any offence under this Act shall be guilty of an offence under this Act and shall on conviction be liable to a fine not less than one million five hundred thousand rupees.

Conclusion of proceedings within one month.

15E. Any prosecution relating to any offence committed under this Act shall be concluded within one month from the date of institution of any such proceedings in the Magistrate's Court.

No person to be enlarged on bail.

15F. Notwithstanding anything to the contrary in the Code of Criminal Procedure Act, No. 15 of 1979, or any other written law, no person suspected of, or accused of, an offence under sections 15 or15A shall be enlarged on bail.

Retention of boat, fishing gear etc. until conclusion of trial.

15G. Subject to the provisions contained in the proviso to section 13 (5) any boat, fishing gear, equipment stowed and cargo suspected to have been involved or used in the commission of any offence under sections 15, 15A and 15D shall not be released until conclusion of the trial.

Master, owner etc., deemed not to be guilty in certain circumstances.

15H. No master, owner, charterer, or any person on board or any person suspected to have been on board shall be deemed to be guilty of an offence under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of that offence as he ought to have exercised having regard to the nature of his functions and the related circumstances.".

Amendment of section 16 of the principal enactment.

7. Section 16 of the principal enactment is hereby amended by the substitution for the words "after trial without a jury before a judge of the High Court," and "to a fine not exceeding seven hundred and fifty thousand rupees" of the words "after trial by a Magistrate," and "to a fine not less than seven hundred and fifty thousand rupees and not exceeding seventy five million rupees." respectively.

Amendment of section 17 of the principal enactment.

8. Section 17 of the principal enactment is hereby amended as follows:-

(1) by the insertion immediately after paragraph (*c*) of that section of the following paragraph:-

"(*d*) fails to provide reasonable facilities to an authorized officer or his assistants to board

the vessel or adequate security to such officer and the assistants at the time of entry into such boat or when they are on board such boat,";

(2) by the substitution for the words "after trial without a jury before a Judge of the High Court" and "to a fine not exceeding twenty five thousand rupees" of the words "after trial by a Magistrate"and "to a fine not less than the amounts specified in column II of the Schedule V hereto based on the length of the fishing boat specified in corresponding entry in the column I of the Schedule V hereto.".

Insertion of new sections 17A and 17B in the principal enactment.

9. The following new sections are hereby inserted immediately after section 17 and shall have effect as sections 17A and 17B of the principal enactment:-

"All offences to be cognizable and non bailable.

17A. Subject to the provisions of subsection (1) of section 21 of this Act, all offences committed under this Act shall be cognizable and non bailable within the meaning of the Code of Criminal Procedure Act, No. 15 of 1979.

Application of the Prevention of Crimes Ordinance (Chapter 22).

17B. The provisions of the Prevention of Crimes Ordinance (Chapter 22) shall *mutatis mutandis* apply to and in relation to indentification of any person previously convicted of an offence under this Act.".

Amendment of section 18 of the principal enactment.

10. Section 18 of the principal enactment is hereby amended, by the substitution for the words "the Court" of the words "the Magistrate's Court.".

Amendment of section 19 of the principal enactment.

11. Section 19 of the principal enactment is hereby amended as follows:-

(1) by the substitution in subsection (1) of that section for the words "court of Appeal" of the words "High Court";

(2) by the substitution for subsection (2) of that section of the following subsection:-

"(2) The Director-General shall take possession of any boat, fishing gear, fish, aquatic plant, equipment, stores or cargo vested in the State under subsection (1) and may sell or otherwise dispose of them as he may think fit.".

Insertion of new sections 19A, 19B and 19C in the principal enactment.

12. The following new sections are hereby inserted immediately after section 19 and shall have effect respectively as sections 19A, 19B and 19C of the principal enactment:-

"Abandoned foreign fishing boats.

19A. Where any abandoned foreign fishing boat, along with fishing gear, fish, aquatic plants, equipment, stores, and cargo is seized, on suspicion of being involved in the commission of an offence under this Act, it shall vest absolutely in the State unless a claim is being made to the said boat within the prescribed period.

Release of abandoned foreign fishing boat pursuant to an inquiry.

19B. (1) Where a claim is made to such abandoned foreign fishing boat, fishing gear, fish, aquatic plants, equipment, stores, and cargo by the master, owner, or charterer if any of the boat within the period prescribed, the Magistrate upon being satisfied pursuant to an inquiry that such boat was not used for the commission of any offence under this Act shall make an order to release such boat or such items on board, or proceeds thereof, if it is sold consequent to an order made under section 13(5) of this Act to such claimant who has established his legal entitlement to such boat or any items on board before the Magistrate.

(2) The claimant shall pay all expenses incurred by the State in relation to the abandoned foreign fishing boat and all such items thereon.

When to consider an abandoned foreign fishing boat as a foreign fishing boat.

19C. Nothing contained in section 19A and 19B shall preclude an abandoned foreign fishing boat being considered as a foreign fishing boat for the purposes of any other provision of this Act including sections 15, 15A, 15B and 15C, in the event where an investigation reveals any person or an entity has contravened any other provision of this Act including sections 4 and 5.".

Replacement of section 20 of the principal enactment.

13. Section 20 of the principal enactment is hereby repealed and the following section substituted therefor:-

"Compounding of offences.

20. (1) Where the Director-General has sufficient evidence to believe that any person has acted in contravention of the provisions of this Act, he may–

(*a*) on the recommendation of the panel appointed under section 20A of this Act, in relation to any offence that was committed for the first time in the Exclusive Economic Zone of Sri Lanka;

(*b*) having regard to the circumstances in which such contravention has taken place,

if it is appropriate to compound such offence, cause a notice to be served in the prescribed form on such person, requiring him to appear within one month from the date of receipt of such notice and show cause why a sum of money should not be charged on him.

(2) Where the person on whom the notice is served appears within one month from the date of receipt of such notice and admits that he acted in contravention of the provisions of this Act, the Director-General shall charge from that person a sum not less than one fifth of the minimum penalty that could be imposed under this Act to which such person could be liable to pay. Further a sum of money not exceeding the aggregate of the estimated value of the boat, fish or other thing and the costs incurred in the detention of the boat and repatriation of its crew shall be paid as part of the settlement under this section and the Director-General shall order the release of such fishing boat, fish or other thing in respect of which no order of detention has been made by the Magistrate.

(3) Where a person on whom notice is served within one month from the date of receipt of such notice states that he has a cause to show against the compounding of the offence, the Director-General may proceed forthwith to hear and decide the matter in the manner prescribed.

(4) Where the Director- General is not satisfied with reasons given, he may after assigning his own reasons therefor, charge from that person a sum of money specified in subsection (2) of this section.

(5) Where the Director-General charges on any person a sum of money specified in subsection (2) of this section, he shall cause a notice in the prescribed form to be servd on such person indicating partiulars of such charge.

(6) Any person aggrieved by such decision of the Director-General may appeal to the Secretary to the Ministry of the Minister assigned the subject of Fisheries and Aquatic

Resources Development (hereinafter referred to as the "Secretary") within thirty days from the date of receipt of such decision of the Director-General.

(7) The Secretary shall, after taking into consideration the decision of the Director-General and the circumstances in which the offence was committed may—

(*a*) affirm the decision of the Director-General and disallow the appeal;

(*b*) set aside the decision of the Director-General and allow the appeal;

(*c*) allow the appeal subject to any amendment, alteration or variation of the decision of the Director-General.

(8) The decision of the Secretary shall be notified to the Director-General who shall take steps to comply with such decision within fourteen days from the date of communication of such decision to the Director-General.

(9) Such decision of the Secretary shall be communicated to the aggrieved party.

(10) Any person aggrieved by such decision of the Secretary may prefer any appeal to the Court of Appeal within thirty days from the date of communication of such decision, on a question of law.

(11) The compounding of any offence under this section shall be notified in writing under the signature of both parties to the Magistrate's Court and shall have effect of an acquittal of the accused.".

Insertion of new section 20A in the principal enactment.

14. The following new section is hereby inserted immediately after section 20 and shall have effect as section 20A of the principal enactment:—

"Appointment of a panel of experts.

20A. (1) The Director-General in consultation with the Secretary shall appoint a panel of experts consisting of three persons who have the knowledge expertise, and experience in the fields of marine engineering, law and accountancy.

(2) It shall be the function of such panel to make recommendations to the Director-General, on the matters to be taken into account pertaining to compounding of an offence under section 20.

(3) The Minister shall pay such monetary remuneration as he shall determine in consultation with the Minister of Finance, to the members of the panel.".

Amendment of section 21 of the principal enactment.

15. Section 21 of the principal enactment is hereby amended as follows:—

(1) by the repeal of subsection (1) of that section and the substitution therefor of the following subsection:—

"(1) Where a Magistrate has ordered the detention of a foreign fishing boat involved in the commission of an offence in the area of Exclusive Economic Zone of Sri Lanka pending the conclusion of any prosecution instituted in respect of that boat, the owner of the boat, permit holder,

master or the authorized local representative appointed in respect of the boat, may apply to said Magistrate for the release of the boat on the provision of a satisfactory bond or other form of security in accordance with this section.".

(2) in subsection (2) of that section by the substitution for the words "A Judge of the High Court to whom" and "approved by the Judge," of the words "A Magistrate to whom" and "approved by the Magistrate,".

Amendment of section 23 of the principal enactment.

16. Section 23 of the principal enactment is hereby amended as follows:—

(1) by the renumbering of that section as subsection (1) of that section;

(2) by the insertion immediately after renumbered subsection (1) of the following subsections:—

"(2) Where any foreign fishing boat is found within any maritime zone of Sri Lanka and the fishing gear of such boat is not stowed in the prescribed manner or fish are found on board of such boat, it may be presumed that the said boat has been used for fishing within the said zone and for any purpose in contravention of the provisions of this Act, until the contrary is proved.

(3) Where any abandoned foreign fishing boat is found, it may be presumed to have been used for the commission of any offence under this Act, until the contrary is proved.".

Amendment of section 24 of the principal enactment.

17. Section 24 of the principal enactment is hereby amended, by the substitution for the words "be triable by the High Court sitting in any Judicial Zone of Sri Lanka.", of the words "be triable by a Magistrate having jurisdiction over the area or locality where the nearest or the most convenient port is situated.".

Amendment of section 26 of the principal enactment.

18. Section 26 of the principal enactment is hereby amended by the substitution for paragraph (*i*) of subsection (2) of that section of the following:—

"(*i*) the implementation of the standards stipulated—

(i) in the United Nations Convention on Law of the Sea, 1982;

(ii) by Indian Ocean Tuna Commission, 1993;

(iii) under the Fish Stock Agreement, 1995;

(iv) under the Food and Agriculture Organization (FAO) of the United Nations Agreement on Port State Measures to prevent, deter and eliminate illegal unreported and unregulated fishing 2009;

(v) in any other instrument to which Sri Lanka has or would become a party;".

Insertion of new section 26A in the principal enactment.

19. The following new section is hereby inserted immediately after section 26 and shall have effect as section 26A of the principal enactment:—

"contravention of regulation to be an offence.

26A. Any contravention of or any failure to comply with, any regulation made under section 26 shall be an offence under this Act

triable by a Magistrate of the Magistrate Court and punishable with a fine not less than one million rupees.".

Insertion of new section 27A in the principal enactment.

20. The following new section is hereby inserted immediately after section 27 and shall have effect as section 27A of the principal enactment:—

"Establishment of the Reward Fund.

27A. (1) There shall be a fund which shall be called the Fisheries Reward Fund (hereinafter referred to as the "Reward Fund").

(2) The Director-General shall be responsible for the administration of the Reward Fund.

(3) There shall be credited to the Reward Fund all proceeds realized from sales under section 19.

(4) The Director-General shall from time to time pay out of the Reward Fund a reward:—

(*a*) to any person as specified in section 3;

(*b*) to any authorized officer; or

(*c*) to any informer,

of such sum of money as he may deem fit:

Provided however, that such sum shall not exceed the maximum amount to be prescribed under this Act.

(5) The accounts of the Reward Fund shall be audited annually by the Auditor-General in accordance with Article 154 of the Constitution.".

Amendment of section 28 of the principal enactment.

21. Section 28 of the principal enactment is hereby amended as follows:—

(1) by the insertion, immediately before the definition of the expression "aquatic plant", of the following new definition:—

" "abandoned foreign fishing boat" includes a boat without any person or persons on board;";

(2) by the substitution for the definition of the expression "authorized officer", of the following new definition:—

" "authorized officer" means any officer not below the rank of Fisheries Inspector appointed under the Fisheries and Aquatic Resources Act, any member of the Navy not below the rank of petty officer, any member of the Air Force not below the rank of Sergeant, any Police Officer not below the rank of Sergeant, any person attached to the regular service of the Department of Coast Guard and any other person designated as such by name of by office, by the minister in writing;";

(3) by the insertion immediately after the definition of the expression"authorized officer", of the following new definition:—

" "Director General" means, the Director-General of Fisheries and Aquatic Resources appointed under section 2 of the Fisheries and Aquatic Resources Act, No. 2 of 1996;";

(4) by the substitution for the definition of the expression "fish" of the following definition:—

" "fish" means, any water dwelling aquatic or marine animal, alive or not, and includes their eggs,

spawn, spat and juvenile stages, and any of their parts, and includes all organisms belonging to sedentary species;";

(5) by the substitution for the definition of the expression "fishing" of the following definition:—

" "fishing" includes searching for, attracting, locating, catching, taking or killing or harvesting fish or collecting aquatic plants by any method and includes an attempt to catch, take or kill fish or to collect aquatic plants and an attempt to execute any of the acts hereinbefore mentioned in Sri Lanka waters;";

(6) in the definition of the expression "Local fishing boat" by the substitution for the words "and registered", of the words "or registered";

(7) by the substitution for the definition of the expression "related activities" of the following definition:—

" "related activities" in relating to fishing include—

(*a*) transshipping fish to or from any boat or vessel in Sri Lanka waters;

(*b*) storing, processing, preserving or transporting fish or aquatic plants obtained from fishing operations;

(*c*) refuelling or supplying fishing boats or performing other activities in support of or ancillary to, fishing operations;

(*d*) provisioning of personnel, fuel, gear and other supplies at sea;

(*e*) attempting or preparing to do any of the above;";

(8) by the substitution for the definition of the expression "Secretary" of the following definition:—

" "Secretary" shall mean the Secretary to the Ministry of the Minister assigned the subject of Fisheries;";

(9) by the substitution for the definition of the expression "Sri Lanka waters" of the following definition:—

" "Sri Lanka waters" means—

(*a*) the area declared to be the territorial sea of Sri Lanka by proclamation made under section 2 of the Maritime Zones Law, No. 22 of 1976;

(*b*) the area declared to be the contiguous Zone of Sri Lanka by proclamation made under section 4 of the Maritime Zones Law, No. 22 of 1976;

(c) the area declared to be the exclusive Economic Zone of Sri Lanka by proclamation made under section 5 of Maritime Zones Law, No. 22 of 1976;

(*d*) the area declared to be the historic waters of Sri Lanka by proclamation made under section 9 of the Maritime Zones Law, No. 22 of 1976; and

(*e*) all public bays, rivers, lakes, lagoons, estuaries, streams, tanks, pools, ponds, channels and all other public inland or internal waters.".

Sinhala text to prevail in case of inconsistency.

22. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

SCHEDULE I

(section 15)

Column I	*Column II*
Length of the boat in metres	*Fine (Rs. Mn.)*
	Territorial waters
Less than 15	6
More than 15 and less than 24	20
More than 24 and less than 45	100
More than 45 and less than 75	150
More than 75	175
Administrative penalty	Not applicable

SCHEDULE II

(section 15A)

Column I	*Column II*
Length of the boat in metres	*Fine (Rs. Mn.)*
	Territorial waters
Less than 15	4
More than 15 and less than 24	15
More than 24 and less than 45	75
More than 45 and less than 75	120
More than 75	150
Administrative penalty	Not applicable

SCHEDULE III

(section 15B)

Column I	*Column II*
Length of the boat in metres	*Fine (Rs. Mn.)*
	Within EEZ
Less than 15	10
More than 15 and less than 24	30
More than 24 and less than 45	120
More than 45 and less than 75	180
More than 75	220
Administrative penalty	1/5 of the original fine

SCHEDULE IV

(section 15C)

Column I	*Column II*
Length of the boat in metres	*Fine (Rs. Mn.)*
	Within EEZ
Less than 15	5
More than 15 and less than 24	20
More than 24 and less than 45	80
More than 45 and less than 75	130
More than 75	160
Administrative penalty	1/5 of the original fine

SCHEDULE V

(section 17)

Column I	*Column II*
Length of the boat in metres	*Fine (Rs.)*
Less than 15	100,000
More than 15 and less than 24	200,000
More than 24 and less than 45	500,000
More than 45 and less than 75	1,500,000
More than 75	7,500,000

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PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

ANTI-DUMPING AND COUNTERVAILING DUTIES ACT, No. 2 OF 2018

[Certified on 19th of March, 2018]

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Anti-Dumping and Countervailing Duties Act, No. 2 of 2018

[Certified on 19th of March, 2018]

L.D.—O. 68/2016

AN ACT TO PROVIDE FOR THE INVESTIGATION AND IMPOSITION OF ANTI-DUMPING DUTIES AND COUNTERVAILING DUTIES WITH REGARD TO PRODUCTS IMPORTED INTO SRI LANKA AND FOR MATTERS CONNECTED THEREWITH AND INCIDENTAL THERETO.

Preamble.

WHEREAS Sri Lanka was one of the original contracting parties to the General Agreement on Tariffs and Trade of 1947(GATT 1947):

AND WHEREAS the General Agreement on Tariffs and Trade 1994 (GATT 1994) which is based upon the text of GATT 1947 and was signed in April 1994, includes among others the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures:

AND WHEREAS Sri Lanka intends to protect the domestic industries from prohibited and actionable subsidies and dumping:

AND WHEREAS it is expedient to make legislative provisions for the implementation in Sri Lanka of the two agreements referred to above:

BE it therefore enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

Short title and date of operation.

1. This Act may be cited as the Anti-Dumping and Countervailing Duties Act, No. 2 of 2018, and shall come into operation on such date as the Minister may appoint, by Order published in the *Gazette*.

PART I

ANTI-DUMPING DUTIES

General principle.

2. Anti-dumping duties may be imposed on products imported into Sri Lanka, where the Director-General determines pursuant to an investigation initiated and conducted in accordance with the provisions of this Part of this Act, that —

(*a*) the investigated product is being dumped;

(*b*) there is injury being caused to the Sri Lankan industry; and

(*c*) there exists a causal link between the dumping and the injury caused.

Assessment of effects.

3. Where imports of like products from more than one country are the subject of simultaneous anti-dumping duty investigations, the Director-General may, for the purpose of determining whether injury exists, cumulatively assess the effects of such dumped imports on the Sri Lankan industry, only where —

(*a*) the applications are filed under section 14 of this Act;

(*b*) the Director-General determines that the amount of dumping established in relation to the investigated product imported from each country is more than *de minimis* and the volume of investigated products imported from each country is not negligible as specified in section 20 of this Act; and

(*c*) the Director-General determines that a cumulative assessment of the effects of the imports of investigated product is appropriate in the light of the conditions of competition between the imported

product and the conditions of competition between the imported products and the domestic like product.

ESTABLISHING THE NORMAL VALUE

Basis for determining normal value.

4. (1) For the purposes of this Part of this Act, the Director-General may determine the normal value of an investigated product, on the basis of the comparable price paid or payable in the ordinary course of trade for the like product, when destined for consumption in the domestic market of the exporting country.

(2) Notwithstanding the provisions of subsection (1), the Director-General may determine the normal value on the basis of comparable price paid or payable in the ordinary course of trade for the like product when destined for consumption in the domestic market of the country of origin, where —

(*a*) the products are merely trans-shipped through the country of export;

(*b*) products are not produced in the country of export; or

(*c*) there is no comparable price for them in the country of export.

(3) Where under subsection (2), the normal value is determined on the basis of the country of origin, reference in sections 5, 6, 7 and 9 to the "exporting country", shall be deemed to be a reference to the country of origin.

Normal value to be based on export price to a third country.

5. (1) Where there are no sales in the ordinary course of trade of the like product in the domestic market of the exporting country under subsection (1) of section 4, or where, because of the particular market situation or the low volume

of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the normal value of the investigated product shall be —

(*a*) the comparable price paid or payable in the ordinary course of trade for the like product exported to any appropriate third country, provided that such price shall be representative; or

(*b*) the cost of production of such product including administrative, selling and general costs in the exporting country, plus a reasonable amount for profits.

(2) For the purpose of subsection (1), sales of like product destined for consumption in the domestic market of the exporting country or the appropriate third country, shall normally be considered to be a sufficient quantity for the determination of the normal value, if such sales constitute five *per centum* or more of the sales of the investigated product to Sri Lanka, except that a lower ratio shall be acceptable, where the evidence shows that domestic sales at such lower ratio are of sufficient magnitude to provide for a proper comparison.

Sales not in the ordinary course of trade.

6. (1) Sales of the like product in the domestic market of the exporting country, or sales to a third country at prices below per unit (fixed and variable) cost of production, may be treated as not being in the ordinary course of trade by reason of price, and may be disregarded in determining normal value, only where the Director-General determines that such sales are made—

(*a*) within an extended period of time (which generally is twelve months and not less than six months) in substantial quantities; and

(*b*) at prices which do not provide for the recovery of all costs within a reasonable period of time.

(2) For the purpose of paragraph (*a*) of subsection (1), sales below cost shall be considered to be made in substantial quantities, where it is established that—

(*a*) the weighted average selling price of the transactions under consideration is below the weighted average cost; or

(*b*) the volume of sales below cost represent twenty *per centum* or more of the volume sold in the transactions under consideration.

(3) Where prices which are below per unit cost at the time of sale, are above weighted average per unit cost for the period of investigation or review, the Director-General shall consider such prices as providing for the recovery of costs within a reasonable period of time.

Calculation of cost for purpose subsection (1) of section 5.

7. (1) For the purpose of subsection (1) of section 5 of this Act, costs shall generally be calculated on the basis of records maintained by the exporter or producer under investigation, provided that such records—

(*a*) are maintained in accordance with generally accepted accounting principles of the exporting country; and

(*b*) reasonably reflect the costs associated with the production and sale of the like product.

(2) The Director-General shall consider all available evidence on the proper allocation of costs, including any evidence made available by the exporter or producer in the course of the investigation of allocations which have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.

(3) Unless already reflected in the cost allocations under this section, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations.

(4) The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the Director-General during the investigation.

Determining of cost of production.

8. (1) The cost of production of the like product for the purpose of sections 5 and 6 of this Act, shall be the total sum of —

(*a*) the cost of materials whether direct or indirect and fabrication or processing in the production of the investigated product in the exporting country; and

(*b*) a reasonable amount for administrative, selling and general costs (including financial cost and profits).

(2) The determination of the amounts referred to in subsection (1) shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product in the exporting country, by the producer or exporter under investigation or review. Where such amounts cannot be determined on this basis, the amounts may be determined on the basis of —

(*a*) the actual amounts incurred and realized by the exporter or producer under investigation or review, in respect of production and sales in the domestic market of the country of origin, of the same general category of products;

(*b*) the weighted average of the actual amounts incurred and realized by other exporters or producers subject

to investigation, in respect of production and sales of the like products in the domestic market of the country of origin; or

(*c*) any other reasonable method, provided that, the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

(3) In computing the constructed value of the investigated product, the Director-General may disregard any cost arising out of a transaction directly or indirectly between related parties or among parties which appear to have compensatory arrangements with each other, unless that cost is comparable to the costs between unrelated parties or parties which do not have compensatory arrangements with each other.

(4) If a transaction is disregarded under subsection (3) and there are no other transactions available for consideration, the determination of the amounts required to be considered under subsection (1), shall be based on the facts available as to what the amounts would have been if the transaction had occurred between unrelated parties or parties without the compensatory arrangements.

Export price.

9. (1) The export price of an investigated product shall be the price actually paid or payable for the investigated product, when sold for export from the exporting country to Sri Lanka.

(2) Where there is no export price or where it appears to the Director-General that the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed—

(*a*) on the basis of the price at which the imported products are first resold to an independent buyer; or

(*b*) if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the Director-General may determine.

(3) If the export price is constructed in the manner specified in subsection (2), allowance shall be made for cost incurred between importation and resale of the investigated product.

(4) Where, under subsection (2) of section 4 of this Act, the Director-General determines the normal value on the basis of the country of origin, the export price shall be the price actually paid or payable for the investigated product when sold for export in the country of origin.

Comparison of normal value and export price.

10. (1) A fair comparison shall be made by the Director-General between the export price and the normal value of any investigated product and such comparison shall be made at the same level of trade, generally at the ex-factory level, and in respect of sales made at, as nearly as possible, the same time.

(2) In the comparison of normal value and export price under subsection (1), due allowance shall be made in each case on its merits to:—

(*a*) differences which affect price comparability;

(*b*) differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics; and

(*c*) any other differences which are demonstrated by parties interested as affecting price comparability.

(3) The Director-General when acting under subsection (2), shall ensure that no duplication takes place in the adjustments made.

(4) In cases where export price is constructed under paragraph (*a*) of subsection (2) of section 9 of this Act, allowances for costs, including duties and taxes incurred between importation and resale, and a reasonable amount for profit accruing, may also be made, and the Director-General shall, where price comparability has been affected, establish the normal value at a level of trade equivalent to the level of trade of the export price constructed under that paragraph, or shall make due allowances as warranted under this section.

(5) To ensure that a fair comparison is being done, the Director-General shall indicate to the parties in question the information that is required from them and shall not impose any unreasonable burden of proof on the parties in question.

Comparison methods.

11. (1) Subject to the provisions of section 10, the existence of dumping margin shall, generally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions, or by a comparison of normal value and export prices on a transaction to transaction basis.

(2) A normal value established on a weighted average basis may be compared to prices of individual export transactions, if the Director-General finds a pattern of export prices which differ significantly among different purchasers, regions or time periods. It shall be the duty of the Director-General to explain in such cases, why such difference cannot be taken into account appropriately, by the use of a weighted average to weighted average or transaction to transaction comparison.

Currency conversion.

12. (1) Where the comparison of normal value and export price under sections 10 and 11 requires a conversion of currencies, that conversion, subject to subsections (3) and (5), shall be made using the rate of exchange on the date of sale.

(2) The date of sale shall, generally be the date of contract, purchase order, order confirmation or invoice whichever establishes the material terms of the sale of the exported product.

(3) Notwithstanding the provisions of subsections (1) or (2), when a forward rate of exchange is used in relation to an export sale, the Director-General shall use the rate of exchange in the forward sale, for all the related transactions.

(4) Where —

(*a*) the comparison referred to in subsection (1) requires conversion of currencies; and

(*b*) the rate of exchange between those currencies has undergone a short-term fluctuation,

the Director-General shall, for the purposes of that comparison, disregard that fluctuation.

(5) Where —

(*a*) the comparison referred to in subsection (1) requires conversion of currencies; and

(*b*) the Director-General is satisfied that the rate of exchange between those currencies has undergone a sustained movement during the period of investigation,

the Director-General shall allow exporters not less than sixty days to adjust their export prices, to reflect the sustained movement.

Individual dumping margins.

13. (1) The Director-General shall as a rule, determine an individual dumping margin for each known exporter or producer of the investigated product.

(2) Where the number of exporters, producers, importers or types of the investigated product is so large as to make it impracticable to determine an individual dumping margin for each known exporter or producer, the Director-General may limit the examination either to a reasonable number of parties interested or investigated products, by using samples which are statistically valid on the basis of information available to the Director-General at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

(3) Any selection of exporters, producers, importers or types of products made under subsection (2), shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned.

(4)Where the Director-General has limited the examination under this section, it shall nevertheless determine an individual dumping margin for any exporter or producer who voluntarily submits the necessary information in time for that information to be considered during the course of the investigation.

(5) Notwithstanding the provisions of subsection (4), where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the Director-General and prevent the timely completion of the investigation, the Director-General may decline to determine an individual dumping margin on the basis of voluntary responses, and limit the examination to the exporters and producers in the sample.

INITIATION OF INVESTIGATION

Requirement of a written application.

14. (1) Except as provided for in section 19, an investigation under this Part of this Act shall be initiated upon a written application in the prescribed form being made by or on behalf of a Sri Lankan industry, accompanied by such fee as may be prescribed.

(2) Applications shall be submitted to the Director-General in such a number of copies, as the Director-General may determine.

(3) For the purposes of this section, an application shall be considered to have been made "by or on behalf of a Sri Lankan industry", if such application is supported by those Sri Lankan producers whose collective output constitutes more than fifty *per centum* of the total production of the domestic like product produced by that portion of the Sri Lankan industry, expressing either support for or opposition to the application:

Provided that, those producers who express their support to the application shall be accounted for not less than twenty-five *per centum* of the total production of the domestic like product, produced by the Sri Lankan industry.

(4) Notwithstanding the provisions of subsection (3), in the case of fragmented industries involving an exceptionally large number of producers, the Director-General may determine support and opposition, by using statistically valid sampling techniques.

Information.

15. An application form prescribed under section 14 shall provide for the submission of such information as is reasonably available to the applicant, on the following matters:—

(*a*) name, address and telephone number of the applicant;

(*b*) a description of the volume and value of the domestic like product produced by the applicant;

(*c*) the identity of the Sri Lankan industry by or on behalf of which the application is being made, including the names, addresses and telephone numbers of all other known producers of the like

product in the Sri Lankan industry, and a description to the extent available to the applicant, of the volume and value of the like product accounted for by such known producers;

(*d*) complete description of the allegedly dumped product, including the technical characteristics and uses of the product and its harmonized commodity description and coding system classification;

(*e*) the name of the country in which the allegedly dumped product is manufactured or produced, and if it is imported from a country other than the country of manufacture or production, the intermediate country from which the product is imported;

(*f*) the name and address of each person, the applicant believes, sells the allegedly dumped product and the proportion of total exports to Sri Lanka that person accounted for, during the most recent twelve-months period;

(*g*) information on prices at which the product in question is sold, when destined for consumption in the domestic market of the country of export or origin, or where appropriate, information on the prices at which the product is sold from the country of export or origin to a third country or on the constructed value of the allegedly dumped product;

(*h*) information on export prices or, where appropriate, on the prices at which the allegedly dumped product is first resold to an independent buyer in Sri Lanka, and on any adjustments as provided for in section 10 of this Act; and

(*i*) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the domestic like products in the Sri Lankan market and the consequent impact of the imports on the Sri Lankan industry, as demonstrated by relevant factors and indices having a bearing on the state of the Sri Lankan industry, such as those listed in section 76, subsections (1), (2) and (3) of section 77 and section 78 of this Act, and information on the existence of a causal link as provided for in subsections (4), (5), (6) and (7) of section 77.

Publicizing of the application.

16. (1) The Director-General and the Minister shall, unless a decision has been made to initiate an investigation, avoid any publicity being given to the application for the initiation of an investigation, under section 14.

(2) Notwithstanding the provisions of subsection (1), the Director-General shall, upon receipt of an application fulfilling the requirements of section 15 of this Act, immediately notify the government of each exporting country concerned, of such fact.

Withdrawal of an application.

17. An application made under section 14 may be withdrawn:—

(*a*) at any time prior to the initiation of an investigation, in which case it shall be considered to have not been made; or

(*b*) at any time after an investigation has been initiated, in which case the Director-General shall terminate the investigation without measures, unless he determines that it shall be continued in the economic interest of Sri Lanka.

Decision to initiate.

18. (1) The Director-General shall, having examined the accuracy and adequacy of the evidence provided in the application, determine whether there is sufficient evidence to justify the initiation of an investigation. In arriving at a decision, the Director-General may where necessary, seek further information from the applicant.

(2) Where the Director-General determines that —

(*a*) the application is made by or on behalf of a Sri Lankan industry; and

(*b*) there is sufficient evidence of dumping, injury and causal link within the meaning of this Act,

the Director-General shall decide, within forty days of receipt of the application, whether or not to initiate an investigation.

Self-initiation.

19. The Minister may, in special circumstances direct the Director-General to initiate an investigation, without having an application being made by or on behalf of the Sri Lankan industry, for the initiation of such investigation, where —

(*a*) the Director-General submits to the Minister sufficient evidence of dumping, injury and a causal link, within the meaning of this Act, to justify the initiation of an investigation; and

(*b*) the Director-General recommends the initiation of an investigation on the basis of the available evidence.

Negligible import volumes and *de minimis* dumping margins.

20. Notwithstanding the provisions of section 18 and section 19 of this Act, the Director-General shall not initiate an investigation, where from information available to the Director-General, he determines that —

(*a*) imports of the allegedly dumped product from that country into Sri Lanka represent less than three *per centum* of total imports of the allegedly dumped and like product in Sri Lanka, unless imports of the allegedly dumped product from countries under investigation, which individually account for less than three *per centum* of the imports of the allegedly dumped and like product in Sri Lanka, collectively account for more than seven *per centum* of imports of the allegedly dumped and like product in Sri Lanka; or

(*b*) the dumping margin is less than two *per centum*, expressed as a percentage of the export price.

Public notice of determination to initiate an investigation.

21. (1) Where an investigation is initiated under this Part of this Act, the Director-General shall:—

(*a*) notify of such investigation to the exporters, importers and representative associations of importers or exporters known to the Director-General to be concerned, as well as representatives of the exporting countries, the complainants and any other parties interested; and

(*b*) give public notice by publishing a notice in any newspaper widely circulated in Sri Lanka, in all three languages.

(2) The notification and public notice referred to in subsection (1), shall contain adequate information on the following matters:—

(*a*) the name of the country or countries of export, and if different, the country or countries of origin, of the investigated product;

(*b*) a complete description of the investigated product, including the technical characteristics and uses of the product and its harmonized commodity description and coding system classification;

(*c*) a description of the alleged dumping to be investigated, including the basis for such allegations;

(*d*) a summary of the factors on which the allegations of injury and casual link are based;

(*e*) the address to which information and comments may be submitted;

(*f*) the date of initiation of the investigation; and

(*g*) the proposed schedule for the conduct of the investigation.

(3) The initiation of an investigation shall be deemed to have commenced on the date on which the public notice required under paragraph (*b*) of subsection (1) is published.

Disclosure of application.

22. (1) Subject to the provisions of section 25 relating to the protection of confidential information, the Director-General shall, as soon as an investigation is initiated, provide the full text of the written application received under section 14, to all known exporters and foreign producers and to the authorities of the exporting country, and upon request, make it available to any other parties interested in such investigation.

(2) Notwithstanding the provisions of subsection (1), where the number of exporters involved is large, the Director-General may provide the text of the application to any relevant trade associations or, where that is not so possible, to the authorities of the exporting countries.

CONDUCT OF INVESTIGATION

Duration of investigation.

23. It shall be the duty of the Director-General except in special circumstances, to conclude an anti-dumping investigation within a period of twelve months of its initiation and in no case more than a period of eighteen months of its initiation.

Customs clearance.

24. The initiation of an anti-dumping investigation shall not hinder the procedures of customs clearance, and once measures are adopted, no additional formalities other than those required for the application of those measures, shall be applied.

Confidentiality.

25. (1) The Director-General shall keep confidential, all information submitted which is entitled to such treatment under subsection (2) of this section, and such information shall not be disclosed without specific permission of the party submitting it.

(2) The Director General shall treat as confidential all information designated as confidential by the party supplying such information, which is protected from disclosure under the Right to Information Act, No. 12 of 2016.

(3) The following types of information, if designated as confidential by the person submitting such information, shall for the purpose of subsection (2) be deemed to be supplied in confidence in terms of paragraph (*i*) of section 5(1) of the Right to Information Act, No. 12 of 2016 —

(*a*) business or trade secrets concerning the nature of a product, production processes, operations, production equipment, or machinery;

(*b*) information concerning the financial condition of a company which is not publicly available; and

(*c*) information concerning the costs, identification of customers, sales, inventories, shipments, amount or source of any income, profit, loss or expenditure related to the manufacture and sale of a product.

(4) A party to an investigation may seek confidential status for certain information made available to the Director-General on request being made in that behalf at the time such information is submitted, including reasons for the request for such treatment. The Director-General shall consider such requests expeditiously, and shall inform the party submitting the information, if he determines that the request for confidential treatment is not warranted.

(5) Parties to an investigation shall furnish non-confidential summaries of all information for which confidential treatment is sought, which may take the form of indexation of figures provided in the confidential version, or marked deletions in the text and which shall permit a reasonable understanding of the substance of the information submitted in confidence.

(6) In exceptional circumstances, parties may indicate that information for which confidential treatment is sought is not susceptible of summary, in which case a statement of the reasons why summarization is not possible, shall also be provided by such parties.

(7) Where the Director-General is of the view that the non-confidential summary provided under subsection (5) fails to satisfy the requirements of that subsection, the Director-General may determine that the request for confidential treatment is not warranted, and where in such instance the supplier of the information is unwilling to make the information public, the Director-General shall disregard such information, and return the information concerned to the party who submitted it, unless it is demonstrated to the satisfaction of the Director-General that the information is correct.

Reliance on information available.

26. (1) Where, at any time during an investigation, any party interested —

(*a*) refuses access to, or otherwise does not provide any necessary information within the time determined by the Director-General; or

(*b*) otherwise significantly impedes the investigation,

the Director-General may reach preliminary and final determinations (affirmative or negative), on the basis of the information available, including information contained in the application. The provisions of the First Schedule to this Act, shall be followed by the Director-General in reaching a determination under this subsection.

(2) The Director-General shall take due account of any difficulties experienced by parties interested, in particular small companies, in supplying information requested for, and as such shall provide any practicable assistance or may extend the time granted for the submission of any specified information, as the case may be.

Public file and access thereto.

27. (1) The Director-General shall establish and maintain a public file relating to each investigation or review conducted under this Act. Subject to the provisions of section 25, the Director-General shall place in the public file:—

(*a*) all public notices relating to the investigation or review;

(*b*) all material, including questionnaires, responses to questionnaires, and written communications submitted to the Director-General;

(*c*) all other information developed or attained by the Director-General including any verification reports prepared under section 33; and

(*d*) any other documents the Director-General deems appropriate for public disclosure.

(2) The public file shall be made available to the public for review and copying at the office of the Director-General, throughout the period of the investigation, review and any resulting judicial review.

INVESTIGATION PROCEDURE

Proposed schedule for investigation.

28. The Director-General shall, in the notice published under section 21 of the initiation of an investigation, include the proposed procedure for the conduct of the investigation, including the proposed time-limits for submission of written arguments, the proposed date for any hearing if requested, the proposed date for the preliminary determination and the proposed date for the final determination.

Gathering information.

29. (1) Upon the initiation of an investigation, the Director-General shall send questionnaires to any person, he believes, may have information relevant to the investigation, including domestic producers, importers, exporters and foreign producers.

(2) The Director-General shall grant the exporters and foreign producers to whom the questionnaire is sent, a period of not less than thirty seven days for reply, beginning from the date on which the questionnaire was sent to the respondent or transmitted to the appropriate diplomatic or official representative of the exporting country. The Director-General shall give due consideration to any request for an extension of the time granted to reply and shall grant such an extension whenever practicable, upon good cause shown, taking into consideration the time limits set for the conclusion of the investigation.

(3) The Director-General may disregard any reply to a questionnaire that is not submitted within the time provided, or in the form in which it was requested to be sent.

(4) The Director-General may, during the course of an investigation, request for further information from parties interested in the form of supplementary questionnaires, or written requests for clarification or additional information. Such requests shall state the date by which reply should be forwarded, taking into consideration sufficient time that may be required to send a meaningful reply.

(5) Any party interested may on its own initiative, submit in writing, any information it considers relevant to the investigation, which shall be considered by the Director-General, unless such consideration would be unduly burdensome or would disrupt the timely progress of the investigation.

(6) The Director-General shall base his assessments of dumping, injury and causal link on data relating to defined periods, which shall —

(*a*) in the case of dumping, generally cover a period of not less than six months and not more than twelve months preceding the date of initiation of the investigation for which data is available; and

(*b*) in the case of injury, generally cover a period of thirty six months.

(7) Notwithstanding the provisions of subsection (6), the Director-General may where appropriate, determine a shorter or longer period as the case may be, in the light of available information regarding the Sri Lankan industry, and the nature of the investigated product.

Preliminary written arguments.

30. Parties interested may, not later than a period of fifteen days before the date scheduled for the making of the preliminary determination, submit written arguments concerning any matter relevant to the investigation.

Preliminary determination.

31. (1) The Director-General shall make a preliminary determination of dumping, injury and causal link, not earlier than a period of two months and not later than a period of five months after initiation of the investigation, based on all information available to the Director-General at that time.

(2) A public notice of the preliminary determination shall be issued by the Director-General, which shall set forth in sufficient detail the findings and conclusions reached on all

issues of fact and law considered material, due regard being given to the requirement for protection of confidential information. The notice shall also contain —

(*a*) the names of the known exporters and producers of the investigated product;

(*b*) a description of the investigated product that is sufficient for customs purposes, including the harmonized commodity description and coding system classification;

(*c*) the amount of the dumping margin, if any, found to exist and the basis for such determination, including a description of the methodology used in determining normal value and export price, and any adjustments made in comparing the two;

(*d*) if the method of comparison provided for in subsection (2) of section 11 of this Act was used, the explanation required by that subsection;

(*e*) if the Director-General declined to determine an individual dumping margin on the basis of voluntary responses as provided for in subsection (5) of section 13 of this Act, the basis for that decision;

(*f*) the factors that have led to the determination of injury and causal link, including information on factors other than dumped imports that have been taken into account; and

(*g*) the amount of any provisional measures to be applied and the reasons why such provisional measures are necessary to prevent injury being caused during the period of the investigation.

(3) The Director-General shall publish the public notice in the *Gazette*, and in any newspaper widely circulated in Sri Lanka in all three languages, and a copy of such notice shall be forwarded to the country or countries exporting the investigated product and to any other known parties interested.

Acceptance of a price undertaking.

32. (1) Where the Director-General —

(*a*) accepts a price undertaking under section 44, the Director-General shall publish a notice to that effect in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages; or

(*b*) refuses to accept a price undertaking under section 44, the Director-General shall provide the reasons for such refusal and shall give the exporter an opportunity to make any comments thereon.

(2) The public notice of the acceptance of an undertaking shall include the non-confidential part of the undertaking and set forth in sufficient detail the findings and conclusions on all issues of fact and law considered material by the Director-General, and such notice shall be forwarded to the country or countries the products of which are subject to such determination, and to any other known parties interested.

(3) Where the Director-General continues the investigation under section 46 of this Act, he shall publish a notice of the continuation of the investigation, setting forth the proposed date for the final determination, and any other modifications to the proposed procedure adopted for the conduct of the investigation. Any final determination in such a continued investigation shall be made within a period of six months of the date of publication of such notice.

Verification of information.

33. (1) Except in the circumstances provided for in section 26, the Director-General shall, during the course of an investigation, satisfy himself as to the accuracy of the information supplied by parties interested upon which his findings are based.

(2) For the purpose of verifying information provided or to obtain further information, the Director-General may carry out investigations in other countries where necessary, with prior consent of the firms concerned, and after notifying the representatives of the government of the country in question.

(3) The procedures specified in the Second Schedule to this Act shall apply with regard to the verifications carried out in the territory of other countries, under subsection (2).

(4) The Director-General shall prepare a report on any verification conducted under this section, and the report shall be made available to the company to which it pertains, and a non-confidential version shall be placed in the public file kept under section 27.

(5) The Director-General shall make every effort to complete any verification, prior to the date of any hearing in the investigation.

Written arguments.

34. (1) In an investigation in which:—

(*a*) no hearing is requested for, a party interested may submit written arguments concerning any matter it considers relevant to the investigation, not later than a period of one and a half months before the date proposed for the final determination;

(*b*) a hearing is held, not later than a period of ten days before the scheduled date of the hearing, a party interested may submit written submissions concerning any matter it considers relevant to the investigation.

(2) Following the hearing, parties interested who participated in the hearing may within a period of ten days, submit further written submissions in response to arguments and information presented at the hearing.

Hearings.

35. (1) The Director-General shall, upon request made by a party interested not later than a period of one month after the publication of the preliminary determination, fix a date not later a period of than three weeks and not more than a period of one month prior to the date of the proposed date of the final determination, for the hearing at which all parties interested may present information and arguments.

(2) There shall be no obligation on any party interested to attend a hearing, and failure to do so shall not be prejudicial to that interested party's case. Hearings shall, as far as possible, be organized by the Director-General so as to take into account the convenience of all the parties interested.

(3) Parties interested intending to appear at the hearing shall notify the Director-General of the names of representatives and witnesses who may appear at the hearing, not less than a period of seven days before the date of the hearing.

(4) Hearings shall be presided over by the Director-General, who shall ensure that confidentiality is preserved, and shall organize the hearing in such manner so as to ensure that all parties participating have an adequate opportunity to present their views. The Director-General shall maintain a record of the hearing, which shall be placed in the public file, with the exception of any confidential information.

Contributions by industrial users and representatives of consumer organizations.

36. (1) The Director-General shall provide opportunities for industrial users of the investigated product in Sri Lanka and for representatives of consumer organizations, to provide information and submit written arguments concerning matters relevant to the investigation, including the economic interest of Sri Lanka, in imposing measures.

(2) All information under this section shall be provided in writing, and the Director-General shall allow industrial users of the investigated product and representatives of consumer organizations, to make oral representations at any hearing held during the course of an investigation.

Essential facts.

37. (1) At least a period of three weeks before the proposed date for the final determination, the Director-General shall, subject to the confidentiality requirement under section 25, inform all parties interested in writing sent by registered post or by any other means, of the essential facts under consideration which shall form the basis for the decision whether to apply definitive measures.

(2) Parties interested may submit comments in writing by registered post, if any, on information disclosed to them under subsection (1), within a period of one week of such disclosure, or in exceptional circumstances, within such extended period of time as may be determined by the Director-General.

Final determination.

38. (1) The Director-General shall make a final determination of dumping, injury, and causal link, generally within a period of six months of the date of the preliminary determination, and such final determination shall be based on all information obtained by the Director-General during the course of the investigation that has been disclosed to parties interested, subject to the confidentiality requirements under section 25.

(2) Where the final determination demonstrates that there is dumping and injury is being caused as a result of such dumping, and taking into consideration among other matters:—

(*a*) the situation of domestic competition for the product under investigation; and

(*b*) the needs of industrial users and the interest of final consumers, where applicable,

and where the economic interest of Sri Lanka calls for the imposition of anti-dumping duties, a proposal for a definitive anti-dumping duty, subject to the provisions of subsection (4), shall be submitted by the Director-General to the Inter-Ministerial Committee.

(3) It shall be the duty of the Inter-Ministerial Committee to consider the appropriateness of imposing a definitive anti--dumping duty, and it shall submit its recommendation to the Minister in charge of the subject of Finance through the Minister, within a period of ten working days of receipt of such proposal.

(4) The Director-General shall examine whether a duty less than the full dumping margin would be adequate to remove the injury to the Sri Lankan industry. Where the Director-General determines that such a lesser duty would be adequate to remove the injury, the amount of the final anti-dumping duty imposed shall not exceed that lesser duty.

(5) Where the final determination is that, there is no evidence of dumping and consequently no injury is being caused to the Sri Lankan Industry or there is no evidence of injury being caused to the Sri Lankan Industry though there is evidence of dumping, or the Sri Lankan economic interest does not call for the imposition of any anti-dumping duties, the Director-General shall immediately terminate the investigation.

Imposition of duty and issue of public notice.

39. (1) Where the Inter-Ministerial Committee recommends the imposition of a definitive anti-dumping duty, the Minister in charge of the subject of Finance in consultation with the Minister shall, within a period of fourteen working days of the date of receipt of the recommendation of the Inter-Ministerial Committee and taking into consideration the economic interest of Sri Lanka, determine whether or not to adopt a definitive anti-dumping duty, and the amount of duty to be imposed, if any, provided that the duty imposed shall not exceed the dumping margin, that was found to exist.

(2) The Director-General shall issue a public notice of:—

(*a*) the final determination (whether affirmative or negative); and

(*b*) the amount of duty, if any, imposed by the Minister in charge of the subject of Finance,

which shall be published in the *Gazette,* and in any newspaper widely circulated in Sri Lanka in all three languages.

(3) A report shall be prepared by the Director-General, containing —

(*a*) the final determination, including all relevant information on matters of fact and law, and the reasons that have led to such determination, due regard being given to the requirement for the protection of confidential information; and

(*b*) the information referred to in subsection (4) of this section,

and such report shall be made available for public inspection, and copies thereof may be issued on the payment of such fee, as may be determined by the Director-General.

(4) The information required under paragraph (*b*) of subsection (3) to be included in the report, shall consist of the following:—

(*a*) the names of the known exporters and producers of the investigated product;

(*b*) description of the investigated product that is sufficient for customs purposes, including the harmonized commodity description and coding system classification;

(*c*) the amount of the dumping margin, if any found to exist and the basis for such determination, including a description of the methodology used in determining normal value and export price, and any adjustments made in comparing the two;

(*d*) if the method of comparison provided for in subsection (2) of section 11 of this Act was used, the explanation required by that subsection;

(*e*) if the Director-General declined to determine an individual dumping margin on the basis of voluntary responses as provided for in subsection (4) of section 13 of this Act, the basis for that decision;

(*f*) the factors that have led to the determination of injury and casual link, including information on factors other than dumped imports that have been taken into account;

(*g*) the reasons for the acceptance or rejection of relevant arguments or claims made by exporters and importers;

(*h*) the amount of any anti-dumping duties, if any, imposed by the Minister in charge of the subject of Finance; and

(*i*) if final anti-dumping duties are to be collected with regard to the imports to which provisional measures were applied, the reasons for the decision to do so.

(5) Where, within a period of seven days of making the report available for public inspection under subsection (3), any party interested brings to the notice of the Director-General any clerical errors appearing in such report, the Director-General may, where he considers it necessary, rectify such error.

(6) A copy each of the notice published under subsection (2) and of the report prepared under subsection (3), shall be sent to the country or countries the product of which was subject to the final determination, and to any other known parties interested, as may be determined by the Director-General.

Disclosure.

40. The Director-General shall, on request made within a period of fifteen days of the publication of the notice under subsection (2) of section 39 of this Act, hold separate disclosure meetings with exporters or producers requesting for such a meeting, to explain the dumping calculation methodology finally applied for that exporter or producer.

PROVISIONAL MEASURES

Imposition of provisional measures.

41. (1) Where the Director-General makes an affirmative preliminary determination of dumping, injury and the existence of a causal link between the dumping and the injury, and is of opinion that provisional measures are necessary to prevent injury being continued during the investigation, he shall communicate his opinion to the Minister who shall submit such opinion to the Minister in charge of the subject of Finance.

(2) The Minister in charge of the subject of Finance shall, in consultation with the Minister, determine whether or not to adopt provisional measures and the amount of provisional duty to be imposed, if any, and the Director-General shall cause notice of such duty imposed to be published in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages.

(3) A negative preliminary determination of dumping shall not automatically terminate the investigation, but no provisional measures shall be imposed in such a case.

Amount of provisional duty to be imposed.

42. The provisional duty imposed by the Minister in charge of the subject of Finance under subsection (2) of section 41, shall not be greater than the estimated dumping margin set forth in the public notice of the preliminary determination published under subsection (3) of section 31.

Duration of application of provisional measures.

43. (1) Provisional measurers shall not be imposed until the expiration of a period of not less than two months from the date of initiation of the investigation, and shall generally be applied for a period not exceeding six months.

(2) The Director-General may, upon a request made in that behalf by exporters representing a significant percentage of the trade involved, extend the period of application of the provisional measures referred to in subsection (1), to a period not exceeding nine months.

(3) The provisions of sections 48 and 49 of this Act, shall be followed *mutatis mutandis* in the application of provisional measures imposed under section 41.

PRICE UNDERTAKINGS

Undertakings relating to price undertakings.

44. (1) The Director-General may suspend an investigation without the imposition of provisional measures or anti-dumping duties, on receipt of satisfactory voluntary undertakings from any exporter, to revise its prices or to cease exports to the area in question at dumped prices, and the Director-General is satisfied that the injurious effect of the dumping is eliminated.

(2) Any price increases imposed as a result of an undertaking given under subsection (1), shall not be higher than what is necessary to eliminate the dumping margin and where the Director-General determines in the interest of the national economy, that a lesser price increase would be adequate to remove the injury to the Sri Lankan industry, the price increase imposed may be less than the dumping margin.

(3) Price undertaking for the purpose of subsection (1) may be suggested by the Director-General, but no exporter shall be forced to enter into such an undertaking.

(4) The fact that exporters do not offer any price undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case, but the Director-General shall be free to determine that a threat of injury is more likely to be realized, if the dumped imports continue.

(5) Except in exceptional circumstances, a price undertaking under subsection (1) may be offered by any exporter at any time not less than a period of two months before the proposed date of the final determination.

Conditions for acceptance of price undertakings.

45. (1) The Director-General shall not seek to suggest or accept any price undertakings from exporters, until a preliminary affirmative determination is made of dumping, injury, and causal link.

(2) Undertakings offered may not be accepted by the Director-General, if he considers their acceptance impractical such as, if the number of actual or potential exporters is too great, or for any other reasons, including reasons of general policy.

(3) Where the Director-General decides not to accept an undertaking, he shall provide to the exporter the reasons which have led to consider the acceptance of an undertaking as inappropriate, and grant to such exporter an opportunity to make written comments thereon.

(4) The Director-General may require any exporter from whom an undertaking have been accepted, to provide periodically, information relevant to the fulfillment of such undertakings, and to permit verification of the information so provided. The communication of these data shall be subject to the provisions of section relating to

confidentiality. Failure to provide information requested by the Director-General may be deemed to be a violation of the undertaking.

(5) Price undertakings offered shall be enforced in such manner and following such procedure as shall be prescribed.

Completion of the investigation.

46. (1) Notwithstanding the acceptance of one or more undertakings, the Director-General shall, where an exporter so desires or the Director-General so decides, complete the investigation of dumping and injury.

(2) In a case where the Director-General completes the investigation under subsection (1) and —

(*a*) the Director-General makes a negative determination of dumping or injury, the undertakings shall automatically lapse, except in cases where such a determination is due in large part to the existence of such undertakings, and the Director-General may require that an undertaking be maintained for a reasonable period of time as shall be determined by him;

(*b*) the Director-General makes an affirmative determination of dumping and injury, the undertaking shall stand modified to the extent of the determination.

Violation of undertakings.

47. Where an undertaking given under section 44 is violated, the Director-General may, in compliance with the provisions of this Act, take all necessary steps as may be necessary for the imposition of provisional measures, using the best information available. In such cases, definitive duties may be levied in accordance with this Act on goods imported for consumption not more than a period of three months before the application of such provisional measures, except that any such assessment shall not apply to imports entered before the violation of the undertaking.

IMPOSITION AND COLLECTION OF ANTI-DUMPING DUTIES

Imposition and collection of anti-dumping duties.

48. (1) Anti-dumping duties shall take the form of *ad valorem* or specific duties, and shall be imposed in addition to other import duties levied on the imported products concerned.

(2) Anti-Dumping duties shall be collected by the Director-General of Customs and the provisions of the Customs Ordinance relating to collection of duties, shall *mutatis mutandis* apply to and in relation to the same.

(3) Except in the circumstances provided for in subsection (4), the Director-General shall establish an individual anti-dumping duty for each known exporter or producer of dumped imports concerned.

(4) When the Director-General has limited the examination in accordance with the provisions of subsections (2) and (3) of section 13 of this Act, any anti-dumping duty applied to imports from exporters or producers not included in the examination, shall not exceed the weighted average dumping margin established with respect to the selected exporters or producers, provided that the Director-General shall disregard for the purpose of this subsection, any zero or *de minimis* margins and margins established under the circumstances referred to in section 26.

(5) Except as otherwise provided for in subsections (4) and (5) of section 13 of this Act, the Director-General shall apply individual duties to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation.

(6) The Minister in charge of the subject of Finance may apply an anti-dumping duty rate for imports from exporters and producers not known to the Director-General at the time the final determination was made. Such anti-dumping duty rate shall not exceed the weighted average of the individual

dumping margins established for exporters and producers examined during the investigation, excluding margins established under the circumstance referred to in section 26 of this Act.

Refund of duties paid in excess of the dumping margin.

49. (1) An importer shall be granted a refund of the duties collected by the Director-General of Customs, where the Director-General determines that the dumping margin, on the basis of which duties were paid, has been eliminated or reduced to a level which is below the level of the duty in force.

(2) The importer shall submit an application to the Director-General for the refund of anti-dumping duties collected within any period of six months, within a period of two months of the end of that period. The application shall contain information on the amount of refund of anti-dumping duties claimed for the period, and all customs documentation relating to the calculation and payment of such amount. It shall also include evidence of normal value and export prices to Sri Lanka, for the exporter or the producer to which the duty applies.

(3) In any case where the importer is not associated with the producer or exporter and the information referred to in subsection (2) is not immediately available, or where the producer or the exporter is unwilling to release it to the importer, the application shall contain a statement from the producer or exporter that the dumping margin has been reduced or eliminated, and that the relevant supporting evidence shall be directly provided to the Director-General. Where such evidence is not forthcoming from the exporter or producer within a reasonable period of time, the application shall be rejected.

(4) In investigating an application for a refund, the Director-General shall apply the relevant provisions of this Act relating to the conduct of an investigation, to his determination. In particular when determining whether and

to what extent a refund should be made when the export price is contracted on the basis of the price at which the imported products are first resold to an independent buyer due to the absence of export price, or because it appears that the export price is unreliable in terms of subsection (2) of section 9, the Director-General shall take account of any change in normal value, any change of costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and shall calculate the export price with no deduction for the amount of anti-dumping duties paid, when satisfactory evidence of the above is provided.

(5) The Director-General shall provide the importer making the request, with a detailed explanation of the reasons for the determination concerning the request for refund.

(6) Refunds of duties shall generally take place within a period of twelve months and in no case more than a period of eighteen months after the date on which an application for a refund was made. Any refund authorized, shall be made by the Director-General of Customs within a period of three months of the determination to grant a refund. The observance of the time-limits mentioned in this subsection may not be possible where the determination to apply the duties in question is subject to a judicial review proceeding.

(7) Notwithstanding the provisions of this section, the time limits referred to herein, may not be strictly adhered to where as a result of the subject matter being judicially reviewed, such adherence is not possible.

Suspension.

50. (1) Subject to the provisions of subsection (2), the Minister in charge of the subject of Finance may, in consultation with the Director-General and upon the recommendations of the Inter-Ministerial Committee, suspend the application of provisional measures or anti-dumping duties imposed under this Act for a specified period.

(2) The decision to suspend the application of provisional measures or anti-dumping duties shall be arrived at, having taken into consideration the interest of the national economy, and –

(*a*) subsequent to an examination of such factors, including market conditions, as the Minister may prescribe in consultation with the Minister in charge of the subject of Finance; and

(*b*) having given an opportunity to the Sri Lankan industry to comment on the issue.

RETROACTIVITY

Principle of retroactivity.

51. Except as provided for in sections 47, 52 and 53 of this Act, provisional measures and anti-dumping duties shall only be applied to products which enter into Sri Lanka for consumption, on or after the date of the publication of an affirmative preliminary or final determination in an investigation conducted under the preceding provisions of this Act, or a review carried under sections 57 to 59 of this Act.

Retroactive application of definitive duties in certain circumstances.

52. A definitive anti-dumping duty may be collected on products which were entered for consumption not more than a period of three months prior to the date of application of provisional measures, where the Director-General determines, in regard to the dumped product in question, that —

(*a*) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and

(*b*) the injury is caused by massive dumped imports of a product in a relatively short time, which in the light of the timing and the volume of the dumped

imports and other circumstances (such as a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.

Definitive collection of provisional duties.

53. (1) Where the Director-General makes a final determination of injury (but not of a threat thereof or of material retardation of the establishment of an industry) or, in the case of a final determination of a threat of injury, where the Director-General considers that the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury, definitive anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

(2) Where the definitive anti-dumping duty is higher than the amount estimated for the purpose of the provisional measure, the difference shall not be collected, but where the definitive duty is lower than the amount estimated for the purpose of the security, the difference shall be reimbursed.

(3) Except as provided for in subsection (1), where the Director-General makes a determination of threat of injury or material retardation (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation. Any provisional duty paid shall be reimbursed within a period of one and a half months.

(4) Where the Director-General makes a negative final determination, any provisional duty paid during the period of application shall be reimbursed within a period of one and a half months.

TERMINATION WITHOUT ADOPTION OF MEASURES

Termination for insufficient evidence, *de minimis* dumping margin or negligible volume.

54. (1) An investigation shall be terminated at any time, where the Director-General is satisfied that there is not sufficient evidence of either dumping or injury, to justify proceeding with the investigation.

(2) The Director-General shall terminate an investigation, if he determines that the dumping margin is *de minimis*, or that the volume of dumped imports, whether actual or potential, or the injury, is negligible.

(3) For the purpose of subsection (2) —

(*a*) the dumping margin shall be considered to be *de minimis* if the margin is less than two *per centum*, expressed as a percentage of the export price; and

(*b*) the volume of dumped imports shall generally be regarded as negligible, if the volume of dumped imports of the investigated product from a particular country is found to account for less than three *per centum* of total imports of the investigated and like product in Sri Lanka, unless imports of the investigated product from all countries under investigation which individually account for less than three *per centum* of the total imports of the investigated and like product in Sri Lanka, collectively account for more than seven *per centum* of imports of the investigated and like product in Sri Lanka.

Public notice of conclusion of an investigation without imposition of measures.

55. The Director-General shall, with due regard being paid to the requirement for the protection of confidential information, issue a public notice of the conclusion of an investigation without imposition of measures, which shall set forth in sufficient detail the findings and conclusions

reached on all issues of fact and law considered material by the Director-General, including the matters of fact and law which have led to arguments being accepted or rejected, as the case may be.

DURATION AND REVIEW OF ANTI-DUMPING DUTIES AND PRICE UNDERTAKINGS

Duration of an anti-dumping duty.

56. (1) An anti-dumping duty shall remain in force as long as, and to the extent necessary, to counteract dumping which is causing injury.

(2) Any definitive anti-dumping duty shall stand terminated on a date not later than a period of five years from its imposition or from the date of the most recent review under section 57, if that review has covered both dumping and injury.

(3) The Director-General shall, not later than a period of three months preceding the date of expiry of the definitive anti-dumping duty, publish a notice in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages, of the impending expiry of any anti-dumping duty. A definitive duty, however, may not expire, if the Director-General determines, in a review initiated before the date of expiry on his own initiative, or upon a duly substantiated request made by or on behalf of the Sri Lankan industry within a period of one and a half months from the public notice of impending termination of the definitive anti-dumping duties concerned, that the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.

Review for change of circumstances.

57. (1) The Director-General shall, where it is warranted, review the need for the continued imposition of the anti-dumping duty on his own initiative or, where a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon a written request submitted by any party interested, which contains positive information substantiating the need for a review.

(2) The Director-General shall, upon initiation of a review under subsection (1), publish a notice in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages, of the initiation of such a review.

(3) In conducting a review under this section, the Director-General shall, upon request made by a party interested, examine whether —

(*a*) the continued imposition of the duty is necessary to offset dumping;

(*b*) the injury would be likely to continue or recur, if the duty were removed or varied; or

(*c*) both events are happening.

(4) Where, as a result of a review under this section, the Director-General determines that the anti-dumping duty is no longer warranted, the Director-General shall recommend to the Minister in charge of the subject of Finance that such duty be terminated immediately.

Newcomer review.

58. (1) Where a product is subject to definitive anti-dumping duties, the Director-General shall promptly carry out a review for the purpose of determining individual dumping margins for any exporters or producers in the exporting country concerned who did not export the product to Sri Lanka during the period of investigation, provided, such exporters or producers may show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the imported investigated product. Such a review shall be initiated within a period of one month following the date of receipt of the application by the producer or exporter concerned.

(2) A review under subsection (1) shall generally be completed within a period of six months from its initiation and, in any event, a period not later than twelve months of its initiation.

(3) No anti-dumping duty shall be levied on imports from such exporters or producers at whose instigation a review is being carried out under subsection (1), while the review is being carried on. The Director-General may, however, request guarantees in the amount of the residual anti-dumping duty rate, as determined under subsection (6) of section 48 of this Act, in order to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

Duration and review of undertakings.

59. The provisions of —

(*a*) sections 56 and 57 of this Act shall apply, *mutatis mutandis*, to price undertakings accepted under the provisions of sections 44 to 47 of this Act;

(*b*) sections 21, 25, 26, 27, 29, 32, 33, 34, 35, 36, 37, 38, 39 and 40 of this Act shall apply, *mutatis mutandis*, to any review carried out under this Part of this Act; and

(*c*) section 22 of this Act shall apply to any review conducted under sections 56 and 57 of this Act which shall be carried out expeditiously and be concluded within a period of twelve months of the date of initiation of the review.

ANTI-CIRCUMVENTION

Circumvention of anti-dumping duty.

60. (1) Where an article subject to anti-dumping duty is imported into Sri Lanka from any country including the country of origin or country of export notified for the purposes of levy of anti-dumping duty, in an unassembled, unfinished or incomplete form and is assembled, finished or completed

in Sri Lanka or in such country, such assembly, finishing or completion shall be considered to circumvent the anti-dumping duty in force if, -

(*a*) the operation started or increased after, or just prior to, the anti-dumping investigations and the parts and components are imported from the country of origin or country of export notified for purposes of levy of anti-dumping duty; and

(*b*) the value consequent to assembly, finishing or completion operation is less than thirty-five *per centum* of the cost of assembled, finished or completed article.

(2) Where an article subject to anti-dumping duty is imported into Sri Lanka from country of origin or country of export notified for the levy of anti-dumping duty after being subjected to any process involving alteration of the description, name or composition of an article, such alteration shall be considered to circumvent the anti-dumping duty in force, if the alteration of the description, name or composition of the article subject to anti-dumping duty results in the article being altered in form or appearance even in minor forms regardless of the variation of tariff classification, if any.

(3) Where an article subject to anti-dumping duty is imported into Sri Lanka through exporters or producers or country not subject to anti-dumping duty, such exports shall be considered to circumvent the anti-dumping duty in force, if the exporters or producers notified for the levy of anti-dumping duty change their trade practice, pattern of trade or channels of sales of the article in order to have their products exported to Sri Lanka through exporters or producers or country not subject to anti-dumping duty.

Initiation of investigation to determine circumvention.

61. (1) Except as provided herein below, the Director-General may initiate an investigation to determine the existence and effect of any alleged circumvention of the anti-dumping duty levied under section 2(1) of the Act, upon receipt of a written application by or on behalf of the Sri Lankan industry.

(2) The application shall, *inter-alia*, contain sufficient evidence as regards the existence of the circumstances to justify initiation of an anti-circumvention investigation.

(3) Notwithstanding anything contained in subsection (1), the Director-General may initiate an investigation on his own initiative, if he is satisfied from information received from any party interested that sufficient evidence exists as to the existence of the circumstances pointing to circumvention of anti-dumping duty in force.

(4) The Director-General may initiate an investigation to determine the existence and effect of any alleged circumvention of the anti-dumping duty in force, where he is satisfied that imports of the article circumventing an anti-dumping duty in force are found to be dumped:

Provided that, the Director-General shall notify the government of the exporting country before proceeding to initiate such an investigation.

(5) The provisions regarding the conduct of anti-dumping investigations under this Act shall apply *mutatis mutandis* to any investigation carried out under this section.

(6) Any such investigation shall be concluded within a period of twelve months and in no case more than a period of eighteen months of the date of initiation of investigation for reasons to be recorded in writing by the Director-General.

Determination of Circumvention.

62. (1) The Director-General, upon determination that circumvention of anti-dumping duty exists, may recommend to the Inter-Ministerial Committee the imposition of anti-dumping duty to imports of articles found to be circumventing an existing anti-dumping duty or to imports of articles originating in or exported from countries other than those which are already notified for the purpose of levy of the anti-dumping duty and such levy may apply retrospectively from the date of initiation of the investigation under section 61.

(2) It shall be the duty of the Inter-Ministerial Committee to consider the appropriateness of the recommendation of the Director-General under subsection (1), and it shall submit its recommendation to the Minister in charge of the subject of Finance through the Minister, within a period of ten working days of receipt of such recommendation.

Review of circumvention.

63. (1) The Director-General may review the need for the continued imposition of the duty, where warranted, on his own initiative or a reasonable period of time has elapsed since the imposition of the measures, upon request made by any party interested which submits positive information substantiating the need for the review.

(2) Any review initiated under subsection (1) shall be concluded within a period not exceeding twelve months from the date of initiation of review.

PART II

COUNTERVAILING DUTIES

Circumstances in which a countervailing duty may be imposed.

64. (1) Countervailing duties may be imposed on products imported into Sri Lanka, where the Director-General determines, pursuant to an investigation initiated and conducted in accordance with the provisions of this Act, that —

(*a*) a prohibited subsidy or an actionable subsidy within the meaning of this Act is being provided with respect to the investigated product;

(*b*) there is injury being caused to the Sri Lankan industry; and

(*c*) there exists a causal link between the subsidized imports and the injury caused.

(2) Where imports of like products from more than one country are the subject of simultaneous countervailing duty investigations, the Director-General may, for the purpose of determining whether injury exists, cumulatively assess the effects of such subsidized imports on the Sri Lankan industry, only if —

(*a*) the applications are filed under section 14 of this Act;

(*b*) the Director-General determines that the amount of countervailable subsidization established in relation to the imports from each country is more than *de minimis* as specified in section 74 and the volume of imports from each country is not negligible as specified in section 74; and

(*c*) the Director-General determines that a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between the imported products, and the conditions of competition between the imported products and the domestic like products.

When may a subsidy be subject to a countervailing duty.

65. (1) Subject to the provisions of section 64 of this Act, a subsidy may be subject to a countervailing duty, if it is —

(*a*) a prohibited subsidy; or

(*b*) an actionable subsidy.

(2) A subsidy shall not be subject to a countervailing duty and be considered a non-actionable subsidy within the meaning of this Act, where the Director-General determines that, such subsidy is —

(*a*) not specific within the meaning of section 66 of this Act; or

(*b*) a subsidy referred to in the Third Schedule to this Act.

(3) A prohibited subsidy shall be deemed to be specific in terms of section 66 of this Act.

Specificity and contingency of subsidy.

66. (1) In order to determine whether for the purpose of subsection (1) of section 65 of this Act, a subsidy is specific to an enterprise or industry or group of enterprises or industries (referred to in this section as "certain enterprises") within the jurisdiction of authority granting it, the following principles shall apply:—

(*a*) where the granting authority or the legislation pursuant to which the granting authority operates,explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific;

(*b*) where the granting authority or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for and the amount of a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to and are clearly spelt out in that legislation or other official document, so as to be capable of verification; and

(*c*) if, notwithstanding any appearance of non-specificity resulting from the application of the

principles laid down in sub-paragraphs (*a*) and (*b*) of this subsection, there are reasons to believe that the subsidy may in fact be specific, the following factors may be considered:—

(i) use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy; and

(ii) account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.

(2) For the purposes of paragraph (*b*) of subsection (1), objective criteria or conditions means, criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as the number of employees or the size of the enterprise.

(3) The setting or change of generally applicable tax rates, shall not be deemed to be a specific subsidy.

(4) A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the authority granting the subsidy shall be deemed to be a specific subsidy.

(5) Any determination of specificity under this section shall be established on the basis of positive evidence.

Determination of benefit by the grant of a subsidy.

67. (1) In determining what amounts to the "conferring of a benefit" for the purpose of a "subsidy" as defined in section 85 of this Act, the Director-General shall have regard to the following guidelines:—

(*a*) government provision of equity capital shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice, including the provision of risk capital, of private investors in the territory of that country;

(*b*) a loan by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan, and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market, in which case the benefit shall be the difference between these two amounts;

(*c*) a loan guaranteed by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government, and the amount that the firm would pay on a comparable commercial loan without that government guarantee, in which case the benefit shall be the difference between these two amounts adjusted for any differences in fees; and

(*d*) the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit, unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration.

(2) For the purposes of paragraph (*d*) of subsection (1), the adequacy of remuneration shall be determined in relation to prevailing market conditions for the goods or services in question in the country of provision or purchase, including price, quality, availability, marketability, transportation and other conditions of purchase or sale.

Establishing the countervailing duty rate.

68. (1) The Director-General shall subject to the provisions of subsection (4), submit through the Minister, a proposal to the Minister in charge of the subject of Finance, relating to the application of an individual countervailing duty rate for each known exporter or producer concerned, of the investigated product that has been individually investigated.

(2) Where the number of exporters, producers, importers or types of the investigated product is so large as to make it impracticable to individually examine each party interested or all the investigated products for the purpose of subsection (1), the Director-General may limit the examination either to a reasonable number of parties interested or investigated products, by using samples which are statistically valid on the basis of information available to the Director-General at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

(3) Any selection of exporters, producers, importers or types of investigated products made under subsection (2), shall preferably be chosen in consultation with and the consent of the exporters, producers or importers concerned.

(4) Where a limited examination is carried out under subsections (2) and (3), the Director-General shall apply to any exporter or producer not included in the investigation, a rate that is equal to the weighted average of the individual countervailing duty rates established for all exporters and producers individually examined, provided that, the Director-General shall disregard for the purpose of this subsection, any zero or countervailable subsidy considered to be *de minimis.*

INITIATION, CONDUCT AND CONCLUSION OF INVESTIGATION AND REVIEW

Initiation of investigation under this Part of the Act.

69. In regard to the initiation of a countervailing duty investigation under this Part of this Act, the provisions of sections 14 to 22 (inclusive of both sections) of this Act, shall *mutatis mutandis*, apply to and in relation to the same, subject to the following modifications:—

(*a*) before initiating a countervailing duty investigation and throughout the conduct of the investigation, the Director-General shall provide any interested foreign government, an opportunity for consultation for the purpose of clarifying any matters that shall be relevant to the investigation and arriving at a mutually agreed solution;

(*b*) a consultation under paragraph (*a*) shall not in any way impede the Director-General from proceeding with the conduct of the investigation, or reaching a provisional or final determination, in relation to the same; and

(*c*) the requirement of notifying the government of each exporting country of a decision to initiate an investigation, where the application fulfills the relevant requirement as provided for in subsection (2) of section 16, shall not be applicable to an investigation initiated under this Part of this Act.

Conduct and conclusion of an investigation under this Part of this Act.

70. In regard to the conduct and conclusion of an investigation under this part of this Act, including the imposition of provisional measures, the provisions of sections 23 to 43 (inclusive of both sections) of this Act, shall *mutatis mutandis* apply to and in relation to the same, subject to the following modifications:—

(*a*) the requirement under section 29 of this Act of sending questionnaires upon the initiation of an

investigation, shall in the case of an investigation under this Part of this Act, also include the sending of such questionnaire to interested members or parties interested;

(*b*) the provisional measures imposed under section 41 of this Act, shall, in the case of an investigation under this Part of this Act, take the form of cash deposits or bonds equal to the amount of the provisionally calculated amount of subsidization;

(c) the duration of the application of any provisional measures imposed as referred to in subsection (1) of section 43 of this Act, shall, in the case of provisional measures imposed in an investigation under this Part of this Act, not exceed a period of four months; and

(*d*) the provisions of subsection (2) of section 43 relating to the granting of an extension of the period of the application of provisional measures imposed, shall not apply to an investigation under this Part of this Act.

Price undertakings.

71. (1) The Director-General may suspend an investigation under this Part of this Act, without the imposition of provisional measures, on receipt of satisfactory voluntary undertakings from the government granting the subsidy or the exporter concerned, that —

(*a*) the government granting the subsidy agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

(*b*) the exporter concerned agrees to revise its prices so that the injurious effects caused by the granting of that subsidy is eliminated.

(2) Any price increases imposed as a result of an undertaking given under paragraph (*b*) of subsection (1), shall not be higher than necessary to eliminate the amount of the subsidy and preferably be less than the amount of the subsidy, if such price increase imposed is adequate to remove the injury caused to the Sri Lankan industry.

(3) Price undertakings for the purpose of subsection (1) may be suggested by the Director-General, but, the exporter concerned shall not be forced to enter into such undertakings.

(4) The fact that exporter concerned does not offer any price undertakings or does not accept an invitation to do so, shall in no way prejudice the consideration of the case, but the Director-General shall be free to determine that a threat of injury to the Sri Lankan industry is more likely to be realized, if the subsidized imports continue.

Consequences of voluntary undertakings under section 71.

72. In regard to the conditions of acceptance of voluntary undertakings from an exporter under section 71 of this Act, and the consequences of such an acceptance, the provisions of sections 45 to 47 (inclusive both sections) of this Act, shall, *mutatis mutandis* apply to and in relation to the same.

Imposition and collection of countervailing duties etc. under this Part of this Act.

73. (1) In regard to the imposition and collection of countervailing duties, retroactivity, termination of investigations, duration and review of countervailing duties and voluntary undertakings, in an investigation under this Part of this Act, the provisions of sections 48 to 57 (inclusive of both sections) and section 59 of this Act, other than the provisions of section 54, shall *mutatis mutandis* apply to and in relation to the same.

(2) Notwithstanding the provisions of subsection (1), where a countervailing duty has been imposed on products exported by an exporter who was not included in an investigation carried under this Part of this Act, (for a

reason other than the refusal to co-operate), the Director-General shall immediately initiate and promptly review an investigation under this Part of this Act and the provisions of section 58 of this Act shall *mutatis mutandis* apply to and in relation to the same.

Termination for insufficient evidence of an investigation under this Part of this Act.

74. An investigation under this part of this Act shall be terminated at any time, where the Director-General determines that:—

(*a*) the amount of countervailable subsidy is *de minimis* or that the volume of subsidized import, actual or potential, or its injury being caused to the Sri Lankan industry, is negligible; or

(*b*) there is not sufficient evidence to justify continuing with the investigation.

Consultations.

75. (1) Where the Director-General on his own motion or on information provided by any party interested, has reason to believe that a prohibited or actionable subsidy is being granted or maintained by a Member in respect of a product being exported to Sri Lanka, the Director-General shall bring such information to the notice of the Minister.

(2) The Minister may, without prejudice to any other action that may be taken in terms of this Act, request such Member who is alleged to be granting the prohibited or actionable subsidy, for a consultation with a view to clarifying the situation relating to the same and arriving at a mutually acceptable solution, provided, however, that a hearing shall be afforded to the Sri Lankan Industry prior to finalizing any such solution.

(3) Any investigation commenced under Part II of this Act may be terminated upon a solution being arrived at under subsection (2). Provided, however, that no such investigations shall be suspended or terminated merely by the request for or commencement of any consultation under subsection (2).

(4) A request made for a consultation under subsection (1) shall be accompanied by a statement containing all the available evidence with regard to the existence of such prohibited or actionable subsidy and the nature of such subsidy.

PART III

GENERAL

Determination of injury.

76. (1) A determination of injury for the purposes of paragraph (*b*) of section 2 and paragraph (*b*) of subsection (1) of section 64 of this Act, shall be based on positive evidence and would involve an objective examination of —

(*a*) the volume of the dumped or subsidized imports and the effect of the dumped or subsidized imports on prices in the domestic market for like products; and

(*b*) the consequent impact of these imports on domestic producers of such like products.

(2) In examining the impact of the subsidized or dumped imports on the Sri Lankan industry, the Director-General shall base his examination on an evaluation of all relevant economic factors and indices having a bearing on the state of such industry, including:—

(*a*) the actual and potential decline in output, sales, market share, profits, productivity, returns on investments or utilization of capacity;

(*b*) the factors affecting domestic prices;

(*c*) the magnitude of the dumping margin in the case of an anti-dumping investigation;

(*d*) the actual and potential negative effects on cash flow, inventories, employment, wages, growth or ability to raise capital or investment; and

(*e*) in the case of a countervailing duty investigation involving agriculture, whether there has been an increased burden on government support programmes.

(3) The factors and indices listed in subsection (2) shall not be considered as exhaustive, nor shall any such factor or index be necessarily conclusive.

Causation.

77. (1) In order to determine for the purpose of paragraph (*c*) of section 2 or paragraph (*c*) of subsection (1) of section 64 of this Act, whether there exists a causal link between the injury caused to the Sri Lankan industry by the investigated product and the dumping or the granting of a countervailable subsidy, as the case may be, the Director-General shall consider among other factors, whether:—

(*a*) there has been a significant increase in dumped or subsidized imports in absolute terms or relative, to production or consumption in Sri Lanka;

(*b*) there has been significant price undercutting by dumped or subsidized imports, as compared with the price of the domestic like product; and

(c) the effect of the dumped or subsidized imports is such as to depress prices to a significant degree, or to prevent price increases which would otherwise have occurred to a significant degree.

(2) The Director-General shall assess the effect of the dumped or subsidized imports in relation to the domestic production of the like product, where available data permits the separate identification of the production in accordance with such criteria, as the production process, producers' sales and profits.

(3) If the separate identification of the production is not possible, the Director-General shall assess the effects of the dumped or subsidized imports by examining the production of the narrowest group or range of products, which includes the domestic like product, for which necessary information can be provided.

(4) In relation to an anti-dumping investigation, the demonstration of a causal link between the dumped imports and the injury to the Sri Lankan Industry shall be based on an examination of all relevant evidence before the Director-General.

(5) The Director-General shall also examine any other known factors, other than the dumped or subsidized imports which, at the same time, are injuring the Sri Lankan industry.

(6) Factors that may be considered by the Director-General under subsection (5) may include, *inter alia*:—

(*a*) the volume and prices of non-subsidized imports of the goods in question or of imports not sold at dumping prices;

(*b*) contraction in demand or changes in the patterns of consumption;

(*c*) trade restrictive practices of, and competition between, the foreign and Sri Lankan producers;

(*d*) developments in technology; and

(*e*) the export performance and productivity of the Sri Lankan industry.

(7) Injury to the Sri Lankan industry caused by factors other than the dumped or subsidized imports shall not be attributed to the dumped or subsidized imports.

Threat of material injury.

78. (1) For the purpose of this Act, a determination of threat of material injury to the Sri Lankan industry shall be based on facts, and not merely on allegation, conjecture or remote possibility, and the change in circumstances which would create a situation in which the dumped or subsidized products would cause injury, shall be clearly foreseen and imminent.

(2) In determining whether a threat of material injury exists, the Director-General shall consider with special care amongst others, factors such as:-

(*a*) a significant rate of increase of dumped or subsidized imports into the Sri Lankan market, indicating the likelihood of substantially increased importation;

(*b*) sufficient freely disposable, or an imminent substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped or subsidized exports to the Sri Lankan market, taking into account the availability of other export markets to absorb any additional exports;

(*c*) whether the imported products are entering at prices that will have a significant depressing or suppressing effect on Sri Lankan prices, and would likely increase demand for further imports;

(*d*) inventories of the products being investigated; and

(*e*) in the case of a countervailing duty investigation, the nature of the subsidy or subsidies in question, and the trade effects likely to arise therefrom.

(3) None of the factors referred in subsection (2) by itself shall be considered as necessarily giving any decisive guidance, but the totality of the factors considered shall lead to the conclusion that further imports of the dumped or subsidized products are imminent and that, unless protective action is taken, injury would occur.

Material retardation.

79. (1) A determination of material retardation to the establishment of Sri Lankan industry, for the purposes of this Act, shall be based on a determination by the Director-General that -

(*a*) the Sri Lankan industry producing the like products, is in the process of being established;

(*b*) such an industry is viable;

(*c*) the establishment of such an industry is imminent; and

(*d*) the dumped or subsidized imports are, through the effects of the dumping or countervailable subsidy, materially retarding the establishment of such an industry.

(2) For the purpose of subsection (1), the Director-General shall consider, amongst others, factors such as feasibility studies, negotiated loans and contracts for the purchase of machinery aimed at new investment projects or the expansion of existing plants, and whether there has been significant investment for the establishment of such an industry.

Confidential information not to be disclosed.

80. Information gathered by any person in the course of an investigation conducted under this Act, or thereafter, which is entitled to be treated as confidential information under subsection (2) of section 25, shall be subject to the provisions of Right to Information Act, No. 12 of 2016.

Judicial review.

81. Any party interested who participated in an investigation, review or refund procedure under this Act, may seek judicial review of action in terms of Article 140 of the Constitution.

Constitution of the Inter-Ministerial Committee.

82. (1) The Inter-Ministerial Committee to be constituted for the purpose of this Act shall, subject to the provisions of subsection (2), consist of the following members:—

(*a*) the Secretary to the Ministry of the Minister, who shall be the Chairman of the Inter-Ministerial Committee;

(*b*) the Secretary to the Ministry of the Minister in charge of the subject of Finance or his designated nominee;

(*c*) the Secretary to the Ministry of the Minister in charge of the subject of Industrial Development or his designated nominee;

(*d*) the Secretary to the Ministry of the Minister in charge of the subject of Internal Trade or his designated nominee;

(*e*) the Secretary to the Ministry of the Minister in charge of the subject of Agriculture or his designated nominee;

(*f*) the Secretary to the Ministry of the Minister in charge of the subject of Foreign Affairs or his designated nominee;

(*g*) Director General of Customs or his designated nominee; and

(*h*) a nominee of the Governor of the Central Bank of Sri Lanka.

(2) Notwithstanding the provisions of subsection (1), where, considering the nature of the proposal being submitted for his consideration under this Act, the Chairman may, in consultation with the members referred to in

paragraphs (*b*) and (*c*) of subsection (1), where he considers it appropriate, co-opt not more than two other members to the Inter-Ministerial Committee.

(3) The Chairman shall, if present, preside at all meetings of the Inter-Ministerial Committee, and in the absence of the Chairman from any such meeting, the members present shall nominate one of the members present to preside at such meeting.

(4) The *quorum* for any meeting of the Inter-Ministerial Committee shall be four members and the procedure in regard to the conduct of meetings and the transaction of its business, shall be regulated by the Inter-Ministerial Committee.

Delegation by the Director-General.

83. (1) The Director-General may delegate any of his functions and powers under this Act, to any officer not below the rank of Deputy Director of Commerce.

(2) An officer to whom any function or power is delegated under subsection (1), shall discharge or exercise such function or power, subject to such directions as may be given by the Director-General.

(3) The Director-General shall, notwithstanding any delegation made under subsection (1), have the right to discharge or exercise any function or power so delegated.

Regulations.

84. (1) The Minister may make regulations in respect of all matters required by this Act to be prescribed or in respect of which regulations are authorized to be made.

(2) Every regulation made by the Minister shall be published in the *Gazette*, and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister shall, as soon as convenient after its publication in the *Gazette*, be brought before Parliament for approval. Any regulation which is not so approved shall be rescinded as from the date of such disapproval, but without prejudice to anything previously done thereunder.

(4) Notification of the date on which any regulation is deemed to be rescinded shall be published in the *Gazette*.

Interpretation.

85. In this Act unless the context otherwise requires —

"actionable subsidy" means a subsidy –

(*a*) that is specific within the meaning of section 66 of this Act;

(*b*) the grant of which results in the receipt of a benefit as referred to in subsection (1) of section 67 of this Act; and

(*c*) that is not referred to in the Third Schedule to this Act;

"country" includes a customs union or customs territory;

"Department" means the Department of Commerce;

"Director-General" means the Director-General of Commerce;

"Director-General of Customs" shall have the same meaning as given in the Customs Ordinance (Chapter 235);

"domestic like product" means the product produced in Sri Lanka which is a "like product" to the investigated product, and includes any agricultural product or livestock product;

"dumping" means introduction to the commerce of Sri Lanka a product at a price which is less than its normal value;

"dumping margin" means the difference between the export price and the normal value, expressed as a percentage of the export price, as it results from the comparison of the two in accordance with the provisions of this Act;

"injury" unless otherwise specified, means material injury to a Sri Lankan industry, threat of material injury to a Sri Lankan industry or material retardation of the establishment of a Sri Lankan industry;

"investigated product" means a product subject to an anti-dumping investigation or subsidized imports, as described in the notice of initiation of the investigation;

"like product" means a product which is identical, that is to say alike in all respects, to the investigated product, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the investigated product;

"Member" means a Member Country of the World Trade Organization established by Marrakesh Agreement entered into on the 15th of April, 1994;

"Minister" means the Minister in charge of the subject of Trade;

"non-actionable subsidy" means a subsidy which is not subject to a countervailing duty as determined by the Director-General under subsection (2) of section 65 of this Act;

"party interested" means —

(i) the exporter or foreign producer of the investigated product;

(ii) the importer of the investigated product;

(iii) trade or business associations, a majority of the members of which are producers, exporters or importers of the investigated product;

(iv) the government of the exporting country;

(v) the producer of the domestic like product in Sri Lanka;

(vi) trade and business associations a majority of the members of which produce the domestic like product in Sri Lanka;

"prohibited subsidy" means —

(*a*) subsidies contingent, in law or in fact (where the facts demonstrates that the granting of the subsidy is in fact, tied to actual or anticipated exportation or export earnings) whether solely or as one of several other conditions, upon export performance, including those specified in the Fourth Schedule to this Act;

(*b*) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods;

"provisional measures" means —

(*a*) in relation to Part I of this Act, the requirement to pay the provisional duty or furnish a security equal to the estimated dumping margin found in the preliminary determination; or

(*b*) in relation to part II of this Act, the requirement to pay the provisional duty or furnish a security equal to the estimated subsidy found in the preliminary determination;

"Sri Lankan industry" means the domestic producers as a whole of the domestic like product or products or those of them whose collective output of that product or products constitutes a major proportion of the total domestic production of that product or products, except that when producers are related to the exporters or importers or are themselves importers of the allegedly dumped investigated product, the term "Sri Lankan industry" may be interpreted as referring to the rest of the producers. For the purposes of this definition, producers shall be deemed to be related to exporters or importers only if —

(i) one of them directly or indirectly controls the other;

(ii) both of them are directly or indirectly controlled by a third person; or

(iii) together they directly or indirectly control a third person,

Provided, there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purposes of this definition, one shall be deemed to control another, when the former is legally or operationally in a position to exercise restraint or direction over the latter; and

"subsidy" means in relation to products that are imported into Sri Lanka —

(*a*) a financial contribution by the government or a public body that is made, including —

(i) a direct transfer of funds including grants, loans, equity, infusion from that government or public body;

(ii) a potential direct transfer of funds or liabilities (loan guarantees etc.) from that government or public body;

(iii) a foregoing or non-collection of revenue (fiscal incentives such as tax credits etc.) due to that government or public body;

(iv) the provision by that government or public body of goods or services otherwise than in the course of providing normal infrastructure facilities;

(v) the purchase by that government or public body of products; or

(vi) the payments to a funding mechanism or entrusting or directing a private body to carry out any one or more of the functions referred to in paragraphs (i) to (v) above, which would normally be vested in the government and the practice in no real sense, differs from practices normally followed by governments; or

(*b*) any form of income or price support in the sense referred to in Article XVI of the General Agreement on Tariffs and Trade 1994, that is received from such government or public body, and a benefit is thereby conferred, but an exemption of any export product from duties and taxes born by the like product when destined for domestic consumption, or the remission of such duties and taxes in amounts not in excess of those which have accrued, by that government, shall not be deemed to be a "subsidy" within the meaning of this definition.

Sinhala text to prevail in case of inconsistency.

86. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

FIRST SCHEDULE

[section 26 (1)]

RELIANCE ON INFORMATION AVAILABLE

1. As soon as possible after the initiation of the investigation, the Director-General shall specify in detail the information required from any interested party, and the way in which that information shall be structured by the interested party in its response. The Director-General shall also ensure that the party is aware that if information is not supplied within the time period mentioned in the request for information, the Director-General shall be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the Sri Lankan industry.

2. The Director-General may also request that an interested party provide its response in a particular medium (e.g. computer tape) or computer language. Where such a request is made, the Director-General shall consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and may not request the company to use for its response a computer system other than that used by the firm. The Director-General shall not maintain a request for a computerized response, if the interested party does not maintain computerized accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble. The Director-General shall not maintain a request for response in a particular medium or computer language if the interested party does not maintain its computerized accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g., it would entail unreasonable additional cost and trouble.

3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties and which is supplied in a timely fashion, and, where applicable, supplied in a medium or computer language requested by the Director-General shall be taken into account when determinations are made. If a party does not respond in the preferred medium or computer language, but the Director-General finds that the circumstances set out in paragraph 2 have been satisfied, this shall not be considered to significantly impede the investigation.

4. Where the Director-General does not have the ability to process information if provided in a particular medium (e.g. computer tape) the information shall be supplied in the form of written material or any other form acceptable to the Director-General.

5. Even though the information provided may not be ideal in all respects, this shall not justify the Director-General from disregarding it, provided the interested party has acted to the best of its ability.

6. If evidence or information is not accepted, the supplying party shall be informed forthwith of the reasons thereof and have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the Director-General as not being satisfactory, the reasons for rejection of such evidence or information shall be given in any published findings.

7. If the Director-General has to base its determinations, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they shall do so with special circumspection. In such cases, the Director-General shall, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained form other interested parties during the investigation. However, if an interested party does not co-operate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did co-operate.

SECOND SCHEDULE

[section 33 (3)]

PROCEDURES FOR ON-THE-SPOT INVESTIGATION PURSUANT TO SECTION 33

1. Upon initiation of an investigation, the authorities of the exporting country and the firms known to be concerned shall be informed of the intention of the Director-General to carry out an on-the-spot investigation.

2. If in exceptional circumstances it is intended to include non--governmental experts in the investigating team, the firms and the authorities of the exporting country shall be so informed. Such non-governmental experts shall be subject to sanctions for breach of confidentiality requirements provided, as for in section 80 of this Act.

3. It shall be standard practice to obtain explicit agreement of the firms concerned in the exporting country before the visit is finally scheduled.

4. As soon as the agreement of the firms concerned has been obtained, the Director-General shall notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed.

5. The Director-General shall give sufficient advance notice to the firms in question before the visit is made.

6.Visits to explain the questionnaire shall only be made at the request of an exporting firm. Such a visit may only be made if the Director-General notifies the representatives of the government of the country in question, and unless the latter do not object to the visit.

7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it shall be carried out after the response to the questionnaire has been received, unless the firm agrees to the contrary and the government of the exporting country is informed by the Director-General of the anticipated visit and does not object to it; further, it shall be standard practice prior to the visit to advice the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this shall not preclude requests to be made on the spot for further details to be provided, in the light of information obtained.

8. Enquiries or questions put by the authorities or firms of the exporting countries and essential to a successful on-the-spot investigation shall, whenever possible, be answered before the visit is made.

THIRD SCHEDULE

[section 65 (2) (*b*)]

NON-ACTIONABLE SUBSIDIES

1. Assistance for research activities conducted by any body of persons, whether incorporated or unincorporated, or by any higher educational or research establishments on a contract basis with such body of persons, where —

(*a*) the assistance covers not more than seventy-five *per centum* of the costs of industrial research or fifty *per centum* of the costs of pre-competitive development activity; and

(*b*) the assistance is limited exclusively to cover —

(i) cost of researchers, technicians and other supporting staff employed exclusively in the research activity;

(ii) cost of instruments, equipment, land and buildings used exclusively and permanently for the research activity and not disposed of on a commercial basis;

(iii) cost of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge, patents, etc.;

(iv) additional overhead costs incurred directly as a result of the research activity;

(v) other running costs, such as materials, supplies and the like, incurred directly as a result of the research activity.

2. Assistance to disadvantaged regions within the territory of a Member given pursuant to a general framework of regional development, and not specific (within the meaning of section 66) within eligible regions, provided that —

(*a*) each disadvantaged region must be a clearly designated contiguous geographical area with a definable economic and administrative identity;

(*b*) the region is considered as disadvantaged on the basis of neutral and objective criteria, indicating that the region's difficulties arise out of more than temporary circumstances. The criteria shall clearly be spelled out in law, regulation or other official document, so as to be capable of verification;

(*c*) the criteria includes a measurement of economic development which shall be based on at least one of the following factors:—

(i) one of either income per capita or household income per capita, or GDP per capita, which must not be above eighty five *per centum* of the average for the territory concerned;

(ii) unemployment rate which must be at least one hundred and ten *per centum* of the average for the territory concerned (as measured over a three year period, such measurement, however may be a composite one and may include other factors).

3. Assistance to promote adaptation of existing facilities to new environmental requirements imposed by any law or regulations, which result in greater constraints and financial burden on firms, provided that the assistance —

(*a*) is a one-time non-recurring measure;

(*b*) is limited to twenty *per centum* of the cost of adaptation;

(*c*) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms;

(*d*) is directly linked to and proportionate to a firm's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved; and

(*e*) is available to all firms, which can adopt the new equipment and/or production processes.

Director-General may refer to the World Trade Organization "AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES" for any verification of non-actionable subsidies specified in this Schedule, and may consider, among others, modifications made by the World Trade Organization "Committee on Subsidies and Countervailing Measures" in the identification of non-actionable subsidies.

FOURTH SCHEDULE

[section 85]

PROHIBITED SUBSIDIES

1. Illustrative List of Export Subsidies —

(*a*) The provision by governments of direct subsidies to anybody of persons whether incorporate or unincorporate or an industry, contingent upon export performance;

(*b*) Currency retention schemes or any similar practices which involve a bonus on exports;

(*c*) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments;

(*d*) The provision by governments or their agencies either directly or indirectly through government mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available on world markets to their exporters;

(*e*) The full or partial exemption remission, or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises;

(*f*) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged;

(*g*) The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of the production and distribution of like products, when sold for domestic consumption;

(*h*) The exemption, remission or deferral of prior-stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption:

Provided that, prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). The provisions of this paragraph shall be interpreted in accordance with the "Guidelines on Consumption of Inputs in the Production Process" referred to in item 2 of this Schedule;

(*i*) The remission of drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste):

Provided that, in particular cases anybody of persons incorporated or unincorporated may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision, if the import and the corresponding export operations both occur within a reasonable time period, not exceeding two years. The provisions of this paragraph shall be interpreted in accordance with the "Guidelines on Consumption of Inputs in the Production Process" specified in item 2 of this Schedule and the "Guidelines in the Determination of Substitution Drawback Systems as Export Subsidies" specified in item 3 of this Schedule;

(*j*) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes;

(*k*) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms:

Provided that, if a Member is a party to an international undertaking on official export credits to which at least twelve original Members to the World Trade Organization "AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES" are parties as of 1 January 1979 (or successor undertaking which has been adopted by those original Members), or if in practice a Member applies the interest rates provisions

of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by the World Trade Organization "AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES";

(*l*) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of GATT 1994.

2. Guidelines on Consumption of Inputs in the Production Process —

(1) Indirect tax rebate schemes can allow for exemption, remission or deferral of prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).

(2) Similarly, drawback schemes can allow for the remission or drawback of import charges levied in inputs that are consumed in the production of the exported product (making normal allowance for waste).

(3) The Illustrative List of Export Subsidies specified in item 1 of this Schedule, makes reference to the term "inputs that are consumed in the production of the exported product" in paragraphs (*h*) and (*i*). Pursuant to paragraph (*h*), indirect tax rebate schemes can constitute an export subsidy to the extent that they result in exemption, remission or deferral of prior-stage cumulative indirect taxes in excess of the amount of such taxes actually levied on inputs that are consumed in the production of the exported product. Pursuant to paragraph (*i*), drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those actually levied on inputs that are consumed in the production of the exported product. Both paragraphs stipulate that normal allowance for waste must be made in findings regarding consumption of inputs in the production of the exported product. Paragraph (*i*) also provides for substitution, where appropriate.

(4) In examining whether inputs are consumed in the production of the exported product, as part of a

countervailing duty investigation conducted under Part II of this Act, the Director-General shall proceed on the following basis:—

(*a*) where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs consumed in the production of the exported product, the Director-General shall first determine whether the government of the exporting Member has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts. Where such a system or procedure is determined to be applied, the Director-General shall then examine the system or procedure to see whether it is reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. The Director-General may, in accordance with section 33 of this Act, carry out certain practical tests in order to verify information or to satisfy itself that the system or procedure is being effectively applied;

(*b*) where there is no such system or procedure, where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not to be applied effectively, a further examination by the exporting Member based on the actual inputs involved would need to be carried out in the context of determining whether an excess payment occurred. If the Director-General deems it necessary, a further examination may be carried out in accordance with paragraph (*a*);

(*c*) the Director-General shall treat inputs as physically incorporated if such inputs are used in the production process and are physically present in the product exported. The Members note that an input need not be present in the final product in the same form in which it entered the production process;

(*d*) in determining the amount of a particular input that is consumed in the production of the exported product, a "normal allowance for waste" shall be taken into account, and such waste shall be treated as consumed in the production of the exported

product. The term "waste" refers to that portion of a given input which does not serve an independent function in the production process, is not consumed in the production of the exported product (for reasons such as inefficiencies) and is not recovered, used or sold by the same manufacturer;

(*e*) the Director-General's determination of whether the claimed allowance for waste is "normal" shall take into account the production process, the average experience of the industry in the country of export, and other technical factors, as appropriate. The Director-General shall bear in mind that an important question is whether the authorities in the exporting Member, have reasonably calculated the amount of waste, when such an amount is intended to be included in the tax or duty rebate or remission.

3. Guidelines in the Determination of Substitution Drawback Systems as Export Subsidies —

(1) Drawback systems can allow for the refund or drawback of import charges on inputs which are consumed in the production process of another product, and where the export of this latter product contains domestic inputs having the same quality and characteristics as those substituted for the imported inputs. Pursuant to paragraph (*i*) of the Illustrative List of Export Subsidies specified in this Schedule, substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported inputs for which drawback is being claimed.

(2) In examining any substitution drawback system as part of a countervailing duty investigation conducted under Part II of this Act, the Director-General shall proceed on the following basis:—

(*a*) paragraph (*i*) of the Illustrative List of Export Subsidies specified in the Schedule, stipulates that home market inputs may be substituted for imported inputs in the production of a product for export, provided such inputs are equal in quantity to, and have the same quality and characteristics as, the imported inputs being substituted. The existence of a verification system or procedure is important, because it enables the government of the exporting Member to ensure and demonstrate that the quantity

of inputs for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is no drawback of import charges in excess of those originally levied on the imported inputs in question;

(*b*) where it is alleged that a substitution drawback system conveys a subsidy, the Director-General shall first proceed to determine whether the government of the exporting Member has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the Director-General shall then examine the verification procedures to see whether they are reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. To the extent that the procedures are determined to meet this test and are effectively applied, no subsidy shall be presumed to exist. The Director-General may in accordance with section 33 of this Act, carry out certain practical tests in order to verify information or to satisfy itself that the verification procedures are being effectively applied;

(*c*) where there are no verification procedures, or where they are not reasonable, or where such procedures are instituted and considered reasonable but are found not to be actually applied or not applied effectively, there may be a subsidy. In such cases, a further examination by the exporting Member, based on the actual transactions involved would need to be carried out to determine whether an excess payment occurred. If the Director-General deems it necessary, a further examination would be carried out in accordance with paragraph (*b*);

(*d*) the existence of a substitution drawback provision under which exporters are allowed to select particular import shipments on which drawback is claimed, shall not of itself be considered to convey a subsidy;

(*e*) an excess drawback of import charges in the sense of paragraph (*i*) of the Illustrative List of Export Subsidies specified in this Schedule, shall be deemed to exist, where governments paid interest on any moneys refunded under their drawback schemes, to the extent of the interest actually paid or payable.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

SAFEGUARD MEASURES ACT, No. 3 OF 2018

[Certified on 19th of March, 2018]

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L.D.—O. 69 / 2016

AN ACT TO PROVIDE FOR THE CONDUCT OF INVESTIGATIONS AND THE APPLICATION OF SAFEGUARD MEASURES ON PRODUCTS IMPORTED INTO SRI LANKA; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Preamble.

WHEREAS Sri Lanka was one of the original contracting parties to the General Agreement on Tariffs and Trade of 1947(GATT 1947):

AND WHEREAS the General Agreement on Tariffs and Trade 1994 (GATT 1994) which is based upon the text of GATT 1947 and was signed in April 1994, includes among others the Agreement on Safeguards:

AND WHEREAS it is expedient to make legislative provisions for the implementation of the Agreement on Safeguards Measurers on products imported into Sri Lanka:

BE it therefore enacted by Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Short title and date of operation.

1. This Act may be cited as the Safeguard Measures Act, No. 3 of 2018, shall come into operation on such date as the Minister may appoint, by the Order published in the *Gazette*.

Application of safeguard measures.

2. (1)The safeguard measures may be applied on products imported into Sri Lanka, where the Director General of Commerce (hereinafter referred to as the "Director General") determines pursuant to an investigation initiated and conducted in accordance with the provisions of this Act, that the investigated product is being imported in such increased quantities, absolute or relative to domestic production and under such conditions, so as to cause or threaten to cause serious injury to the domestic industry producing like or directly competitive products, and that the application of safeguard measures is in the public interest.

(2) Any decisions relating to the application, suspension or withdrawal of safeguard measures and the modification or extension of periods of application of safeguard measures shall be the responsibility of the Inter Ministerial Committee (hereinafter referred of as the "Committee").

Constitution of the Committee.

3. (1) The Committee shall, subject to the provisions of subsection (2), consist of the following members:-

(*a*) the Secretary to the Ministry of the Minister, who shall be the Chairman of the Committee;

(*b*) the Secretary to the Ministry of the Minister in charge of the subject of Finance or his nominee;

(*c*) the Secretary to the Ministry of the Minister in charge of the subject of Industrial Development or his nominee;

(*d*) the Secretary to the Ministry of the Minister in charge of the subject of Internal Trade or his nominee;

(*e*) the Secretary to the Ministry of the Minister in charge of the subject of Agriculture or his nominee;

(*f*) the Secretary to the Ministry of the Minister in charge of the subject of Foreign Affairs or his nominee;

(*g*) the Director-General of Customs or his nominee; and

(*h*) a nominee of the Governor of the Central Bank of Sri Lanka.

(2) Notwithstanding the provisions of subsection (1), considering the nature of the proposal being submitted for

its consideration under this Act, and where the Chairman considers it appropriate, he may, in consultation with the members referred to in paragraphs (*b*) and (*c*) of subsection (1), co-opt not more than two other members to the Committee.

(3) The Chairman of the Committee shall, if present, preside at all meetings of such Committee, and in the absence of the Chairman from any such meeting, the members present shall nominate one of the members present to preside at such meeting.

(4) The *quorum* for any meeting of the Committee shall be four members and the procedure in regard to the conduct of meetings and the transaction of its business, shall be regulated by such Committee.

Serious injury.

4. (1) For the purpose of this Act, a determination as to whether increased imports of the investigated product have caused a threat of serious injury or serious injury to a domestic industry, shall be based upon an evaluation of all relevant factors of an objective and quantifiable nature having a bearing on such domestic industry, and in particular, the following factors:-

(*a*) the rate and amount of the increase in imports of the investigated product in absolute terms and relative to domestic production of like or directly competitive products;

(*b*) the share of the domestic market taken by increased imports of the investigated product;

(*c*) the consequent impact on the domestic industry of the like or directly competitive products, evidenced by changes in relevant economic indicators such as production, capacity utilization, inventories, sales, prices (such as decrease in domestic prices or lack of increase in domestic prices, which could

have otherwise occurred in the absence of increased imports), productivity, profits and losses, return on investments, cash flow and employment; and

(*d*) any other relevant factors other than increased imports of the investigated product which also are causing or threatening to cause serious injury to the domestic industry, though such injury shall not be attributed to the increased imports.

(2) A determination of threat of serious injury or serious injury shall be based on objective evidence that demonstrates the existence of a causal link between the increased imports of the product concerned and the alleged threat of serious injury or injury.

(3) Where factors other than increased imports causes threat of serious injury or serious injury to the domestic industry in question at the same time, such serious injury shall not be attributed to such increased imports. In such cases, the Director-General may refer the complaint for anti-dumping or countervailing duty investigations, if necessary.

Threat of serious injury.

5. A determination of a threat of serious injury caused by increased imports of the investigated product shall be based only on actual facts, and in making such a determination, in addition to the factors specified in section 4, the following shall also be taken into consideration:-

(*a*) the actual and potential export capacity of the country or countries of production or origin of the investigated product;

(*b*) any build-up of inventories in the country or countries of exportation;

(*c*) the probability of exports of the investigated product entering the domestic market in increasing quantities; and

(*d*) any other factors determined relevant by the Director-General.

Requirement of a written application.

6. An investigation to determine whether increased imports of the investigated product have caused or is threatening to cause serious injury to a domestic industry, shall be initiated -

(*a*) upon a written application being made to the Director-General by or on behalf of a domestic industry; or

(*b*) by the Director-General on his own behalf.

Information required to be included in the application.

7. (1) An application made under paragraph (*a*) of section 6 shall provide such information as is reasonably available to the applicant on the following matters:-

(*a*) a complete description of the imported product including its technical characteristics and uses and an identification of its tariff classification and the duties applicable to such product;

(*b*) a complete description of the domestic like or directly competitive products, including the technical characteristics and uses of such products;

(*c*) the names and addresses of the enterprises making the application or the enterprises on whose behalf the application is being made (hereinafter referred to as the "requesting enterprises") and of all other known producers of the domestic like or directly competitive products;

(*d*) the percentage of domestic production of the like or directly competitive products represented by the requesting enterprises;

(*e*) information on the volume and value of the imported product for each of the three calendar years preceding the date of making the application and any other recent data, by the country of origin;

(*f*) a description of the increase in imports and in particular whether such increase is absolute or relative to domestic production, or both;

(*g*) information relating to the serious injury or threat of serious injury to the domestic industry, for each of the three calendar years preceding the date of making the application and recent data, including-

(i) with respect to serious injury -

(A) volume and value of the domestic product;

(B) utilization of production capacity;

(C) changes in inventory levels;

(D) market share;

(E) changes in sales levels;

(F) level of employment and wages in the domestic industry;

(G) changes in price levels;

(H) productivity;

(I) profit and loss;

(J) return on investment;

(K) cash flow; and

(L) any other information that may relate to the existence of a serious injury;

(ii) with respect to threat of serious injury-

(A) export capacity in the exporting countries;

(B) inventories relating to the imported product available in Sri Lanka and in the exporting countries; and

(C) information regarding the probability of increase in the imports including trade restrictions on exports to third country markets;

(*h*) an explanation, in the light of the information contained in the application and the requirements under this Act, of the reasons why it is believed that serious injury or threat thereof exists, and is caused by increased imports;

(*i*) a statement giving specific reasons for seeking an application of a safeguard measure, such as, to facilitate the orderly transfer of resources to more productive uses, to improve competitiveness or to adapt to new conditions of competition, together with the type and level of the measure considered necessary to ensure the achievement of the objectives pursued;

(*j*) a plan for adjusting the domestic industry to competition from imports, in accordance with the objectives referred to in paragraph (*i*) ; and

(*k*) if a provisional measure is sought, information regarding critical circumstances where delay in taking action would cause damage to the industry which it would be difficult to repair, and a statement indicating the level of tariff increase requested for as a provisional measure.

(2) Every application made under paragraph (*a*) of section 6 shall be accompanied by such fee as may be prescribed and be submitted to the Director-General together with such number of copies of the application as may be determined by the Director-General.

(3) The Director-General shall take due account of any difficulties experienced by interested parties and in particular small companies, in supplying the information requested for and provide them, through an advisory body constituted for that purpose, with practicable assistance or where appropriate, extend the time granted for the submission of any specified information, as the case may be.

(4) The Minister shall constitute an advisory body for the purpose of assisting applicants in the formulation of applications made under paragraph (*a*) of section 6. The composition, establishment and all other matters pertaining to such an advisory body shall be as prescribed by the Minister.

Withdrawal of application.

8. An application made under paragraph (*a*) of section 6 may be withdrawn prior to initiation of an investigation, and in such a case it shall be considered to have not been made.

Decision to initiate an investigation where an application is made.

9. (1) Where, after examining the accuracy and adequacy of the information provided in an application made under paragraph (*a*) of section 6, and being satisfied that there is sufficient evidence of serious injury or threat thereof caused by increased imports, the Director-General shall initiate an investigation. Prior to arriving at a decision to initiate an investigation, the Director-General may seek such additional information he considers necessary, including from the requesting enterprises.

(2) Where the Director-General decides not to initiate an investigation in response to an application made under paragraph (*a*) of section 6, he shall notify the requesting enterprise making the application or on whose behalf the application is being made of the reasons for not initiating, an investigation.

(3) Where an application has been received by the Director-General, he shall generally be required to make a decision as to whether or not to initiate a safeguard investigation within a period of thirty days of the date of receipt of the application. Where the application involved complex issues, or if Director-General has sought additional information under subsection (1) of this section, the time for arriving at a decision may be extended by a further period of fifteen days.

Director General may initiate an investigation.

10. The Director-General may on his own behalf, initiate an investigation under this Act, where he has sufficient evidence available of injury being caused or threatened to be caused to the domestic industry by the increased imports of the investigation product, so as to justify the initiation of such investigation.

Public notice regarding initiation of an investigation.

11. (1) Where a decision is taken by the Director-General to initiate an investigation under this Act, the Director-General shall immediately -

(*a*) notify the requesting enterprises and all other interested parties, as well as the relevant representative of the exporting countries, of such investigation; and

(*b*) publish a notice regarding the initiation of such safeguard investigation in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages.

(2) The initiation of an investigation shall be deemed to have commenced on the date of publication in the *Gazette* of the notice referred to in paragraph (*b*) of subsection (1).

(3) An interested party who wishes to participate in the investigation shall within a period of fifteen days of the date of initiation of the investigation, inform to the Director-General in writing of its desire to participate in the

investigation. The Director-General may, where he considers it appropriate, accept any request from an interested party to participate in an investigation after the period allowed for making submission to participate under this subsection.

(4) The Director-General shall immediately after the initiation of an investigation under this Act, notify the Committee of such investigation, in conformity with such requirements established by the Committee.

(5) Where a decision is taken by the Director-General not to initiate an investigation upon an application made under paragraph (*a*) of section 6, the Director General shall inform the Committee and upon the approval of the Committee, he shall cause a notice to be published in the *Gazette* containing the following information:-

(*a*) the identity of the requesting enterprises and the domestic products with respect to which the initiation of an investigation is being requested for;

(*b*) an identification of the imported product which is alleged to be causing serious injury or threat thereof; and

(*c*) reasons for taking a decision not to initiate an investigation.

Contents of the notice regarding the investigation.

12. The notice regarding the initiation of a safeguard investigation to be published under paragraph (*b*) of subsection (1) of section 11, shall contain adequate information on the following matters:-

(*a*) complete description of the product including its technical characteristics and uses and an identification of its tariff clarification and the duties applicable to such product;

(*b*) a complete description of the domestic like or directly competitive products, including the

technical characteristics and uses of such products;

(*c*) the names of the requesting enterprises, if any, and of all other known producers of the domestic like or directly competitive products;

(*d*) the country or countries of origin of the investigated product;

(*e*) a summary of the information on which the allegation pertaining to increase in imports of the investigated products and the serious injury or threat thereof caused by such increase in imports are based;

(*f*) name, address and telephone number of the Director-General;

(*g*) a statement that the date of initiation of the investigation is the date of the publication in the *Gazette* of the notice regarding the initiation of the safeguard investigation;

(*h*) whether or not an application of a provisional measure will be considered; and

(*i*) the proposed schedule for the conduct of the investigation, including -

(i) the date on or before which an interested party who wishes to participate in the investigation may inform the Director- General in writing of such fact;

(ii) where the application of a provisional measure is being considered, the date on or before which any written arguments or submissions may be forwarded to the Director-General;

(iii) the date on or before which an oral hearing, if so desired, should be requested for; and

(iv) the proposed dates for the determination of the application of a provisional safeguard measure, and where relevant, for the determination regarding serious injury or threat thereof and causation, and of any other decision regarding the application of a safeguard measure.

Duration of investigation.

13. (1) Subject to the provisions of subsection (2), it shall be the duty of the Director-General, except in special circumstances, to conduct an investigation within six months of its initiation. Where the circumstances so requires, the period of six months may be extended further by not more than two months.

(2) Where in any investigation under this Act, the application of any provisional measure is being considered, the Director-General shall make a decision relating to the application of such provisional measures, not earlier than sixty days and not later than ninety days from the date of initiation of the investigation.

Interested parties to submit evidence.

14. In the conduct of an investigation, the Director-General shall give an opportunity to all participating interested parties to the investigation to make their views known on matters being investigated, and to this end Director-General shall grant to those parties time not exceeding two weeks to-

(*a*) make submissions and responses to any questions or other requests being made by the Director-General to obtain any relevant information pertaining to the investigation;

(*b*) submit any evidence deemed relevant by such parties, including their views on the matter under investigation; and

(*c*) express their views with regard to whether or not the application of a safeguard measure would be in the public interest.

Director-General's power to call for information from certain person.

15. (1) In the conduct of an investigation under this Act, the Director-General may request for any information considered relevant for purpose of conducting such investigation, from any customs officer, company, forwarder, other enterprise, both public and private or person, and it shall be the duty of such officer, company, forwarder or enterprise, as the case may be, to provide the information requested for within such time as may be specified by the Director-General.

(2) The Director-General may, where he considers appropriate, verify or obtain further details on information received by him under section 14 and subsection (1) of this section, and where any such verification is carried out, the Director-General shall prepare a report describing the findings of such verification and such report, excluding any confidential information obtained, shall be placed in the public file maintained under section 19.

(3) Where in an investigation -

(*a*) if no hearing is requested for, any participating interested party may submit written arguments concerning any matter it considers relevant to the investigation, not later than a period of one and a half months before the date proposed for the determination regarding serious injury or threat thereof and causation; or

(*b*) if a hearing is held, not later than a period of ten days before the scheduled date of the hearing, any participating interested party may submit written submissions and information concerning any matter it considers relevant to the investigation.

(4) A participating interested party shall -

(*a*) where no hearing is requested for, after the expiry of the period allowed for the submission of written arguments; or

(*b*) where a hearing is held, following such hearing,

have a further period not exceeding ten days to submit any further written responses to the written submissions of any other participating interested parties, or submit further written arguments in response to submissions and information presented at the hearing, as the case may be.

Confidential information.

16. (1) The Director-General shall keep confidential all information submitted which is entitled to such treatment under subsection (2) of this section, and such information shall not be disclosed without the specific permission of the party submitting it.

(2) The Director General shall treat as confidential all information designated as confidential by the party supplying such information, which is protected from disclosure under the Right to Information Act, No. 12 of 2016.

(3) The following types of information, if designated as confidential by the person submitting such information, shall for the purpose of subsection (2) be deemed to be supplied in confidence in terms of paragraph (*i*) of section 5(1) of the Right to Information Act, No. 12 of 2016 -

(*a*) business or trade secrets concerning the nature of a product, production processes, operations, production equipment, or machinery;

(*b*) information concerning the financial condition of a company which is not publicly available; and

(*c*) information concerning the costs, identification of customers, sales, inventories, shipments, amount or source of any income, profit, loss or expenditure related to the manufacture and sale of a product.

(4) A party to an investigation may seek confidential status for certain information made available to the Director-General on request being made in that behalf at the time such information is submitted, including reasons for the request for such treatment. The Director-General shall consider such requests expeditiously, and shall inform the party submitting the information, if he determines that the request for confidential treatment is not warranted.

(5) Parties to an investigation shall furnish non-confidential summaries of all information for which confidential treatment is sought, which may take the form of indexation of figures provided in the confidential version, or marked deletions in the text and which shall permit a reasonable understanding of the substance of the information submitted in confidence.

(6) In exceptional circumstances, parties may indicate that information for which confidential treatment is sought is not susceptible of summary, in which case a statement of the reasons why summarization is not possible, shall also be provided by such parties.

(7) Where the Director-General is of the view that the non-confidential summary provided under subsection (5) fails to satisfy the requirements of that subsection, the Director-General may determine that the request for confidential treatment is not warranted, and where in such instance the supplier of the information is unwilling to make the information public, the Director-General shall disregard such information, and return the information concerned to the party who submitted it, unless it is demonstrated to the satisfaction of the Director-General that the information is correct.

Written arguments.

17. (1) All participating interested parties shall have an opportunity to submit in accordance with the provisions of this section, evidence and arguments in writing, including responses to the written or oral presentations made by other participating interested parties, and views as to whether or not the application of a safeguard measure is in the public interest.

(2) In an investigation where application of any provisional safeguard measure is being considered, any participating interested party may submit written arguments within a period of fifteen days before the date proposed for the determination of the provisional safeguard measure, with regard to any matter relevant towards arriving at such determination.

Hearings.

18. (1) The Director-General shall, upon any request made by a participating interested party, not later than a period of fifteen days after publication of the determination regarding the application of a provisional measure, under section 22 or where the application of a provisional measure is not being considered, not later than a period of one and a half month after the initiation of an investigation, fix a date for a hearing at which all participating interested parties may present information and arguments orally.

(2) A hearing under subsection (1) shall be held not later than a period of two months prior to the date proposed for the determination regarding serious injury or threat thereof and causation.

(3) Participating interested parties intending to appear at a hearing shall notify the Director-General at least a period of one week prior to the date of the hearing, of the names of their representatives and witnesses who will appear at the hearing.

(4) Hearings shall be presided over by the Director-General or his nominee who shall ensure that confidentiality is preserved, and shall organize hearings in a manner that ensures that all participating interested parties have an adequate opportunity to present their views.

(5) The Director-General shall maintain a record of the proceedings at the hearing, which shall be placed in the public file maintained under section 19, with the exception of any confidential information.

Public file and access thereto.

19. (1) The Director-General shall establish and maintain a public file relating to each investigation or review conducted under this Act. Subject to the provisions of section 16, the Director-General shall place in the public file -

(*a*) all public notices relating to the investigation or review;

(*b*) all material, including questionnaires, responses to questionnaires and written communications submitted to the Director-General;

(*c*) all other information developed or attained by the Director-General including any verification reports prepared under section 15; and

(*d*) any other documents the Director-General deems appropriate for public disclosure.

(2) The public file shall be available to the public for review and copying at the office of the Director-General throughout the period of the investigation, review and of any resulting judicial review.

Reliance on information available.

20. (1) Where, at any time during an investigation, any party interested –

(*a*) refuses access to, or otherwise does not provide any necessary information within the time determined by the Director-General; or

(*b*) otherwise significantly impedes the investigation,

the Director-General may reach preliminary and final determinations (affirmative or negative), on the basis of the information available, including information contained in the application.

(2) The Director-General shall take due account of any difficulties experienced by parties interested, in particular small companies, in supplying information requested for, and as such shall provide any practicable assistance or may extend the time granted for the submission of any specified information, as the case may be.

Application of a provisional safeguard measure.

21. (1) The Director-General may recommend the application of a provisional safeguard measure, where he determines that -

(*a*) there exists certain critical circumstances and delay in taking action may cause damage which would be difficult to repair; and

(*b*) there is clear evidence that the increased imports of the investigated product has caused or are threatening to cause serious injury.

(2) A provisional safeguard measure shall take the form of a duty payable at the time of importation of the investigated product. This duty shall be in addition to any duty payable under any other written law.

(3) The Director-General shall submit his recommendations to the Minister, who shall forward the same to the Minister in charge of the subject of Finance.

(4) The Minister in charge of the subject of Finance upon receipt of the recommendations of the Director-General shall, in consultation with the Minister, determine whether or not to apply provisional safeguard measures and the amount of provisional duty to be imposed.

Notification with regard to the application of a provisional safeguard measure.

22. (1) Where a decision is taken up to apply a provisional safeguard measure under subsection (4) of section 21, the Minister shall direct the Director-General to publish a notice regarding such application in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages, which shall contain the following information:-

(*a*) a complete description of the investigated product, including its technical characteristics and uses and an identification of its tariff classification and the duties applicable;

(*b*) a complete description of the domestic like or directly competitive products, including their technical characteristics and uses;

(*c*) the names of all known producers of the domestic like or directly competitive products;

(*d*) the country or countries of origin of the investigated product;

(*e*) the basis for the determination of the existence of certain critical circumstances, where delay in the application of a provisional safeguard measure may cause damage that would be difficult to repair;

(*f*) the basis for the determination of the existence of clear evidence that increased imports of the investigated products have caused or are threatening to cause serious injury;

(*g*) the amount of duty increase which is proposed as a provisional safeguard measure; and

(*h*) the intended duration of the period of application of the provisional safeguard measure.

(2) Where a decision is taken against the application of a provisional safeguard measure, the Minister shall direct the Director-General to publish a notice of the same in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages, which shall contain the following information:-

(*a*) a complete description of the investigated product, including the technical characteristics and uses and an identification of its tariff classification and the duties applicable ;

(*b*) an identification of the domestic like or directly competitive product;

(*c*) an explanation of the reasons for arriving at a decision against the application of a provisional safeguard measure; and

(*d*) a statement as to whether the investigation will be terminated at that point, or continued through to a finality.

Duration of a provisional safeguard measure.

23. A provisional safeguard measure shall generally be applied for a period not exceeding two hundred days and may be suspended before the expiry of that period by the Minister in charge of the subject of Finance, in consultation with the Minister.

Payment and refund of a provisional safeguard measure.

24. (1) The amount of a provisional safeguard measure shall be collected and paid in the form of a cheque or a cash payment, or guaranteed by the furnishing of a bond or deposit in favour of the Director-General of Customs.

(2) Any amount collected as a provisional safeguard measure shall be refunded and any bond or deposit shall be promptly released, if subsequent investigations do not result in a determination that increased imports have caused or threaten to cause serious injury to the domestic industry.

(3) The Director-General of Customs shall be responsible for the assessment and collection of provisional safeguard measures, and the provisions of the Customs Ordinance relating to collection of duties, shall *mutatis mutandis* apply to and in relation to the same.

Determination of serious injury, threat of serious injury and causation.

25. (1) The Director-General shall, in accordance with the provisions of section 4 and 5 of this Act, and on the basis of information disclosed at the investigation, determine whether increased imports of the investigated product have caused or threaten to cause serious injury to the domestic industry.

(2) At the conclusion of an investigation, the Director-General shall prepare a report containing -

(*a*) the final determination, including the findings and conclusions reached on all relevant issues of fact and law; and

(*b*) a detailed analysis of all information disclosed at the investigation and the relevance of issues and factors examined by the Director-General.

(3) In the preparation of the report under subsection (2), due regard shall be given to the requirement for protection of confidential information.

Public notice and notification of determination of serious injury, threat of serious injury and causation.

26. The Director-General shall immediately upon reaching a determination, whether negative or affirmative, as to serious injury or threat thereof and causation, cause to be published in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages, a notice of the determination regarding serious injury, or threat thereof and causation, containing the following information:-

(*a*) a complete description of the investigated product, including its technical characteristics and uses and an identification of its tariff classification and the duties applicable;

(*b*) a complete description of the domestic like or directly competitive products, including their technical characteristics and uses;

(*c*) the names of all known producers of the domestic like or directly competitive products;

(*d*) the country or countries of origin of the investigated product; and

(*e*) a summary of the information disclosed at the investigation, factors considered and the relevance thereof and the findings and conclusions reached on the relevant issues of fact and law and the reasons therefor.

General principle on definitive safeguard measure.

27. (1) The Director-General shall submit the report prepared under subsection (2) of section 25 to the Committee, together with the recommendations of the Director-General on the application of a definitive safeguard measure.

(2) The Committee may within a period of ten working days of the receipt of the documents referred to in subsection (1), recommend to the Minister in charge of the subject of Finance through the Minister, the application of a definitive safeguard measure, where it determines that –

(*a*) as a result of unforeseen developments, increased imports have caused or threaten to cause serious injury to the domestic industry; and

(*b*) application of a definitive safeguard measure is in the public interest.

(3) The duration and level of application of a definitive safeguard measure shall not be more than what is necessary to prevent or remedy serious injury and to facilitate adjustments.

Minister to determine the adoption of definitive safeguard measure.

28. Where the Committee recommends the imposition of a definitive safeguard measure, the Minister in charge of the subject of Finance in consultation with the Minister shall, within a period of fourteen working days of the date of receipt of the recommendation of the Committee and taking into consideration the interests of the national economy, determine whether or not to adopt such safeguard measure.

Notice recording of application of definitive safeguard measure.

29. (1) Where a decision is taken to apply a definitive safeguard measure, it shall be the duty of the Director-General to publish in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages, a notice which shall contain the following information:-

(*a*) a complete description of the investigated product, including its technical characteristics and uses and an identification of its tariff classification and the duties applicable;

(*b*) a complete description of the domestic like or directly competitive products, including their technical characteristics and uses;

(*c*) names of all known producers of the domestic like or directly competitive products;

(*d*) country or countries of origin of the investigated product;

(*e*) a summary of the affirmative injury determination, including the factors considered and the relevance thereof, the findings and conclusions and the reasons therefor on issues of fact and law considered or a cross reference to the notice of determination regarding serious injury or threat thereof and causation;

(*f*) reasons for reaching the conclusion that the application of a definitive safeguard measure is in the public interest;

(*g*) details concerning the domestic industry's adjustment plan;

(*h*) the form, level and duration of the proposed definitive safeguard measure, and an explanation thereof in compliance with the requirements referred to in subsection (3) of section 27;

(*i*) the proposed date of application of the definitive safeguard measure;

(*j*) if a quantitative restriction is proposed, the allocation of the quota among the supplier countries, and an explanation and the relevant information in compliance with the requirements referred to in section 31, regarding the basis on which the allocation is made;

(*k*) if the proposed duration of the measure (including the period of application of any provisional safeguard measure) is more than a period of one year, a timetable for the progressive liberalization of the measure; and

(*l*) an identification of the developing countries exempted from the measure.

(2) Where a decision is taken against the application of a definitive safeguard measure, it shall be the duty of the Director-General to publish a notice setting forth the factual and legal basis for reaching such decision, in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages.

Form and application of a definitive safeguard measure.

30. (1) A definitive safeguard measure shall generally be applied in the form of either a tariff increase or a quantitative restriction on imports, and subject to the provisions of section 31, be applied on all imports of the investigated product, irrespective of its source, entered on or after the date on which the measure comes into effect.

(2) Where the definitive safeguard measure is applied in the form of a tariff increase, the Director-General of Customs shall be responsible for the collection of such tariff increase, while the administration of a definitive safeguard measure in the form of a quantitative restriction shall be the responsibility of the Controller of Imports and Exports.

Non-application of definitive safeguard measure to certain developing countries.

31. (1) Notwithstanding anything to the contrary in any other provisions of this Act, a definitive safeguard measure shall not be applied to imports of the investigated product originating in a developing country Member, so long as those imports account for not more than three *per centum* of Sri Lanka's total imports of the investigated product.

(2) Notwithstanding the provisions of subsection (1), where imports from developing country Members which individually account for less than three *per centum* of Sri Lanka's imports of the investigated product, collectively account for more than nine *per centum* of Sri Lanka's imports of the investigated product, a definitive safeguard measure may be applied to such imports from those developing country Members.

Quotas as definitive safeguard measure.

32. (1) A definitive safeguard measure in the form of a quota on imports of the investigated product, shall not reduce the quantity of those imports below the average level registered in the most recent three representative years for which statistics are available.

(2) Notwithstanding the provisions of subsection (1), the Minister in charge of the subject of Finance in consultation with the Minister, may, where there are sufficient reasons to justify that a different level is necessary to prevent or remedy serious injury or threat of serious injury, apply a quota which reduces the quantity of imports of the investigated product below the average level registered in the most recent three representative years for which statistics are available.

(3) Where more than one country exports the investigated product to Sri Lanka, any quota on imports shall be allocated among all the supplying countries.

(4) Where the Minister in charge of the subject of Finance, in consultation with the Minister, determines that the method referred to in subsection (3) is not reasonably practical for allocation of the quota, he shall allocate the quota among countries having a substantial interest in supplying the investigated product. The allocation shall be based upon the proportions of the investigated product supplied by such countries during the previous three years, and due account shall also be taken of any special factors which may have affected or may be affecting trade in the investigated product.

Duration of a definitive safeguard measure.

33. (1) A definitive safeguard measure shall be applied for a period of not more than four years, including the period of application of any provisional measure, unless it is extended under the provisions of section 36.

(2) The total duration of the period of application of a definitive safeguard measure, including the period of application of any provisional measure, the period of initial application and any extension thereof under section 36, shall not exceed a period of ten years.

Progressive liberalization.

34. A definitive safeguard measure whose period of application exceeds a period of one year, shall be progressively liberalized at regular intervals during the period of its application, in accordance with the notice published regarding application of a definitive safeguard measure under section 29.

Review.

35. (1) Where the duration of a definitive safeguard measure (including the period of application of any provisional measure) exceeds three years, not later than the mid-term of the period of application of such measure, the Director-General shall review the situation, including a review of the effects of the definitive safeguard measure on the domestic industry concerned, and of the industry's progress in implementing its adjustment plan.

(2) The provisions of sections 11 to 19 of this Act shall apply *mutatis mutandis* in respect of such review.

(3) The result of the review shall be published in a report prepared by the Director-General and he shall thereafter forward such report to the Committee to make its recommendations as to whether to maintain or withdraw the definitive safeguard measure or to increase the pace of its liberalization.

(4) A notice to maintain, liberalize or withdraw a definitive safeguard measure summarizing the results of the review, shall be published in the *Gazette.* The contents of such notice shall conform, *mutatis mutandis,* to the requirements specified in respect of the notice regarding application of a definitive safeguard measure provided for in section 29.

Extension of a definitive safeguard measure.

36. (1) Where the domestic industry considers that there is a continuing need to apply a definitive safeguard measure beyond the initial period of its application, it shall submit a written request for extension of the measure, including evidence of the industry's adjustment plan, to the Director-General, not less than a period of six months before the end of that period.

(2) The Director-General shall conduct an investigation to determine whether an extension is warranted, and for the purpose of such investigation and determination, the procedures set forth in this Act for applying the original measure shall *mutatis mutandis* be followed.

(3) Subject to the provisions of section 33, a safeguard measure may be extended only once.

(4) The Director-General may recommend the extension of a definitive safeguard measure, only where he determines through an investigation referred to subsection (2), that the definitive safeguard measure continues to be necessary to prevent or remedy serious injury, and that there is evidence that the domestic industry is adjusting.

(5) The Director-General shall submit his recommendations to the Committee within a period of ten working days, and the Committee may within a period of ten working days of the receipt of the same, recommend to the Minister in charge of the subject of Finance through the Minister, the extension of a definitive safeguard measure, where it determines that –

(*a*) the safeguard measures continues to be necessary to prevent or remedy serious injury; and

(*b*) there is evidence that the domestic industry is adjusting.

(6) Where the Committee recommends the extension of a definitive safeguard measure, the Minister in charge of the subject of Finance in consultation with the Minister shall, within a period of fourteen working days of the receipt of the recommendation of the Committee taking into consideration the interest of the national economy, determine whether or not to extend such safeguard measure.

(7) An extended definitive safeguard measure shall not be more restrictive than it was at the end of the initial period of application.

(8) During an extension period, a safeguard measure shall continue to be progressively liberalized in accordance with a notice published to extend a definitive safeguard measure. Such notice shall conform *mutatis mutandis* to the requirements in respect of the notice applying a definitive safeguard measure, provided for in section 29.

Confidential information not to be disclosed.

37. (1) Information gathered by any person in the course of an investigation conducted under this Act or thereafter, which is entitled to be treated as confidential information under section 16, shall not be disclosed by such person unless required or authorized to do so under the provisions of this Act.

(2) Any person who in contravention of the provisions of subsection (1) discloses any confidential information as referred to therein, shall be guilty of an offence and be liable on conviction to a fine not exceeding rupees one hundred thousand or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Judicial review.

38. Any party who participated in or who had an interest in an investigation or review procedure under this Act, may seek judicial review in terms of Article 140 of the Constitution.

Delegation by the Director-General.

39. (1) The Director-General may delegate any of his functions and powers under this Act to any officer not below the rank of Deputy Director of Commerce.

(2) An officer to whom any function or power is delegated under subsection (1), shall discharge or exercise such function or power, subject to such directions as may be given by the Director-General.

(3) The Director-General shall, notwithstanding any delegation made under subsection (1), have the right to discharge or exercise any function or power so delegated.

Regulations.

40. (1) The Minister may make regulations in respect of all matters required by this Act to be prescribed or in respect of which regulations are authorized to be made.

(2) Every regulation made by the Minister shall be published in the *Gazette*, and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister shall, as soon as convenient after its publication in the *Gazette,* be brought before Parliament for approval. Any regulation which is not so approved shall be rescinded as from the date of such disapproval, but without prejudice to anything previously done thereunder.

(4) Notification of the date on which any regulation is deemed to be rescinded shall be published in *Gazette*.

Interpretation.

41. In this Act unless the context otherwise requires –

"country" includes Members of the World Trade Organization or any other country or autonomous customs territory;

"directly competitive product" means domestic product similar to or serving as a substitute for the product subject to investigation;

"domestic industry" means the producers as a whole of products which are like or directly competitive with the investigated product operating within the territory of Sri Lanka, or those producers operating within the territory of Sri Lanka whose collective output of like or directly competitive products constitutes a major proportion of the total domestic production of those products;

"increased quantity" includes increase in import whether in absolute terms or relative to domestic production;

" interested parties" means –

(*a*) an exporter and foreign producer of the investigated product;

(*b*) an importer of the investigated product;

(*c*) trade or business associations, a majority of the members of which are producers, exporters or importers of the investigated product;

(*d*) the government of an exporting country or countries;

(*e*) producers of the domestic like or directly competitive products in Sri Lanka;

(*f*) trade and business associations, a majority of the members of which are producers of the domestic like or directly competitive products in Sri Lanka;

(*g*) labour unions or other organizations representing the interests of workers in the domestic industry;

(*h*) consumer associations;

(*i*) industrial users of the investigated product; and

(*j*) any other natural or legal person as determined by the Director-General to have a sufficient interest in the outcome of an investigation;

"investigated product" means an imported product subject to safeguard investigation under this Act as described in the notice of initiation;

"like products" means domestic products which are identical or alike in all respects to the product subject to investigation or, in the absence of such products, another product that although not alike in all respect have the same physical, technical or chemical characteristics closely resembling the product under investigation;

"Member" means Member of the World Trade Organization;

"Minister" means the Minister in charge of the subject of Trade;

"participating interested parties" means those interested parties that have indicated their interest in participating in an investigation, in accordance with the provisions of section 11 of this Act;

"serious injury" means a significant overall impairment in the position of a domestic industry; and

"threat of serious injury" means a serious injury that is clearly imminent.

Sinhala text to prevail in case of inconsistency.

42. In the case of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

EXCISE (AMENDMENT) ACT, No. 4 OF 2018

[Certified on 19th of March, 2018]

Printed on the Order of Government

Published as a Supplement to Part II of the **Gazette of the Democratic Socialist Republic of Sri Lanka** of March 23, 2018

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Price : Rs. 4.00 **Postage : Rs. 10.00**

This Act can be downloaded from www.documents.gov.lk

Excise (Amendment)
Act, No. 4 of 2018

[Certified on 19th of March, 2018]

L.D.—O. 63/2016

AN ACT TO AMEND THE EXCISE ORDINANCE (CHAPTER 52)

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

Short title and date of operation.

1. This Act may be cited as the Excise (Amendment) Act, No. 4 of 2018 and shall come into operation on April 1, 2018.

Amendment of section 15 of the Excise Ordinance (Chapter 52).

2. Section 15 of the Excise Ordinance (Chapter 52) is hereby amended by the repeal of paragraphs (*b*) and (*c*) of that section, and the substitution therefor of the following:—

"(*b*) no tree producing toddy, other than kithul tree shall be tapped;

(*c*) no toddy shall be drawn or lowered from any tree other than the kithul tree.".

Sinhala text to prevail in case of inconsistency.

3. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

2—PL 010549— 2977 (12/2017)

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE ACT, No. 5 OF 2018

[Certified on 21st of March, 2018]

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This Act can be downloaded from www.documents.gov.lk

International Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018

[Certified on 21st of March, 2018]

L.D.—O. 9/2016.

AN ACT TO GIVE EFFECT TO THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE; TO ENSURE THE RIGHT TO JUSTICE AND REPARATION TO VICTIMS OF ENFORCED DISAPPEARANCE; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Preamble.

WHEREAS Sri Lanka became a signatory to the International Convention for the Protection of All Persons from Enforced Disappearance on December 10, 2015 (hereinafter referred to as the "Convention"):

AND WHEREAS by an instrument of ratification dated May 3, 2016, and deposited with the Secretary-General of the United Nations Organization on May 25, 2016, Sri Lanka ratified the aforesaid Convention:

AND WHEREAS the aforesaid Convention has entered into force in respect of Sri Lanka, with effect from June 24, 2016:

AND WHEREAS it has become necessary for the Government of Sri Lanka to make legislative provision to give effect to Sri Lanka's obligations under the aforesaid Convention:

NOW THEREFORE be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Short title.

1. This Act may be cited as the International Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018 and shall come into force on the date of Certification in terms of Article 79 of the Constitution.

2—PL 05071— 2977 (03/2017)

Convention States.

2. The Minister may, by Order published in the *Gazette*, certify the States which are parties to the Convention. A State in respect of which an Order is made under this section, is hereinafter referred to as "a Convention State".

Enforced Disappearance etc.

3. (1) Any person who, being a public officer or acting in an official capacity, or any person acting with the authorization, support or acquiescence of the State -

(*a*) arrests, detains, wrongfully confines, abducts, kidnaps, or in any other form deprives any other person of such person's liberty; and

(*b*) (i) refuses to acknowledge such arrest, detention, wrongful confinement, abduction, kidnapping, or deprivation of liberty; or

(ii) conceals the fate of such other person; or

(iii) fails or refuses to disclose or is unable without valid excuse to disclose the subsequent or present whereabouts of such other person,

shall be guilty of the offence of enforced disappearance, and shall after conviction after trial on indictment by the High Court, be punished with imprisonment for a term not exceeding twenty years, and also be liable to pay a fine not exceeding one million rupees and shall further be liable to pay compensation not less than five hundred thousand rupees to a victim.

(2) Any person who -

(*a*) wrongfully confines, abducts, kidnaps or in any other form deprives any other person of such person's liberty; and

(*b*) (i) refuses to acknowledge such wrongful confinement, abduction, kidnapping, or deprivation of liberty; or

(ii) conceals the fate of such other person; or

(iii) fails or refuses to disclose or is unable without valid excuse to disclose the subsequent or present whereabouts of such other person,

shall be guilty of an offence under this Act, and shall after conviction after trial on indictment by the High Court, be punished with imprisonment for a term not exceeding twenty years, and also be liable to pay a fine not exceeding one million rupees and shall further be liable to pay compensation not less than five hundred thousand rupees to a victim.

(3) A superior who –

(*a*) knows, or consciously disregards information which clearly indicated, that subordinates under the effective authority and control of such superior were committing or about to commit an offence under subsection (1);

(*b*) exercises effective responsibility for and control over activities which were concerned with the offence of enforced disappearance; and

(*c*) fails to take all necessary and reasonable measures within his power to prevent or repress the commission of an offence under sub section (1) or to submit the matter to a law enforcement authority for investigation and prosecution,

shall be guilty of the offence of enforced disappearance, and shall after conviction after trial on indictment by the High Court, be punished with imprisonment for a term not exceeding twenty years, and also be liable to pay a fine not exceeding one million rupees and shall further be liable to pay compensation not less than five hundred thousand rupees to a victim.

(4) In this section "wrongful confinement", "kidnapping" and "abduction" have the same meaning as in sections 331, 350, 351, 352 and 353 of the Penal Code.

Aiding, abetting, attempt & conspiracy.

4. (1) Any person who aids or abets the commission of any offence set out in section 3, or conspires or attempts to commit any offence set out in section 3, shall be guilty of an offence under this Act, and shall after conviction after trial on indictment by the High Court, be punished with imprisonment for a term not exceeding twenty years, and also be liable to pay a fine not exceeding one million rupees and shall further be liable to pay compensation not less than five hundred thousand rupees to a victim.

(2) In this section "abet" and "conspiracy" have the same meaning as in sections 100, 101 and 113A respectively, of the Penal Code.

Cognizable and non-bailable offence.

5. Every offence under this Act shall be a cognizable offence and a non-bailable offence, within the meaning, and for the purposes of the Code of Criminal Procedure Act, No. 15 of 1979.

High Court to try offences under this Act, and penalties.

6. (1) The High Court of Sri Lanka holden in Colombo, or the High Court established under Article 154P of the Constitution, for the Western Province holden in Colombo, shall notwithstanding anything to the contrary in any other written law, have exclusive jurisdiction to try offences under sections 3 and 4 of this Act.

(2) Where an act constituting an offence under this Act is committed outside Sri Lanka, the High Court referred to in subsection (1), shall have the jurisdiction to try such offence as if it were committed within Sri Lanka, if -

(*a*) the offender whether he is a citizen of Sri Lanka or not is present in any territory under the jurisdiction of Sri Lanka;

(*b*) the person alleged to have committed the offence is a citizen of Sri Lanka, or a national of another State which is a party to the Convention, or by a stateless person who has his habitual residence in Sri Lanka; or

(*c*) such act is committed against, or on board -

(i) a ship flying the flag of Sri Lanka; or

(ii) an aircraft registered in Sri Lanka at the time of the commission of the offence;

(*d*) the person in relation to whom the offence is alleged to have been committed is a citizen of Sri Lanka.

Rights of certain persons arrested for offences under this Act.

7. Where a person who is not a citizen of Sri Lanka is arrested for an offence under this Act, such person shall be entitled -

(*a*) to communicate without delay, with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights, or if he is a stateless person, with the nearest appropriate representative of the State in the territory of which he was habitually resident;

(*b*) to be visited by a representative of that State; and

(*c*) be informed of his rights under paragraphs (*a*) and (*b*).

Minister to notify requesting State of measures taken against persons for whose extradition request is made.

8. Where a request is made to the Government of Sri Lanka, by or on behalf of the Government of a Convention State for the extradition of any person accused or convicted of an offence under sections 3 or 4, the Minister shall, on behalf of the Government of Sri Lanka, forthwith notify the Government of the requesting State of the measures which the Government of Sri Lanka has taken, or proposes to take, for the prosecution or extradition of that person for that offence.

Assistance to Convention States.

9. (1) The provisions of the Mutual Assistance in Criminal Matters Act, No. 25 of 2002 shall, wherever it is necessary for the investigation and prosecution of an offence under sections 3 or 4, be applicable in respect of the providing of assistance as between the Government of Sri Lanka and other States who are either Commonwealth countries specified by the Minister by Order under section 2 of the aforesaid Act or Non-Commonwealth countries with which the Government of Sri Lanka entered into an agreement in terms of the aforesaid Act.

(2) In the case of a country which is neither a Commonwealth country specified by the Minister by Order under section 2 of the aforesaid Act nor a Non-Commonwealth country with which the Government of Sri Lanka entered into an agreement in terms of the aforesaid Act, then the Government may afford all such assistance to, and may through the Minister request all such assistance from, a Convention country, as may be necessary for the investigation and prosecution of an offence under sections 3 or 4, to the extent required for the discharge of its obligations under the Convention (including assistance relating to the taking of evidence and statements, the serving of process and the conduct of searches).

(3) The grant of assistance to a Convention country may be made subject to such terms and conditions as the Minister thinks fit.

Existing extradition arrangements with Convention States deemed to provide for offences.

10. Where there is an extradition arrangement made by the Government of Sri Lanka with any Convention State in force on the date on which this Act comes into operation, such arrangement shall be deemed for the purposes of the Extradition Law, No. 8 of 1977, to include provision for the extradition in respect of the offences under this Act.

Minister may treat Convention as an extradition arrangement between Sri Lanka and certain Convention States.

11. Where there is no extradition arrangement made by the Government of Sri Lanka with any Convention State, the Minister may by Order published in the *Gazette*, treat the Convention, for the purposes of the Extradition Law, No. 8 of 1977 as an extradition arrangement, made by the Government of Sri Lanka with the Convention State providing for extradition in respect of the offences under this Act.

Amendment to the Extradition Law, No. 8 of 1977.

12. The Extradition Law, No. 8 of 1977 is hereby amended in the Schedule to that Law, by the addition immediately after item 37 of the items appearing immediately before Part B of that Schedule, of the following item:–

"(37A) An offence within the scope of the Convention for the Protection of All Persons from Enforced Disappearance Act, No. 5 of 2018.".

Offences under this Act not to be political offences for the purposes of the Extradition Law.

13. Notwithstanding anything in the Extradition Law, No. 8 of 1977, an offence specified in the Schedule to that Law or an offence under this Act, shall for the purposes of that Law be deemed not to be an offence of a political character or an offence connected with a political offence or an offence inspired by political motives, for the purposes only of the extradition of any person accused or convicted of any such offence, as between the Government of Sri Lanka and any Convention State, or of affording assistance to a Convention State under section 9 of this Act.

Rights of victims and relatives-vis-à-vis law enforcement authorities.

14. (1) Every victim and relative of a victim shall have the right to know the truth regarding the circumstances of an enforced disappearance, the progress and results of the investigation as are carried out by the law enforcement authorities, and the fate of the disappeared person.

(2) Every victim and relative of a victim shall, subject to restrictions placed by law, have the right to form and freely participate in organizations and associations concerned with attempting to establish the circumstances of offences

committed under section 3 and the fate of disappeared persons, and to assist victims of offences under section 3.

(3) Where there are reasonable grounds for believing that a person has been subjected to an offence under section 3, law enforcement authorities shall undertake an investigation, even if there has been no formal complaint.

(4) Law enforcement authorities shall take all appropriate measures to search for and locate the disappeared person, and in the case of a person held in secret detention, procure the release of such person, and in the event of death, to locate, respect and return the remains of such person.

Obligations concerning deprivation of liberty.

15. (1) No person shall be held in secret detention.

(2) Any person deprived of liberty shall have the right to communicate with and be visited by his relatives, attorney-at-law or any other person of his choice, subject only to the conditions established by written law.

(3) Law enforcement authorities, and the Human Rights Commission of Sri Lanka, shall have access to the places where persons are deprived of liberty.

(4) Law enforcement authorities shall assure the compilation and maintenance of up-to-date official registers or records of persons deprived of liberty, which shall be promptly made available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law, and shall contain -

(*a*) the identity of the person deprived of liberty;

(*b*) the date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;

(*c*) the authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;

(*d*) the authority responsible for supervising the deprivation of liberty;

(*e*) the place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;

(*f*) information relating to the state of health of the person deprived of liberty;

(*g*) in the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains; and

(*h*) the date and time of release or transfer to another place of deprivation of liberty, the destination of the place of deprivation of liberty to which a person is transferred, and the authority responsible for the transfer.

Rights of relatives, representatives and attorneys-at-law.

16. (1) Any relative of a person deprived of liberty, the representative of a person deprived of liberty or an attorney-at-law of a person deprived of liberty shall have the right to access the following information:-

(*a*) the person or authority that ordered the deprivation of liberty;

(*b*) the date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty;

(*c*) the authority responsible for supervising the deprivation of liberty;

(*d*) the whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer;

(*e*) the date, time and place of release;

(*f*) information relating to the state of health of the person deprived of liberty; and

(*g*) in the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains.

(2) Any person referred to in subsection (1) of this section, as well as persons participating in the investigation, shall be protected from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.

(3) Without prejudice to consideration of the lawfulness of the deprivation of a person's liberty, any person referred to in subsection (1) shall have the right to a prompt and effective judicial remedy as a means of obtaining without delay the information referred to in subsection (1) of this section, and such right to a remedy shall not be suspended or restricted in any circumstances.

Interference with and influencing investigations, and failure to record or refusal to provide information.

17. (1) any person, including a person suspected of having committed an offence under sections 3 or 4 of this Act, who -

(*a*) interferes with the conduct of an investigation;

(*b*) influences the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their attorney-at-law or persons participating in the investigation;

(*c*) being the officer responsible for the official register, intentionally fails to record the deprivation of liberty of any person, or records any information which he knew to be inaccurate;

(*d*) refuses to provide information on the deprivation of liberty of a person, or provides inaccurate information, notwithstanding the fact that legal requirements for providing such information have been met,

shall be guilty of an offence under this Act.

(2) A person guilty of an offence under subsection (1) shall after conviction after trial on indictment by the High Court, be punished with imprisonment for a term not exceeding seven years and to a fine not exceeding five hundred thousand rupees.

No extradition where there is a possibility of such person being subjected to enforced disappearance.

18. (1) No person shall be expelled, returned, surrendered or extradited to another State where there are substantial grounds for believing that such person would be in danger of being subjected to enforced disappearance.

(2) For the purpose of determining whether there are such grounds referred to in subsection (1) of this section, all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law shall be taken into account.

(3) The Minister may make regulations prescribing the criteria upon which a person may be expelled, returned, surrendered or extradited to another State.

Privacy and data protection.

19. Without prejudice to the use of information in criminal proceedings relating to an offence committed under this Act, or the exercise of the right to obtain reparations,

personal information, including medical and genetic data, which is collected or transmitted within the framework of the search for a disappeared person, shall not be used or made available for purposes other than the search for the disappeared person, and shall not be collected, processed, used or stored in a manner that infringes or has the effect of infringing the fundamental rights and freedoms or dignity of a person.

Enforcement of the provisions of this Act.

20. (1) Without prejudice to any judicial or other remedy provided for by or under any written law, any person with a legitimate interest shall be entitled to apply by way of petition addressed to the High Court seeking the enforcement of sections 7, 14, 15, 16 or 19 of this Act and to plead for such relief or redress as shall be prayed for in such petition.

(2) The jurisdiction of the High Court may be invoked under subsection (1) of this section by any person with a legitimate interest, by himself or through any other person on his behalf, within three months of the date on which the non-enforcement of sections 7, 14, 15, 16 or 19 of this Act becomes known to such person, as the case may be.

(3) Notwithstanding anything to the contrary in any other law, the High Court may, where it considers it appropriate at any stage of the proceeding relating to a petition made to it under subsection (1) of this section, refer such matter to the Human Rights Commission of Sri Lanka for an inquiry and report and request such Commission to submit its report to the High Court within such time as shall be stipulated by the Court for that purpose.

(4) The High Court shall have the power to grant the relief prayed for in a petition made to it under subsection (1) or grant such other relief or make such direction as it may consider just and equitable, in the circumstances of the case.

(5) Any person aggrieved by an order made by the High Court in any petition filed under this section, shall have a

right of appeal to the Supreme Court against such order within six weeks of the date on which such order is made.

Minister to issue guidelines or directions.

21. The Minister may from time to time issue guidelines or such general or special directions as may be required for the effective implementation of the principles and provisions of the Convention to such extent as is necessary to give full effect to Sri Lanka's international obligations under the Convention.

Regulations.

22. (1) Without prejudice to any provision in this Act, the Minister may make regulations for the purpose of giving effect to the principles and provisions of this Act or any matter which is prescribed or in respect of which regulations are required or authorized under this Act to be made.

(2) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in such regulation.

(3) Every regulation made by the Minister, shall as soon as convenient after its publication in the *Gazette*, be brought before Parliament for approval. Any regulation which is not so approved, shall be deemed to be rescinded as from the date of such disapproval, but without prejudice to anything previously done thereunder.

Provisions of this Act to prevail over other written law.

23. The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law and accordingly in the event of any inconsistency or conflict between the provisions of this Act and such other written law, the provisions of this Act shall prevail.

Sinhala text to prevail in case of inconsistency.

24. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Interpretation.

25. In this Act, unless the context otherwise requires -

"effective authority and control" means the power to issue orders to subordinates and the capacity to ensure compliance with such orders;

"deprivation of liberty" means the confinement of a person to a particular place, where such person does not consent to that confinement;

"Human Rights Commission of Sri Lanka" means the Human Rights Commission of Sri Lanka, established by the Human Rights Commission of Sri Lanka Act, No. 21 of 1996;

"law enforcement authority" means a police officer or any other person or institution authorized by or under any written law to investigate into the commission of an offence;

"secret detention" means circumstances in which a person is held in a place that is not a place of detention authorized by or under any written law, and where the whereabouts or fate of the person are not known to his relatives or others;

"victim" means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

TRUSTS (AMENDMENT) ACT, No. 6 OF 2018

[Certified on 28th of March, 2018]

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L.D.—O. 24/2016

AN ACT TO AMEND THE TRUSTS ORDINANCE (CHAPTER 87)

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

Short title.

1. This Act may be cited as the Trusts (Amendment) Act, No. 6 of 2018.

Amendment of section 3 of Chapter 87.

2. Section 3 of the Trusts Ordinance (Chapter 87) (hereinafter referred to as the "principal enactment") is hereby amended as follows:—

(1) by the repeal of paragraph (*e*) of that section and the substitution therefor, of the following paragraph:—

"(*e*) "beneficiary" means a person, or a defined or definitely ascertainable class of persons, for whose benefit the confidence is accepted;";

(2) by the addition immediately after paragraph (*o*) of that section, of the following paragraphs:—

"(*p*) "express trust" means a trust that is created by the author of the trust generally in the form of an instrument in writing with certainty indicating the intention of the trust, but does not include a constructive trust or a *de facto* trust, whether charitable or not;

(*q*) "prescribed" means prescribed by regulations made under this Act.".

2—PL 010603—2,977 (01/2018)

Insertion of new sections 6A and 6B in the principal enactment.

3. The following new sections are hereby inserted immediately after section 6 of the principal enactment and shall have effect as sections 6A and 6B of that enactment:-

"Registrar-General to maintain a register of trusts.

6A. (1) The Registrar-General shall prepare and maintain a register containing such information as may be prescribed in respect of every express trust created in compliance with section 5.

(2) The trustee of any immovable or movable property in respect of an express trust, shall forward to the Registrar-General for the purpose of subsection (1), all such information relating to the trust, as may be prescribed.

Duty of the Registrar-General to provide information of trusts.

6B. (1) The Registrar-General shall, on a request made by the Financial Intelligence Unit, or by any other authority with the written sanction of the Financial Intelligence Unit, provide to the Financial Intelligence Unit or such other authority any information relating to any express trust, kept in the register maintained under section 6A.

(2) For the purpose of subsection (1), the Financial Intelligence Unit shall be the Financial Intelligence Unit that may be designated under the Financial Transactions Reporting Act, No. 6 of 2006.".

Insertion of new sections 19A,19B and 19C in the principal enactment.

4. The following new sections are hereby inserted immediately after section 19 of the principal enactment and shall have effect as sections 19A, 19B and 19C of that enactment:—

"Trustee to keep updated information on identity in record.

19A. (1) A trustee shall keep records of all such information as may be prescribed, on the identity of the following persons at the time of creation of an express trust under section 6:—

(*a*) the trustee himself;

(*b*) the co-trustees, if any;

(*c*) the author of the trust;

(*d*) the beneficiary, to the greatest extent possible; and

(*e*) any other person engaged in the execution of the trust in the capacity of an agent, a legal representative, a manager, an investment advisor or a tax advisor, an accountant or otherwise.

(2) The information under subsection (1) shall be verified and updated every three months, to the greatest extent possible.

(3) Where an express trust has been created for the benefit of a class of persons, all such information as may be prescribed, on the identity of every person belonging to such class of persons, to the greatest extent possible, shall be kept in record under subsection (1).

(4) Where an express trust has been created for the benefit of a person other than a natural person, the information on the identity of the natural person who is the beneficial owner of the trust, shall be kept in record under subsection (1).

(5) A trustee shall maintain records of information of any person referred to in subsections (1), (2), (3) and (4), at least for a period of six years from the date on which such person's involvement with the trust ceases to exist.

(6) For the purposes of this section, "beneficial owner" means a natural person or persons who ultimately own the benefits of an express trust or control the trust property or the person or persons on whose behalf an express trust is being created and includes the person or persons who exercise ultimate effective control over a person or a body of persons, whether incorporated or unincorporated.

Trustee to provide updated information of identity to relevant authorities.

19B. (1) (*a*) A trustee and a co-trustee, if any, of an express trust shall provide to any relevant authority, any information in the record maintained under section 19A, in respect of any person referred to in that section whenever such trustee is required to provide such information by such authority.

(*b*) For the purpose of paragraph (*a*), the "relevant authority" means –

(i) any public authority assigned with the responsibility of preventing money laundering and suppression of terrorist financing; or

(ii) any authority that performs the function of investigating and prosecuting money laundering and terrorist financing associated offences and seizing or freezing and confiscating assets relating to such offences.

(2) (*a*) A trustee of an express trust shall, when entering into a continuing business relationship or conducting any transaction or carrying out any occasional transaction, exceeding a financial limit as may be prescribed, with any institution carrying out financial business or designated non-finance business, provide updated information on the identity of any person referred to in section 19A or of the trust property which is subject to the business relationship, as is required by such institution.

(*b*) For the purpose of paragraph (*a*), the expressions "designated non-finance business", "finance business" and "occasional transaction'', shall have the same meanings as in the Financial Transactions Reporting Act, No. 6 of 2006.

Penalty for contravention of sections 6A, 19, 19A and 19B.

19C. A trustee who acts in contravention of the provisions of sections 6A, 19, 19A and 19B shall be guilty of an offence under this Act and shall, on conviction by a Magistrate, be liable to a fine not exceeding two hundred thousand rupees or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.".

Amendment of section 72 of the principal enactment.

5. Section 72 of the principal enactment is hereby amended by the substitution for the words "by his discharge from his office.", of the words and figure "by his discharge from his office or on such trustee being convicted of an offence under section 19C.".

Amendment of section 75 of the principal enactment.

6. Section 75 of the principal enactment is hereby amended, in subsection (1) of that section, by the substitution for the words "or accepts an inconsistent trust,", of the words and figure "or accepts an inconsistent trust, or is convicted of an offence under section 19C,".

Insertion of new section 115A in the principal enactment.

7. The following new section is hereby inserted immediately after section 115 of the principal enactment and shall have effect as section 115A of that enactment:-

"Regulations.

115A. (1) The Minister may make regulations in respect of all matters required by this Act to be prescribed or in respect of which regulations are authorized by this Act to be made.

(2) Every regulation made by the Minister under subsection (1) shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified therein.

(3) Every regulation made by the Minister shall, as soon as convenient, be brought before Parliament for approval. Every regulation which is not so approved shall be deemed to be rescinded from the date of disapproval but without prejudice to anything previously done thereunder.

(4) Notification of the date on which any regulation is deemed to be rescinded shall be published in the *Gazette.*".

Sinhala text to prevail in case of inconsistency.

8. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

INTELLECTUAL PROPERTY (AMENDMENT) ACT, No. 7 OF 2018

[Certified on 28th of March, 2018]

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This Act can be downloaded from www.documents.gov.lk

Intellectual Property (Amendment) Act, No. 7 of 2018

[Certified on 28th of March, 2018]

L.D.—O. 37/2014

AN ACT TO AMEND THE INTELLECTUAL PROPERTY ACT, NO. 36 OF 2003

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

Short title.

1. This Act may be cited as the Intellectual Property (Amendment) Act, No. 7 of 2018.

Amendment of section 161 of the Intellectual Property Act, No. 36 of 2003.

2. Section 161 of the Intellectual Property Act, No. 36 of 2003 is hereby amended by the insertion immediately after subsection (4) thereof, the following new subsection:—

"(4A) The Minister may prescribe any geographical indication in respect of any goods or products for the purpose of this Act.".

Sinhala text to prevail in case of inconsistency.

3. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "PRAKASHANA PIYASA", DEPARTMENT OF GOVERNMENT PRINTING, NO. 118, DR. DANISTER DE SILVA MAWATHA, COLOMBO 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

ACTIVE LIABILITY MANAGEMENT ACT, No. 8 OF 2018

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Active Liability Management
Act, No. 8 of 2018

[Certified on 28th of March, 2018]

L.D.—O. 36/2017.

AN ACT TO AUTHORISE THE RAISING OF LOANS IN OR OUTSIDE SRI LANKA FOR THE PURPOSE OF ACTIVE LIABILITY MANAGEMENT TO IMPROVE PUBLIC DEBT MANAGEMENT IN SRI LANKA AND TO MAKE PROVISIONS FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

Short title and date of operation.

1. This Act may be cited as the Active Liability Management Act, No. 8 of 2018 and shall come in to operation on such date as the Minister may appoint by Order published in the *Gazette*.

Objective.

2. The objective of this Act shall be to manage public debt to ensure the financing needs and payment obligations of the Government are met at the lowest possible cost over the medium to long term consistent with a prudent degree of risk.

Raising loans for the purpose of management of public debt.

3. The Parliament may, during a particular financial year from time to time, by resolution, approve to raise sums of money, the total of which shall not exceed *ten percentum* of the total outstanding debt as at the end of the preceding financial year, as a loan whether in or outside Sri Lanka, in terms of the relevant laws for moneys to be raised including the provisions of the Monetary Law Act (Chapter 422), the Local Treasury Bills Ordinance (Chapter 417), Registered Stocks and Securities Ordinance (Chapter 420), or the Foreign Loans Act, No. 29 of 1957, for and on behalf of the Government for the purposes of refinancing and pre-financing of public debts of the Government.

Settlement of obligations of the Government.

4. (1) The Minister shall with approval of the Cabinet of Ministers and subject to the provisions of section 3 of this Act and section 114 of the Monetary Law Act (Chapter 422), decide on matters pertaining to and incidental to the refinancing and pre-financing of public debts including —

(*a*) the sum of money to be raised by a loan;

(*b*) the mode of raising such loan; and

(*c*) the manner in which such payment obligations of the Government are settled as he may deem fit including the buying-back of existing debt and switching existing debt with new debt.

(2) The decision made by the Minister under subsection (1) shall be communicated in writing to the Registrar through the Minister assigned the subject of Central Bank of Sri Lanka.

(3) The Registrar may, subject to the terms of such communication and to any directions as the Minister may issue in that behalf —

(*a*) make all such arrangements as may be necessary to raise such loan; and

(*b*) effect such arrangements to settle obligations of the Government upon the most favourable terms that may be obtained in the interest of the Government.

Exemption from the application of the provisions of the Appropriation Act.

5. Any loan raised for and on behalf of the Government for the purposes of refinancing and pre-financing of public debts of the Government shall be exempted from the application of the provisions of section 2 (1) (*b*) of the Appropriation Act, No. 30 of 2017 and also from the application of the provisions of any annual Appropriation Act which is enacted after the date of commencement of the Appropriation Act, No 30 of 2017.

Loans a charge upon Consolidated Fund.

6. (1) Any loan raised under this Act where—

(*a*) the monetary unit is Sri Lanka rupees shall be retained in one or more accounts maintained by the Deputy Secretary to the Treasury as may be nominated by the Secretary to the Treasury, in writing, on that behalf, at the Central Bank of Sri Lanka or at a licensed commercial bank subject to the provisions of section 107 of the Monetary Law Act (Chapter 422);

(*b*) the monetary unit is foreign currency shall be retained in one or more accounts maintaind by the Deputy Secretary to the Treasury as may be nominated by the Secretary to the Treasury, in writing, on that behalf, at the Central Bank of Sri Lanka.

(2) The principal money and the interest, if any, which is in any account maintained at the Central Bank of Sri Lanka or at a licensed commercial bank shall be part of the Consolidated Fund as assets of Sri Lanka but as a ring-fenced account.

(3) The Moneys retained under subsection (1) shall only be used for the purposes of refinancing and pre-financing of public debts in achieving the objective of this Act.

Reporting under the Fiscal Management (Responsibility) Act, No. 3 of 2003.

7. Details of all loans raised, money retained in the accounts maintained at the Central Bank of Sri Lanka or at a licensed commerical bank and the settlement of obligations of the Government made under the provisions of this Act shall be incorporated in the reports relating to the Government's fiscal performance, which are required to be tabled in Parliament under the Fiscal Management (Responsibility) Act, No. 3 of 2003.

Exemption from stamp duties.

8. Notwithstanding anything to the contrary in any other written law, all documents or instruments made or used under the provisions of this Act shall be free from stamp duty.

Protection for acts done in good faith.

9. (1) No member of the Monetary Board or officer or servant of the Central Bank of Sri Lanka shall be liable for any damage or loss suffered by the Central Bank of Sri Lanka unless such damage or loss was caused by his misconduct or willful default.

(2) Every member of the Monetary Board and every officer or servant of the Central Bank of Sri Lanka shall be indemnified by the Central Bank of Sri Lanka from all losses and expenses incurred by him in or about the discharge of his duties, other than such losses and expenses as the Monetary Board may deem to have been occasioned by his misconduct or willful default.

Regulations.

10. (1) The Minister may make regulations on the advice of the Monetary Board, in respect of all matters required by this Act to be prescribed or in respect of which regulations are authorised by this Act to be made.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations in respect of all or any of the following matters:-

(*a*) the conditions subject to which debt may be refinanced and pre-financed;

(*b*) the manner and the procedures applicable to the refinancing and pre-financing of debt; and

(*c*) any other matters as may be necessary for the purpose of achieving the objective of this Act.

(3) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication, or on such later date as may be specified in the regulation.

(4) Every regulation made by the Minister shall, within three months after its publication in the *Gazette*, be brought before Parliament for approval.Any such regulation which is not so approved shall be deemed to be rescinded as from the date of its disapproval, but without prejudice to anything previously done thereunder.

(5) Notification of the date on which any regulation made by the Minister is so deemed to be rescinded shall be published in the *Gazette*.

Delegation of powers of the Minister assigned the subject of Finance.

11. The Minister may, by Order published in the *Gazette* delegate to the Secretary to the Treasury any power conferred on the Minister by this Act except under sections 4 and 10 subject to such conditions, reservations and restrictions as may be specified in the Order.

Offences.

12. Any person who contravenes any provision of this Act commits an offence under this Act and shall be liable on conviction after summary trial by a Magistrate, to imprisonment for a term not exceeding five years or to a fine not less than three million rupees and not exeeding ten million rupees or where the offence has resulted in monetary loss or a loss which is quantifiable in monetary terms to the Government, to a fine equivalent to twice the value of such loss or to both such imprisonment and fine.

This Act to prevail over other laws.

13. In the event of any conflict or inconsistency between the provisions of this Act and the provisions of any other written law, the provisions of this Act shall prevail.

Interpretation.

14. In this Act, unless the context otherwise requires —

"Central Bank of Sri Lanka" means the Central Bank of Sri Lanka established under the Monetary Law Act (Chapter 422);

"financial year" means a period of twelve months commencing on First of January and ending on Thirty First of December;

"licensed commercial bank" means a bank licensed under the provisions of the Banking Act, No. 30 of 1988 to carry out commercial banking activities;

"Minister" means the Minister assigned the subject of Finance;

"Monetary Board" means the Monetary Board of the Central Bank of Sri Lanka established under the Monetary Law Act (Chapter 422);

"pre-financing" includes financial arrangements made in advance to restructure an existing outstanding debt in order to change the conditions and terms of such debt;

"public debt" means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the Government and includes interest on that debt, sinking fund charges, the repayment or amortization of debt and all expenditure in connection with the raising of the loans on the security of revenues of the Government and on the service and redemption of the debt thereby created;

"refinancing" includes the substitution of an existing outstanding debt or debts with another debt or debts; and

"Registrar" means the Registrar appointed under the provisions of the Registered Stocks and Securities Ordinance (Chapter 420).

15. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to prevail in case of inconsistency.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

JUDICATURE (AMENDMENT) ACT, No. 9 OF 2018

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Judicature (Amendment) Act, No. 9 of 2018

[Certified on 15th of May, 2018]

L. D.—O. 59/ 2017

AN ACT TO AMEND THE JUDICATURE ACT, NO. 2 OF 1978

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

Short title.

1. This Act may be cited as the Judicature (Amendment) Act, No. 9 of 2018.

Insertion of new sections12A, 12B and 12C in Act, No. 2 of 1978.

2. Judicature Act , No. 2 of 1978 (hereinafter referred to as the "principal enactment") is hereby amended by the insertion immediately after section 12 thereof, of the following new sections which shall have effect as sections 12A, 12B and 12C of that enactment:—

"Jurisdiction of the High Court established under Article 154P of the Constitution in respect of certain offences.

12A. (1) (*a*) Notwithstanding anything in any other written law, the High Court established by Article 154P of the Constitution for a Province shall, in terms of sub-paragraph (*c*) of paragraph (3) of Article 154P of the Constitution hear, try and determine in the manner provided for by written law and subject to the provisions of subsection (4), prosecutions on indictment against any person, in respect of financial and economic offences specified in the Sixth Schedule to this Act, and any other offence committed in the course of the same transaction of any such offence, with three Judges sitting together nominated by the Chief Justice from among the Judges of the High Court of the Republic of Sri Lanka (hereinafter referred to as the "Permanent High Court at Bar")

(*b*) The Minister may, with the concurrence of the Chief Justice increase, by order published in the *Gazette*, the number of such Courts of the Permanent High Court at Bar.

(2) (*a*) Notwithstanding anything to the contrary in any other written law, the Permanent High Court at Bar shall have jurisdiction in respect of offences referred to in subsection (1) –

(i) committed by any person wholly or partly in Sri Lanka; or

(ii) wherever committed by a citizen of Sri Lanka in any place outside the territory of Sri Lanka or on board or in relation to any ship or aircraft of whatever category.

(*b*) For the avoidance of doubt it is hereby declared that the jurisdiction of any other Court in respect of the offences referred to in the Sixth Schedule, shall continue to be in force.

(3) The jurisdiction of such Permanent High Court at Bar shall–

(*a*) if such Court is the Court established for the Western Province, be exercised by that Court sitting in Colombo and where necessary in any other place within the Western Province, as may be designated by the Minister by Order published in the *Gazette*, with the concurrence of the Chief Justice; or

(*b*) if such Court is the Court established for any other Province, be exercised by that Court sitting in such place within that Province, as may be designated by the Minister by Order published in the *Gazette*, with the concurrence of the Chief Justice.

(4) (*a*) The Attorney General or, the Director General for the Prevention of Bribery and Corruption on the direction of the Commission to Investigate Allegations of Bribery or Corruption, as the case may be, shall, taking into consideration–

(i) the nature and circumstances;

(ii) the gravity;

(iii) the complexity;

(iv) the impact on the victim; or

(v) the impact on the State,

of the offence, referred to in subsection (1), refer the information relating to the commission of such offence to the Chief Justice for a direction whether criminal proceedings in respect of such offence shall be instituted in the Permanent High Court at Bar.

(*b*) Where the Chief Justice is of the opinion that any one or more of the criteria specified in paragraph (*a*) has been satisfied in referring information under that paragraph, he may by order under his hand direct that the criminal proceedings in respect of such offence be instituted in the Permanent High Court at Bar.

(5) Where the Chief Justice so directs, a trial before such Permanent High Court at Bar shall–

(*a*) be held upon indictment by the Attorney General, or the Director General for the Prevention of Bribery and Corruption on the

direction of the Commission to Investigate Allegations of Bribery or Corruption;

(*b*) be held and concluded expeditiously; and

(*c*) unless in the opinion of the Court, exceptional circumstances exist which shall be recorded, be heard from day to day, to ensure the expeditious disposal.

(6) (*a*) Where any Judge of the Permanent High Court at Bar, dies or resigns or requests to be discharged from hearing the whole or part of any trial, before or after its commencement, or refuses or becomes unable to act, or otherwise ceases to be a Judge of the High Court, the Chief Justice shall, not later than two weeks of such death, resignation, discharge, refusal, inability or other cause, which causes such Judge to cease to be a Judge of such High Court, nominate another Judge of the High Court of the Republic of Sri Lanka in his place, to hear the whole or any part of such trial.

(*b*) Where a new Judge has been nominated under paragraph (*a*), it shall not be necessary for any evidence taken prior to such nomination to be retaken and the Permanent High Court at Bar shall be entitled to continue the trial from the stage at which it was immediately prior to such nomination, subject to the proviso to section 48 of this Act.

(7) The provisions of the Code of Criminal Procedure Act, No.15 of 1979 and the Commission to Investigate Allegations of

Bribery or Corruption Act, No. 19 of 1994 or any other written law, shall, *mutatis mutandis*, apply to the institution of proceedings and trials before the Permanent High Court at Bar.

Right of Appeal.

12B. (1) An appeal from any judgment, sentence or order pronounced at a trial held by a Permanent High Court at Bar under section 12A, shall be made within twenty eight days from the pronouncement of such judgment, sentence or order to the Supreme Court and shall be heard by a Bench of not less than five Judges of that Court nominated by the Chief Justice.

(2) The provisions of the Code of Criminal Procedure Act, No. 15 of 1979 and the Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994, or of any other written law governing appeals to the Court of Appeal from judgments, sentences or orders of the High Court in cases tried without a Jury shall, *mutatis mutandis*, apply to the appeals to the Supreme Court under subsection (1) from judgments, sentences or orders pronounced at a trial held before the Permanent High Court at Bar under section 12A.

(3) Any appeal made under this section shall be heard and disposed of, expeditiously.

Construction of written law in relation to the offences prosecuted against, in the permanent High Court at Bar.

12C. Where criminal proceedings have been instituted in terms of subsection (4) of section 12A, in the Permanent High Court at Bar, in respect of an offence referred to in subsection (1) of section 12A, a reference to any other court in the relevant law, shall be deemed to be a reference to the Permanent High Court at Bar, with effect from the date on which the indictment is filed in the Permanent High Court at Bar.".

Amendment of section 63 of the principal enactment.

3. Section 63 of the principal enactment is hereby amended by the insertion immediately after the definition of the expressions "District Courts" and "Magistrate Courts" of the following definition:—

" "Commission to Investigate the Allegations of Bribery or Corruption" means the Commission to Investigate Allegations of Bribery or Corruption established under section 2 of the Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994;

"Director General for the Prevention of Bribery and Corruption" means the Director General for the Prevention of Bribery and Corruption appointed under section 16 of the Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994;".

Addition of the Sixth Schedule in the principal enactment.

4. The principal enactment is hereby amended by the addition immediately after the Fifth Schedule thereof , of the following Schedule:-

"SIXTH SCHEDULE

[section 12A (1)]

Column I	*Column II*
The law	Section and the offence
Penal Code (Chapter 19)	366 - Theft. 386 - Dishonest misappropriation of Property. 387 - Dishonest misappropriation of property possessed by a deceased person at the time of his death. 388 - Criminal breach of trust. 390 - Criminal breach of trust by a carrier. 391 - Criminal breach of trust by a clerk or Servant. 392 - Criminal breach of trust by public servant, or by banker, merchant, or agent. 392A- Criminal breach of a trust by public servant in respect of money or balance of money. 392B- Criminal breach of trust by agent in respect of postal articles. 394 - Dishonestly receiving stolen property. 395 - Habitually dealing in stolen property. 396 - Assisting in concealment of stolen property. 398 - Cheating. 399 - Cheating by personation. 401 - Cheating with knowledge that wrongful loss may be thereby caused to a person whose interest the offender is bound to protect.

	403 - Cheating and dishonestly inducing a delivery of property. 404 - Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors. 405 - Dishonestly or fraudulently preventing from being made available for his creditors a debt or demand due to the offender. 406 - Dishonest or fraudulent execution of deed of transfer containing a false statement of consideration. 407 - Dishonest or fraudulent removal or concealment of property or release of claim. 452 - Forgery. 453 - Making a false document. 455 - Forgery of a record of a Court of Justice or of a public register of births,etc. 456 - Forgery of a valuable security or will. 457 - Forgery of the purpose of cheating. 459 - Using as genuine a forged document. 460 - Making or possessing a counterfeit seal, plate, and etc, with intent to commit a forgery punishable under section 456. 461 - Making or possessing a counterfeit seal, plate and etc. with intent to commit a forgery punishable otherwise. 462 - Having possession of a forged record or valuable security or will, known to be forged, with intent to use it as genuine.

	463 - Counterfeiting a device or mark used for authenticating documents described in section 456 or possessing counterfeit marked material. 464 - Counterfeiting a device or mark used for authenticating documents other than those described in section 456, or possessing counterfeit marked material. 467 - Falsification of accounts. 468 - Possession of any imitation of any currency note, bank note or coin. 100, 101, 101A, 102, 113A, 113B - Conspiracy and Abetment to commit the offences of the Penal Code setout in this Schedule.
Prevention of Money Laundering Act, No. 5 of 2006	3 - Offence of Money Laundering. 4 - An act amounting to an Offence under this section. - Conspiracy and Abetment to commit the offences under the Prevention of Money Laundering Act, No. 5 of 2006 set out in this Schedule.
Bribery Act (Chapter 26)	14 - Bribery of Judicial Officers and Members of Parliament. 15 - Acceptance of gratification by Members of Parliament for interviewing public officers. 16 - Bribery of police officers, peace officers and other public officers. 17 - Bribery for giving assistance or using influence in regard to contracts. 18 - Bribery for procuring withdrawal of tenders.

	19	- Bribery in respect of government business.
	20	- Bribery in connection with payment of claims, appointments, employments, grants, leases, and other benefits.
	21	- Bribery of public officers by persons having dealings with the Government.
	22	- Bribery of member of local authority, or of scheduled institution, or of governing body of scheduled institution, and bribery of officer or employee of local authority or such institution.
	23	- Use of threats or fraud to influence vote of member of local authority, or of scheduled institution, or of governing body of scheduled institution.
	23A	- To own or to have owned property deemed under this section to be property acquired by bribery or property to which property acquired by bribery has or had been converted.
	24	- Accept of gratification.
	25	- Attempt to commit and abetment of an offence under Part II of the Bribery Act.
	70	- Corruption.
		- Conspiracy and Abetment to commit the offences under the Bribery Act, set out in this Schedule.

Offences Against Public Property Act, No. 12 of 1982	3 - Theft of public property. 5 - Dishonest misappropriation, criminal breach of trust, cheating, forgery and falsification of Accounts. - Conspiracy and Abetment to commit the offences under the offences against Public Property Act, set out in this Schedule.
Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005	3 - offences under the Convention on the Suppression of Terrorist Financing Act. - Conspiracy and Abetment to commit the offences under the Convention on the Suppression of Terrorist Financing Act set out in this Schedule.
Banking Act, No. 30 of 1988	Any act constituting an offence under Banking Act.
Registered Stocks and Securities Ordinance (Chapter 420)	Any act constituting an offence under Registered Stocks and Securities Ordinance.
Local Treasury Bills Act (Chapter 417)	Any act constituting an offence under Local Treasury Bills Act.
Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987	Any act constituting an offence under Securities and Exchange Commission of Sri Lanka Act.
Regulation of Insurance Industry Act, No. 43 of 2000	Any act constituting an offence under Regulation of Insurance Industry Act.
Finance Business Act, No.42 of 2011	Any act constituting an offence under Finance Business Act.

Payment Devices and Frauds Act, No. 30 of 2006	Any act constituting an offence under Payment Devices and Frauds Act.
Computer Crime Act, No. 24 of 2007	Any act constituting an offence under Computer Crime Act.
Offences under any law for the time being in force relating to transnational organized crime.".	

Sinhala text to prevail in case of inconsistency.

5. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

PENAL CODE (AMENDMENT) ACT, No. 10 OF 2018

[Certified on 21st of May, 2018]

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This Act can be downloaded from www.documents.gov.lk

[Certified on 21st of May, 2018]

L. D.—O. 33/2016.

AN ACT TO AMEND THE PENAL CODE (CHAPTER 19)

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

Short title.

1. This Act may be cited as the Penal Code (Amendment) Act, No. 10 of 2018.

Amendment of section 75 of Chapter 19.

2. Section 75 of the Penal Code (Chapter 19) (hereinafter referred to as the "principal enactment") is hereby amended by the substitution—

(1) for the words "eight years" of the words "twelve years"; and

(2) in the marginal note thereof, for the words "eight years", of the words "twelve years".

Amendment of section 76 of the principal enactment.

3. Section 76 of the principal enactment is hereby amended by the substitution—

(1) for the words "above eight years of age and under twelve," of the words "above twelve years of age and under fourteen"; and

(2) in the marginal note thereof, for the words "above eight and under twelve" of the words "above twelve and under fourteen".

Sinhala text to prevail in case of inconsistency.

4. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

CODE OF CRIMINAL PROCEDURE (AMENDMENT) ACT, No. 11 OF 2018

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This Act can be downloaded from www.documents.gov.lk

Code of Criminal Procedure (Amendment) Act, No. 11 of 2018

[Certified on 21st of May, 2018]

L. D.—O. 42/2016.

AN ACT TO AMEND THE CODE OF CRIMINAL PROCEDURE ACT, NO. 15 OF 1979

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:–

Short title.

1. This Act may be cited as the Code of Criminal Procedure (Amendment) Act, No. 11 of 2018.

Insertion of new section 122A in the Act, No. 15 of 1979.

2. The following new section is hereby inserted immediately after section 122 of the Code of Criminal Procedure Act, No. 15 of 1979 and shall have effect as section 122A of that Act–

"Medical examination in case of an offence alleged to have been committed by a child of, or above twelve years of age and under fourteen.

122A. (1) The officer in charge of the police station who is investigating an offence alleged to have been committed by a child of, or above, twelve years of age and under fourteen years, shall, with the consent of the parent or guardian of such child, cause the child to be examined by a multidisciplinary team comprising of the experts specified in subsection (2), in order to obtain a report whether such child has attained sufficient maturity of understanding which enables the Magistrate having jurisdiction in the case to decide–

(*a*) the degree of responsibility of such child, taking into consideration the nature and consequences of the alleged offence; and

(*b*) whether the child is in need of any therapeutic intervention.

2—PL 010735—2,977 (04/2018)

(2) The multidisciplinary team referred to in subsection (1) shall comprise of —

(*a*) the judicial medical officer of the relevant district;

(*b*) a pediatric or adolescent psychiatrist; and

(*c*) a psychologist.

(3) Where such parent or guardian of the child does not consent to the child being so examined, the officer in charge of the police station shall apply to the Magistrate having jurisdiction in the case, for an order authorizing such multidisciplinary team to examine such child.

(4) In any event where the judicial medical officer of the relevant district is not available, the officer in charge of the police station who is investigating the offence shall obtain the assistance of a judicial medical officer of any other district to obtain the report referred to in subsection (1).

(5) Such multidisciplinary team shall submit its report to the officer in charge of the police station who shall submit such report to the Magistrate, in order to assist him to form his opinion as referred to in subsection (1) and to make his decision, taking into consideration the provisions of section 76 of the Penal Code.

(6) The child referred to in subsection (1) shall be subject to rehabilitation in the

prescribed manner under the supervision and assessment of a pediatric psychiatrist and a psychologist.".

Sinhala text to prevail in case of inconsistency.

3. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

CIVIL AVIATION (AMENDMENT) ACT, No. 12 OF 2018

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This Act can be downloaded from www.documents.gov.lk

Civil Aviation (Amendment) Act, No. 12 of 2018

[Certified on 21st of May, 2018]

L.D.—O. 7/2017

AN ACT TO AMEND THE CIVIL AVIATION ACT, NO. 14 OF 2010

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

Short title.

1. This Act may be cited as the Civil Aviation (Amendment) Act, No. 12 of 2018.

Insertion of new section 18A in the Civil Aviation Act, No. 14 of 2010.

2. The following new section is hereby inserted immediately after section 18, of the Civil Aviation Act, No. 14 of 2010 and shall have effect as section 18A of that enactment:—

"Offence of touting within an aerodrome.

18A. (1) Every person who is found by an employee providing Aviation Security Services of the Service Provider appointed under subsection (3) of section 6 or a police officer on duty, to be within the premises of the aerodrome without being duly authorized to do so and touting for any incoming or outgoing passenger, shall be guilty of an offence and may be arrested by the police officer or apprehended and handed over by the employee providing Aviation Security Services of the Service Provider to the police officer, as the case may be:

Provided however, rendering any service such as arranging transport, accommodation, loading or unloading any baggage or other articles into or from any vehicle for any incoming or outgoing passenger by any member of the family or friend of such passenger or being authorized in that behalf by the Service Provider, a concierge or a representative or agent of the hospitality trade, shall not constitute an offence.

2—PL 010705 — 2,977 (04//2018)

(2) Every person arrested by or apprehended and handed over to the police officer in pursuance of subsection (1), shall be brought by the police officer, as soon as practicable, before the Magistrate having jurisdiction over the area in which the offence was alleged to have been committed.

(3) Notwithstanding the provisions of subsections (2) and (3) of section 107, prosecution against any person for any offence under this section may be commenced and on conviction, he shall be liable to a fine not exceeding twenty five thousand rupees or imprisonment not exceeding six months or both such fine and imprisonment.

(4) For the purpose of this section,-

"hospitality trade" means, any business activity or service related or incidental to the tourism industry; and

"touting" means, canvassing with a view to arranging transport or accommodation for an incoming or outgoing passenger or loading or unloading his baggage or other articles into or from vehicles or offering any similar service, for a valuable consideration or otherwise, without being duly authorized to do so.".

Sinhala text to prevail in case of inconsistency.

3. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

SRI LANKA TEA BOARD (AMENDMENT) ACT, No. 13 OF 2018

[Certified on 05th of June, 2018]

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This Act can be downloaded from www.documents.gov.lk

Sri Lanka Tea Board (Amendment)
Act, No. 13 of 2018

[Certified on 05th of June, 2018]

L.D.—O. 27/2017

AN ACT TO AMEND THE SRI LANKA TEA BOARD LAW, NO. 14 OF 1975

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

Short title.

1. This Act may be cited as the Sri Lanka Tea Board (Amendment) Act, No. 13 of 2018.

Insertion of new section 6A in Law No. 14 of 1975.

2. The following new section is hereby inserted immediately after section 6 of the Sri Lanka Tea Board Law, No. 14 of 1975 (hereinafter referred to as the "principal enactment") and shall have effect as section 6A of that enactment:—

"Working Director of the Board.

6A. (1) The Minister may appoint to the Board, a Working Director other than the members referred to in section 6 from among persons who have had wide experience in the area of tea industry.

(2) The Working Director shall–

(*a*) be a full time officer;

(*b*) assist the Chairman in the promotion of the development of the tea industry within and outside Sri Lanka; and

(*c*) assist the Chairman in the administration, management and operation of the affairs of the Board including the co-ordination of the activities of the Board.

(3) The Minister may remove the Working Director from office after assigning reasons therefor.

(4) The term of office of the Working Director shall be for a period of three years from the date of appointment and he shall be eligible for reappointment unless he has been removed from office as referred to in subsection (3). Such reappointment shall be for not more than one further term, whether consequent or not.

(5) The office of the Working Director shall become vacant upon death, removal from office under subsection (3) or resignation by letter in that behalf addressed to the Minister.

(6) Where the Working Director by reason of ill health, infirmity or absence from Sri Lanka is temporarily unable to perform the duties of his office, the Minister shall appoint another member of the Board to act in his place.

(7) The Working Director shall be paid such remuneration as may be specified in the relevant Public Enterprise Circular issued by the Ministry of Finance.".

Sinhala text to prevail in case of inconsistency.

3. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

SHOP AND OFFICE EMPLOYEES (REGULATION OF EMPLOYMENT AND REMUNERATION) (AMENDMENT) ACT, No. 14 OF 2018

[Certified on 18th of June, 2018]

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This Act can be downloaded from www.documents.gov.lk

Shop and Office Employees
(Regulation of Employment and Remuneration)
(Amendment) Act, No. 14 of 2018

[Certified on 18th of June, 2018]

L.D.—O. 29/2009.

AN ACT TO AMEND THE SHOP AND OFFICE EMPLOYEES (REGULATION OF EMPLOYMENT AND REMUNERATION) ACT (CHAPTER 129)

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

Short title.

1. This Act may be cited as the Shop and Office Employees (Regulation of Employment and Remuneration) (Amendment) Act, No. 14 of 2018.

Amendment of section 18 of Chapter 129.

2. Section 18 of the Shop and Office Employees (Regulation of Employment and Remuneration) Act (Chapter 129) is hereby amended, as follows:—

(1) in section 18B thereof—

(*a*) by the repeal of subsection (2) of that section and the substitution therefor of the following subsection:—

"(2) A female employee to whom this Part applies, shall, if she is confined, be entitled to take leave for a period of:–

(*a*) seventy days commencing on the date of her confinement, if the confinement results in the delivery of live child; and

(*b*) twenty eight days commencing on the date of her confinement, if the confinement does not result in the delivery of a live child,

and the employer shall allow such leave.";

(*b*) by the repeal of subsection (4) of that section.

(2) by the insertion immediately after section 18H of that section which shall have effect as section 18I thereof:—

"Provision of nursing intervals for nursing mothers.

18I. The employer of a female employee in any shop or office shall, if she is nursing a child under one year of age, allow her, in any period of nine hours, two nursing intervals at such times as she may require. Each interval shall, where a creche or other suitable place is provided by such employer to such female employee for nursing such child, be not less than thirty minutes, and where no creche or other suitable place is so provided, be not less than one hour, and shall be in addition to any interval provided to such female employee for meals or rest under any written law and be regarded, for the purposes of her employment, as time during which she has worked in her employment.".

Sinhala text to prevail in case of inconsistency.

3. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

MATERNITY BENEFITS (AMENDMENT) ACT, No. 15 OF 2018

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This Act can be downloaded from www.documents.gov.lk

Maternity Benefits (Amendment)
Act, No. 15 of 2018

[Certified on 18th of June, 2018]

L.D.—O. 23/2015.

AN ACT TO AMEND THE MATERNITY BENEFITS ORDINANCE (CHAPTER 140)

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Short title.

1. This Act may be cited as the Maternity Benefits (Amendment) Act, No. 15 of 2018.

Amendment of section 3 of Chapter 140.

2. Section 3 of the Maternity Benefits Ordinance (hereinafter referred to as the "principal enactment") is hereby amended by the repealed of subsection (1) of that section and substitution therefor, of the following subsection:—

"(1) The period for which any woman worker shall be entitled to the payment of maternity benefits shall be—

(*a*) twelve weeks, that is to say two weeks up to and including the day of her confinement and ten weeks immediately following that day, if the confinement results in the issue of a live child; and

(*b*) six weeks, that is to say two weeks up to and including the day of her confinement and four weeks immediately following that day, if the confinement does not result in the issue of a live child:

Provided however, that where such woman worker has worked in her employment for any number of days during the aforesaid period of two weeks referred to in paragraphs (*a*) and (*b*) she shall be entitled to the

payment of maternity benefits for such number of days immediately after her confinement commencing from the day immediately after the date on which the aforesaid period of ten weeks or four weeks as the case may be, ends.".

Replacement of section 5 of the principal enactment.

3. Section 5 of the principal enactment is hereby repealed and the substitution therefor, of the following section:—

"Liablity of employer and rate of maternity benefits.

5. (1) The employer of a woman worker shall pay to such woman worker maternity benefits at the prescribed rate—

(*a*) for the entirety of the period of two weeks immediately preceding the confinement and of the period of ten weeks immediately following her confinement if such confinement results in the issue of a live child; and

(*b*) for the entirety of the period of two weeks immediately preceding the confinement and of the period of four weeks immediately following her confinement, if the confinement does not result in the issue of a live child:

Provided however, where such woman worker has worked in her employment on any number of days during the aforesaid period of two weeks referred to in paragraphs (*a*) and (*b*), she shall be entitled to maternity benefits for such number of days after her confinement.

(2) The periods in respect of which payments of maternity benefits shall be made under this section shall be in addition to any holiday or leave to which she is entitled.".

Replacement of section 6 of the principal enactment.

4. Section 6 of the principal enactment is hereby repealed and the substitution therefor, of the following section:—

"Woman worker not to claim benefits, in respect of the same confinement, from more than one employer.

6. Nothing in the provisions of section 5 shall be deemed to entitle any woman worker to claim the maternity benefits referred to in this Ordinance from more than one employer in respect of the same confinement.".

Amendment of section 7 of the principal enactment.

5. Section 7 of the principal enactment is hereby amended as follows:—

(1) by the repeal of subsection (2) of that section and substitution therefor, of the following subsection:—

"(2) A woman worker who has been confined shall, within one week of her confinement give notice to her employer of the date on which she was confined and for the purpose of ascertaining the number of days, she will be permitted to absent herself from the employment specify whether the confinement resulted in the issue of a live child or not;";and

(2) by the repeal of subsection (4) of that section and the substitution therefor, of the following subsection:—

"(4) The employer shall on receipt of the notice from a woman worker under subsection (1) or subsection (2), permit that woman worker to absent herself from employment—

(*a*) for two weeks immediately preceding, and ten weeks immediately following her

confinement if the confinement results in the issue of a live child; and

(*b*) for two weeks immediately preceding and four weeks immediately following her confinement, if the confinement does not result in the issue of a live child:

Provided however, that where such woman worker has worked in her employment for any number of days during the aforesaid period of two weeks referred to in paragraphs (*a*) and (*b*), she shall be permitted to absent herself from employment for such number of days after her confinement commencing from the day immediately after the date on which the aforesaid period of ten weeks or four weeks, as the case may be end.";

(3) by the insertion immediately after subsection (4) of that section of the following new subsection:—

"(5) The leave to which a woman worker is entitled under this Act in consequence of any confinement shall be in addition to any holiday or leave to which she is entitled under any other law or regulation.".

Amendment of section 8 of the principal enactment.

6. Section 8 of the principal enactment is hereby amended, by the substitution for the words "notice of her confinement to her employer under section 7(2)" of the following words:—

"notice of her confinement to her employer under section 7(2):

Provided however, that for the purpose of ascertaining the period for which such woman

worker is entitled to the payment of maternity benefit, she shall inform her employer of whether or not her confinement resulted in the issue of a live child or not.".

Amendment of section 11 of the principal enactment.

7. Section 11 of the principal enactment is hereby amended, in subsection (1) of that section by the substitution for the words "depriving her of any maternity benefit or alternative maternity benefits to which", of the words, "depriving her of any maternity benefits to which".

Amendment of section 15 of the principal enactment.

8. Section 15 of the principal enactment is hereby amended, in subsection (2) of that section, by the repeal of paragraph (*f*) thereof.

Sinhala text to prevail in case of inconsistency.

9. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

NATIONAL DEFENCE FUND (AMENDMENT) ACT, No. 16 OF 2018

[Certified on 22nd of June, 2018]

Printed on the Order of Government

Published as a Supplement to Part II of the **Gazette of the Democratic Socialist Republic of Sri Lanka** of June 22, 2018

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This Act can be downloaded from www.documents.gov.lk

National Defence Fund (Amendment)
Act, No. 16 of 2018

[Certified on 22nd of June, 2018]

L.D.—O. 34/2017

AN ACT TO AMEND THE NATIONAL DEFENCE FUND ACT, NO. 9 OF 1985

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

Short title.

1. This Act may be cited as the National Defence Fund (Amendment) Act, No. 16 of 2018.

Amendment of section 3 of Act, No. 9 of 1985.

2. Section 3 of National Defence Fund Act, No. 9 of 1985 (hereinafter referred to as the "principal enactment") is hereby amended as follows:—

(1) by the repeal of paragraphs (*a*) and (*b*) of subsection (2) of that section and substitution therefor of the following paragraph:—

"(*a*) the following *ex-officio* members:—

(i) the Secretary to the President of the Republic;

(ii) the Secretary to the Ministry of the Minister assigned the subject of Defence; and" ;

(2) by relettering the paragraph (*c*) of subsection (2) of that section as paragraph (*b*); and

(3) by the substitution in subsections (3) and (4), for the words and figures "paragraph (*c*) of subsection (2)", of the words and figures "paragraph (*b*) of subsection (2)".

Amendment of section 6 of the principal enactment.

3. Section 6 of the principal enactment is hereby amended by the substitution for the words "The President", of the words "The Secretary to the President of the Republic".

Amendment of section 13 of the principal enactment.

4. Section 13 of the principal enactment is hereby amended by the substitution for the word "Finance,", of the word "Defence,".

Sinhala text to prevail in case of inconsistency.

5. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

GENERAL SIR JOHN KOTELAWALA DEFENCE UNIVERSITY (SPECIAL PROVISIONS) ACT, No. 17 OF 2018

[Certified on 28th of June, 2018]

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This Act can be downloaded from www.documents.gov.lk

General Sir John Kotelawala Defence University (Special Provisions) Act, No. 17 of 2018

[Certified on 28th of June, 2018]

L.D.—O. 27/2018

AN ACT TO MAKE PROVISIONS FOR THE ABSORPTION OF STUDENTS REGISTERED WITH THE SOUTH ASIAN INSTITUTE OF TECHNOLOGY AND MEDICINE TO THE GENERAL SIR JOHN KOTELAWALA DEFENCE UNIVERSITY ESTABLISHED UNDER THE SIR JOHN KOTELAWALA DEFENCE UNIVERSITY ACT, NO. 68 OF 1981 AS A MATTER OF NATIONAL INTEREST AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Short title and date of operation.

1. This Act may be cited as the General Sir John Kotelawala Defence University (Special Provisions) Act, No. 17 of 2018 and shall come into operation on such date as the Minister may appoint by Order published in the *Gazette* (hereinafter referred to as the "appointed date").

Absorption of students of South Asian Institute of Technology and Medicine to the University.

2. The General Sir John Kotelawala Defence University (hereinafter referred to as the "University") shall have the power -

(*a*) to absorb those students who have obtained basic qualifications from among the students who have registered with the South Asian Institute of Technology and Medicine (hereinafter referred to as the "SAITM") between the period commencing from the fifteenth day of September Two Thousand Nine and ending in the fifteenth day of May Two Thousand Seventeen, to the University to follow the study programme leading to the award of the MBBS Degree (KDU);

(*b*) to award the MBBS Degree (KDU) to students absorbed to the University under paragraph (*a*), who would successfully complete the study programme leading to the award of the MBBS Degree (KDU);

(*c*) to award to those students having basic qualifications and have completed the study programme leading to the award of the MBBS Degree at the SAITM on or before the appointed date, the MBBS Degree (KDU) on such terms as may be determined by the Board of Management of the University in respect thereof; and

(*d*) to decide on the criteria to be employed by the Board of Management of the University to determine the conditions subject to which the students specified in paragraphs (*a*) and (*c*) shall be awarded the MBBS Degree (KDU).

Medical Faculty of SAITM cease to be in operation.

3. Notwithstanding the provisions of any other written law, immediately upon the completion of the absorption of students specified in section 2, the Medical Faculty of SAITM shall cease to be eligible to award the MBBS Degree and shall cease to be in operation.

Interpretation.

4. In this Act —

"basic qualifications" mean, minimum of 'S' grade (simple) pass in Chemistry, Physics and Biology at the G.C.E. (Advanced Level) Examination conducted by the Examinations Department of the Ministry of Education of Sri Lanka or an equivalent foreign qualification including equivalent qualifications of students who have offered the subjects Chemistry, Mathematics and Biology;

"MBBS Degree" means the Degree of Bachelor of Medicine and Bachelor of Surgery.

Sinhala text to prevail in case of any inconsistency.

5. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "PRAKASHANA PIYASA", DEPARTMENT OF GOVERNMENT PRINTING, NO. 118, DR. DANISTER DE SILVA MAWATHA, COLOMBO 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

1990 SUWASERIYA FOUNDATION ACT, No. 18 OF 2018

[Certified on 04th of July, 2018]

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This Act can be downloaded from www.documents.gov.lk

1990 Suwaseriya Foundation
Act, No. 18 of 2018

[Certified on 04th of July, 2018]

L.D.—O. 54/2017

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE 1990 SUWASERIYA FOUNDATION; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Preamble.

WHEREAS the Government having identified pre-hospital care ambulance services as an essential service in enhancing the standard of living of pepole in Sri Lanka by delivering comprehensive, speedy, reliable and quality pre-hospital care services, established with a grant from the Government of India a pre-hospital care ambulance service free of charge initially in the western and southern provinces:

AND WHEREAS it has now become necessary to expand the pre-hospital care ambulance service to cover the whole island and to ensure the smooth operation of such service in a sustainable manner:

AND WHEREAS it has become necessary to establish a Foundation for effectively carrying out pre-hospital care ambulance services free of charge to any person and to specify the powers, functions and duties of such Foundation:

NOW THEREFORE be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

Short title and date of operation.

1. This Act may be cited as the 1990 Suwaseriya Foundation Act, No. 18 of 2018, and shall come into operation on such date as the President may appoint by Order published in the *Gazette* (hereinafter referred to as the "appointed date").

PART I

ESTABLISHMENT OF THE 1990 SUWASERIYA FOUNDATION

Establishment of the 1990 Suwaseriya Foundation.

2. (1) There shall be established a Foundation which shall be called the 1990 Suwaseriya Foundation (hereinafter referred to as the "Foundation").

(2) The Foundation shall by the name assigned to it, by subsection (1) be a body corporate, with perpetual succession and a common seal and may sue and be sued in such name.

Objects of the Foundation.

3. The objects of the Foundation shall be to—

(*a*) provide pre-hospital care ambulance services and emergency response services free of charge to any person; and

(*b*) provide immediate and effective pre-hospital care free of charge in a safe and clinical working environment until a person reaches the nearest healthcare provider.

Powers, functions and duties of the Foundation.

4. The powers, functions and duties of the Foundation shall be to—

(*a*) provide ambulance services, emergency response services and life-saving pre-hospital care in a safe and clinical working environment to any person free of any charge;

(*b*) provide such other services as may be determined by the Foundation to any person including training, equipment supply and managing other ambulance services provided by non-profit organizations free of charge upon a management fee as may be determined by the Foundation in consultation with the Minister;

(*c*) hold, take, give on lease, hire, sell, mortgage, grant, assign, exchange or otherwise dispose of the movable or immovable property belonging to the Foundation;

(*d*) receive grants, gifts or donation in cash or kind;

(*e*) enter into and execute, whether directly or through any officer or agent authorized in that behalf by the Board, all such contracts or agreements as may be necessary, for the discharge of the functions of the Foundation;

(*f*) open and maintain any account with any bank as it may think appropriate, and such account shall be operated in accordance with prevailing applicable written laws;

(*g*) manage, control, administer and operate the Fund of the Foundation; and

(*h*) do all such other acts which may be incidental or conducive to, the attainment of the objects of this Act or the exercise or discharge of powers and duties assigned to the Foundation under this Act.

Powers of the Foundation to hold property.

5. The Foundation shall be capable in law to take and hold property movable or immovable which may become vested in it by virtue of any purchase, grant, gift, testamentary disposition, bequest, or otherwise and all such property shall be held by the Foundation for the purposes of this Act.

PART II

ADMINISTRATION AND MANAGEMENT OF AFFAIRS

Administration of the Foundation vested in Board.

6. (1) The administration and management of the affairs of the Foundation shall be vested in a Board of Management (hereinafter reffered to as the "Board").

(2) The Board shall, for the purpose of administering the affairs of the Foundation, exercise, discharge and perform the powers, functions and duties conferred or assigned to or imposed on the Foundation by this Act.

Constitution of the Board.

7. The Board shall consist of—

(*a*) the following *ex-officio* members, namely—

(i) the Secretary to the Ministry of the Minister assigned the subject of Finance or his representative;

(ii) the Secretary to the Ministry of the Minister assigned the subject of Health or his representative;

(iii) the Inspector General of Police or his representative; and

(*b*) four other members appointed by the President who shall possess academic or professional qualifications and have experience in the fields of medical science, pharmaceuticals medical technology, finance, management, administration, or law (hereinafter referred to as the "appointed members").

Chairman of the Board.

8. (1) The President shall appoint one of the appointed members to act as Chairman of the Board.

(2) The Chairman may resign from his office by letter addressed to the President and such resignation shall be effective from the date on which it is accepted by the President.

(3) The President may for reasons assigned remove the Chairman from the office of Chairman.

(4) Subject to the provisions of subsections (2) and (3), the term of office of the Chairman shall be the period of his membership of the Board.

(5) Where the Chairman is temporarily unable to perform the duties of his office due to ill health, other infirmity, absence

from Sri Lanka or any other cause, the President may appoint any other appointed member to act as Chairman in addition to his normal duties as an appointed member.

Disqualifications from being a member of the Board.

9. A person shall be disqualified from being appointed or continuing as a member of the Board, if he—

(*a*) is or becomes a member of Parliament or of any Provincial Council or of any local authority;

(*b*) is not or ceases to be a citizen of Sri Lanka;

(*c*) is under any law in force in Sri Lanka or any other country found or declared to be of unsound mind;

(*d*) is a person who having been declared insolvent or bankrupt under any law in force in Sri Lanka and is an undischarged insolvent or bankrupt;

(*e*) is serving or has served a sentence of imprisonment imposed by any court in Sri Lanka or in any other country;

(*f*) holds or enjoys any right or benefit under any contract made by or on behalf of the Foundation; or

(*g*) has any financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member of the Board.

Term of office of members.

10. Every appointed member shall, unless he earlier vacates office by resignation, death or removal, hold office for a period of three years from the date of his appointment and such member other than a member who is removed shall be eligible for re-appointment.

Removal and resignation of members.

11. (1) Every appointed member may at any time resign from his office by a letter to that effect, addressed to the President, and such resignation shall be effective from the date on which it is accepted by the President in writing.

(2) Where any appointed member by reason of illness, infirmity or absence from Sri Lanka is temporarily unable to discharge the functions of his office, the President may, having regard to the provisions of paragraph (*b*) of section 7, appoint some other person to act in his place.

(3) The President may for the reasons assigned, remove an appointed member from office.

(4) Where an appointed member dies, resigns or is removed from office, the President may having regard to the provisions of paragraph (*b*) of section 7, appoint another person in his place and the person so appointed shall hold office for the unexpired period of the term of office of the member whom he succeeds.

Quorum and meetings of the Board.

12. (1) The meetings of the Board shall be held at least once in every month and the quorum for a meeting of the Board shall be four members.

(2) The Chairman shall preside at every meeting of the Board. In the absence of the Chairman from any meeting of the Board a member elected by the members present shall preside at such meeting.

(3) All questions for decision at any meeting of the Board shall be decided by the vote of the majority of members present at such meeting. In the case of an equality of votes the Chairman shall, in addition to his vote have a casting vote.

(4) Subject to the preceding provisions of this section, the Board may regulate the procedure in relation to the meetings of the Board and the transaction of business at such meetings.

Acts or proceedings of the Board deemed not to be invalid by reason of any vacancy.

13. The Board may act notwithstanding any vacancy among its members and any act or proceeding of the Board shall not be or deemed to be invalid by reason only of the existence of any vacancy among its members or any defect in the appointment of a member thereof.

Remuneration of the members of the Board.

14. The members of the Board shall be paid remuneration in such manner and at such rates as may be determined by the President, with the concurrence of the Minister assigned the subject of Finance.

Seal of the Foundation.

15. (1) The seal of the Foundation shall be in the custody of such person as the Board may decide from time to time.

(2) The seal of the Foundation may be altered in such manner as may be determined by the Board.

(3) The seal of the Foundation shall not be affixed to any instrument or doucment except with the sanction of the Board and in the peresence of the Chairman and one other member of the Board who shall sign the instrument or document in token of their presence:

Provided however, where the Chairman is unable to be present at the time when seal of the Foundation is affixed to any instrument or document, any other member of the Board authorized in writing by the Chairman on that behalf shall be competent to sign such instrument or document in accordance with the preceding provision of this subsection.

(4) The Foundation shall maintain a register of the instruments and documents to which the seal of the Foundation has been affixed.

PART III

CHIEF EXECUTIVE OFFICER AND THE STAFF OF THE FOUNDATION

Appointment of the Chief Executive Officer of the Foundation.

16. (1) The Board shall, in consultation with the Minister and having regard to the qualification and scheme of recruitment specified under subsection (2) appoint to the staff of the Foundation a Chief Executive Officer (in this Act referred to as the "CEO").

(2) The Board shall, with the concurrence of the Minister specify qualification and the scheme of recruitment for the post of CEO.

(3) The CEO shall subject to the general directions and supervision of the Board:–

(*a*) be charged with the administration of the affairs of the Foundation including the administration and control of the staff;

(*b*) be responsible for the execution of all decisions of the Board; and

(*c*) carry out all such functions as may be assigned to him by the Board.

(4) The CEO shall be entitled to be present and speak at any meeting of the Board, but shall not be entitled to vote at such meeting.

(5) The CEO may delegate in writing to any officer of the Foundation, any of his powers or functions and the officer to whom any such power or function is delegated shall exercise or perform them subject to the directions of the CEO.

(6) The Board may remove the CEO from office:—

(*a*) if he becomes permanently incapable of performing his duties;

(*b*) if he had done any act which, in the opinion of the Board, is of a fraudulent or illegal character or is prejudicial to the interests of the Foundation; or

(*c*) has failed to comply with any directions issued by the Foundation.

(7) The CEO shall be paid such remuneration as may be determined by the Board.

Staff of the Foundation.

17. (1) Subject to the provisions of this Act, the Foundation may employ or appoint such employees as may be necessary for the efficient exercise, discharge and perform of its powers, functions and duties.

(2) The Board shall have the power subject to the provisions of the Act to—

(*a*) exercise disciplinary control over and dismiss the officers and employees of the Foundation;

(*b*) determine the terms and conditions of service of the officers and employees of the Foundation; and

(*c*) fix the rates at which such officers and employees shall be remunerated with the concurrence of the Minister.

(3) All employees of the Foundation shall, within one month of employment, declare in writing to the Foundation of their personal direct or indirect interest to the affairs and transactions of the Foundation including those of their close relations or, concerns in which such employee has a substantial interest.

PART IV

FINANCE

Fund of the Foundation.

18. (1) The Foundation shall have its own Fund (hereinafter referred to as "the Fund").

(2) All monyes lying to the credit of GVK EMRI Lanka (Private) Limited (in this Act referred to as the "GEL"), on the day immediately preceding the appointed date shall be transferred to the Fund with effect from the appointed date.

(3) There shall be credited to the Fund:—

(*a*) all sums of money as may be voted from time to time by Parliament, for the use of the Foundation;

(*b*) all such sums as received by the Foundation in the exercise and discharge of its powers, functions and duties under this Act;

(*c*) all such sums of money as may be received by the Foundation by way of income, fees, charges, grants, gifts or donations from any source whatsoever whether within or outside Sri Lanka.

(4) There shall be paid out of the Fund:—

(*a*) all such sums of money as are required to defray any expenditure incurred by the Foundation in the exercise, performance and discharge of its powers, functions and duties under this Act; and

(*b*) all such sums of money as are required to be paid out of the Fund, by or under, this Act.

(5) The Board shall make rules regarding payment of moneys out of the Fund.

Financial year and audit of accounts.

19. (1) The financial year of the Foundation shall be the calendar year.

(2) The Board shall cause proper books of accounts to be kept of the income and expenditure, assets and liabilities and all other transactions of the Foundation.

(3) The provisions of Article 154 of the Consititution relating to the audit of the accounts of public corporations shall apply to the audit of accounts of the Foundation.

(4) The Board shall submit the audited statement of accounts together with the auditor's report to the Minister within one hundred and fifty days of the end of the financial year to which such report relates. The Minister shall place such statement and the report before Parliament within two months of the receipt thereof.

Defence in criminal or civil proceedings.

20. It shall be a defence in any criminal or civil proceeding for anything done or omitted to be done by—

(*a*) a member of the Board;

(*b*) any employee or manager of the Foundation;

if he proves that he exercised due diligence and reasonable care and acted in good faith in the course of or in connection with the discharge or purported discharge of his obligation under this Act or any regulation, rule, order or directive issued or made thereunder.

Expenses incurred to be paid out of the Fund.

21. Any expense incurred by a member of the Board or any other officer or employee or agent of the Foundation in any suit or prosecution brought against the Foundation or such person before any Court, in respect of any act which is done by the Foundation or such person under this Act or on the direction of the Foundation, shall, if the Court holds that

such act was done in good faith, be paid out of the Fund, and any cost paid or recovered by the Foundation or any such person referred to in this section, shall be credited to the Fund.

PART V

GENERAL

Foundation deemed to be scheduled institution within the meaning of the Bribery Act.

22. The Foundation shall be deemed to be a Scheduled Institution within the meaning of the Bribery Act (Chapter 26) and the provision of the Act shall be construed accordingly.

Members, Officers and employees of the Foundation deemed to be public servants.

23. All members of the Board, the CEO, and all officers and employees of the Foundation shall be deemed to be public servants within the meaning and for the purposes of the Penal Code (Chapter 19).

Directions of the Minister.

24. The Minister may from time to time issue to the Board general or special directions as to the exercise, performance and discharge of the powers, duties and functions of the Board.

Rules.

25. (1) Subject to the provisions to of this Act, the Foundation may make rules in respect of all or any of the following matters:—

(*a*) in respect of all matters for which rules are authorized or required to be made under this Act;

(*b*) the meetings of the Board and the procedure to be followed at such meeting;

(*c*) in respect of the appoinment, promotion, remuneration and disciplinary control of an employee and the grant of leave and other emoluments to employees;

(*d*) in respect of the manner in which services, emergency response services and pre-hospital care shall be provided under this Act; and

(*e*) any other matter connected with the affairs of the Foundation.

(2) Every rule made by the Foundation shall be approved by the Minister and be published in the *Gazette* and shall come into operation on the date of its publication or on such later date as may be specified therein.

Savings.

26. Notwithstanding anything to the contrary in any other written law:–

(*a*) all movable and immovable property of the GEL including the ambulances and medical equipment purchased under the grant from India maintained by the Ministry of Health for the purpose of GEL on the day immediately preceding the appointed date shall on and after the appointed date be deemed to be movable and immovable property of the Foundation;

(*b*) the employees, servants and agents of the GEL holding office on the day immediately preceding the appointed date shall on and after the appointed date be deemed to be the employees, servants and agents of the Foundation and such employees, servants and agents shall continue to hold office in the Foundation on the same terms and conditions enjoyed by them under the GEL immediately preceding the appointed date;

(*c*) all contracts, deeds, bonds, agreements, guarantees, powers of attorney, grants of legal representation and other instruments of whatever nature of the GEL

subsisting and having effect on the day immediately preceding the appointed date and to which the GEL is a party or which are in favour of the GEL on and after the appointed date be deemed to be contracts, deeds, bonds, agreements, guarantees, powers of attorney, grants of legal representation and other instruments entered into by or granted in favour of the Foundation;

(*d*) unless specifically revoked or substituted in the manner provided for in any other law, all approvals or licences granted to the GEL by any regulatory body or authority, Provincial Council, or local authority subsisting or having effect on the day immediately preceding the appointed date shall on and after the appointed date be deemed to be approvals or licences granted to the Foundation;

(*e*) any account maintained between the GEL and any other person in or outside Sri Lanka including the Government of Sri Lanka, its departments and statutory bodies on the day immediately preceding the appointed date, whether it be an asset or liability of the GEL shall on and after the appointed date be deemed to be an account between the Foundation and such other person with the same rights and subject to the same obligations and incidents including rights of setoff as would have been applicable thereto if the account between the GEL and such other person had continued and so that any instruction, order, direction, mandate or authority given by such other person in relation to such account and subsisting on the day immediately preceding the appointed date shall, unless and until revoked or cancelled, apply to and have effect in relation to, the account between the Foundation and such other person;

(*f*) all applications, actions, proceedings or appeals of whatever nature instituted under the provisions of any law by or against the GEL and pending on the day immediately preceding the appointed date shall on and after the appointed date be deemed to be applications, actions, proceedings or appeals instituted by or against the Foundation and may be continued accordingly;

(*g*) any pension fund, gratuity fund or unfunded liability in respect of a pension, gratuity or other liability relating to post employment benefit to any employee of the GEL and existing on the day immediately preceding the appointed date shall on and after the appointed date with the concurrence of the Minister assigned the subject of Finance be deemed, to be a pension fund, gratuity fund or such liability as the case may be, of the Foundation in respect of such employee;

(*h*) where the GEL on the day immediately preceding the appointed date was a contributor to any provident fund approved by the Commissioner of Labour for the benefit of its employees, then the Foundation shall on and after the appointed date be deemed, to be the contributor to such provident fund in respect of such employees;

(*i*) all tax credits, refunds, losses, concessions, reliefs, benefits and liabilities of the GEL subsisting on the day immediately precending the appointed date shall on and after the appointed date be deemed to be tax credits, refunds, losses, concessions, reliefs, benefits and liabilities of the Foundation;

(*j*) all judgments, decrees or orders entered in favour of, or against the GEL by any Court in any action or proceeding shall on and after the appointed date be deemed to be judgment, decrees or orders entered in favour of, or against the Foundation; and

(*k*) all rights to intellectual property including trademarks, patents and software subsisting in favour of the GEL on the day immediately preceding the appointed date shall on and after the appointed date be deemed to be such rights in favour of the Foundation.

Interpretation.

27. In this Act, unless the context otherwise requires—

"close relation" means spouse or dependent child;

"GVK EMRI Lanka (Private) Limited" means the company incorporated under the provisions of the Companies Act, No. 7 of 2007 bearing company incorporation No. PV 111132;

"healthcare provider" includes 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, 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;

"Minister" means the Minister assigned the subject of the Suwaseriya Foundation;

"pre-hospital care" includes first aid, emergency care or treatment given to a person suffering from any sickness, injury or infirmity until he reaches a health care provider;

"President" means the President of the Democratic Socialist Republic of Sri Lanka;

"substantial interest" means—

(*a*) in relation to a company, the holding of a beneficial interest by another company or an individual or his relative, whether singly or taken together, in the shares thereof, the paid up value of which exceeds ten *per centum* of the paid up capital of the company or the existence of a guarantee or indemnity for a sum not less than ten *per centum* of the paid up capital given by an individual or his relative or by another company on behalf of such company;

(*b*) in relation to a firm, the beneficial interest held therein by an individual or his relative, whether singly or taken together, which represents more than ten *per centum* of the total capital subscribed by all partners of the firm or the existence of a guarantee or indemnity for a sum not less than ten *per centum* of such capital given by an individual or the spouse, parent or child of the individual on behalf of such firm.

Sinhala text to prevail in case of inconsistency.

28. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

NATIONAL AUDIT ACT, No. 19 OF 2018

[Certified on 17th of July, 2018]

Printed on the Order of Government

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[Certified on 17th of July, 2018]

L.D.—O. 3/2015

AN ACT TO PROVIDE FOR THE POWERS, DUTIES AND FUNCTIONS OF THE AUDIT SERVICE COMMISSION; THE ESTABLISHMENT OF THE OFFICE OF THE NATIONAL AUDIT OFFICE AND THE SRI LANKA STATE AUDIT SERVICE; TO SPECIFY THE ROLE OF THE AUDITOR-GENERAL OVER PUBLIC FINANCE AND TO MAKE PROVISION FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:–

Short title and date of operation.

1. (1) This Act may be cited as the National Audit Act, No. 19 of 2018.

(2) The provisions of this Act shall come into operation on such date as the President may appoint by Order published in the *Gazette* (hereinafter referred to as the "appointed date").

Applicable law pertaining to audits.

2. The provisions enshrined in Articles 153, 153A, 153B, 153C, 153D, 153E, 153F, 153G, 153H and 154 of the Constitution, the provisions of this Act and any other written law, as may be applicable, shall apply to audits of auditee entities and matters connected therewith.

PART I

SCOPE OF AUDITS CARRIED OUT BY THE AUDITOR-GENERAL

Scope of audit in relation to auditee entities.

3. (1) The Auditor-General shall—

(*a*) audit all income recevied to the Consolidated Fund and all expenditure from the Consolidated Fund;

(*b*) ascertain whether the moneys shown in the accounts of auditee entities as having been

disbursed were legally available for and applicable to, the services or purposes to which they have been applied for or charged with;

(*c*) determine whether the expenditure conforms to the authority which governs it; and

(*d*) in each audit, examine income, expenditure, transactions and events.

(2) The scope of an audit carried out by the Auditor-General includes examining the accounts, finances, financial position and prudent management of public finance and properties of auditee entities.

(3) The Auditor General shall be responsible to Parliament in carrying out the provisions of this Act.

Public to notify Auditor General.

4. Subject to the provisions of section 3, the Auditor-General may examine any matter relating to an auditee entity brought to his notice by any member of the public in writing along with substantial proof of the matters asserted, and report thereon to Parliament.

Applicable auditing standards.

5. (1) The Sri Lanka Auditing Standards determined by the Auditing Standards Committee established under the Sri Lanka Accounting and Auditing Standards Act, No.15 of 1995 shall be applicable to audits undertaken by the National Audit Office established under section 29.

(2) Where there are no auditing standards specified in the Sri Lanka Auditing Standards for performance audits, environmental audits, technical audits and any other special audits, the Audit Service Commission may, by Order published in the *Gazette*, specify the provisions of the International Standards of the Supreme Audit Institutions determined by the International Organization of Supreme Audit Institutions which shall apply to such audits, with necessary amendments to suit local requirements.

PART II

POWERS, DUTIES AND FUNCTIONS OF THE AUDITOR-GENERAL

Duties and functions of the Auditor-General.

6. (1) The Auditor-General or any person authorized by him in carrying out an audit shall—

(*a*) inspect accounts of any auditee entity including treasuries and initial or subsidiary accounts of such auditee entities;

(*b*) require that any accounts, books, papers and other documents which deal with or form the basis of or is otherwise relevant to the transactions to which his duties extend, shall be sent to such place as he may appoint for his inspection;

(*c*) question or make such observations as he may consider necessary, from the Chief Accounting Officer of the auditee entity and call for such information as he may require for the preparation of any account or report;

(*d*) ensure that the set of financial statements presented for audit by the auditee entity–

(i) is in accordance with the applicable financial reporting standards;

(ii) have been designed to present a true and fair view of the affairs of the auditee entity for the year under review;

(iii) is consistent with the preceding year; and

(iv) includes any recommendations made by the Auditor-General in the previous year.

(2) The Auditor-General shall assist the Committee on Public Accounts and the Committee on Public Enterprises to carry out their functions more efficiently and effectively. The Auditor-General shall assist all other Committees of Parliament when such assistance is required.

(3) Notwithstanding the provisions of subsection (1) of section 3, the Minister in charge of any public corporation, business or other undertaking vested in the Government under any written law and companies registered or deemed to be registered under the Companies Act, No. 7 of 2007 in which the Government or a public corporation or a local authority holds fifty *per centum* or more of the shares of that company directly or indirectly may, with the concurrence of the Minister assigned the subject of Finance and in consultation with the Auditor-General, appoint a qualified auditor or auditors to audit the accounts of such auditee entity. Where such appointment has been made by the Minister, the Auditor-General may, in writing, inform such auditor or auditors that he proposes to utilise his or their services for the performance and discharge of the Auditor-General's duties and functions in relation to such auditee entity and thereupon such auditor or auditors shall act under the direction and control of the Auditor-General.

Powers of the Auditor-General in carrying out an audit.

7. (1) In addition to the powers and functions conferred on the Auditor-General under Article 154 (5) of the Constitution, the Auditor-General or any person authorized by him may exercise the following powers in respect of an audit of an auditee entity—

(*a*) access or call for any written or electronic records or other information relating to the activities of an auditee entity;

(*b*) call any person whom the Auditor-General has reasonable grounds to believe to be in possession

of information and documents, as he may consider necessary to carry on the functions under this Act, to obtain written or oral statements and require the production of any document, from any person, who may be either in - service or otherwise;

(*c*) examine and make copies of or take extracts from any written or electronic records and search for information whether or not in the custody of the auditee entity;

(*d*) after obtaining permission from the relevant Magistrate's Court, examine and audit any account, transaction or activity of a financial institution, of any person, where the Auditor-General has reason to believe that money belonging to an auditee entity has been fraudulently, irregularly or wrongfully paid into such person's account;

(*e*) require any officer of financial institution to produce any document or provide any information relating to an account, transaction, dealing or activity of person referred to in paragraph (*d*) and to take copies of any document so produced, if necessary;

(*f*) obtain the views from the governing body of each auditee entity, on the results of the audit carried out by such officer;

(*g*) pay rewards and incentives out of the Audit Fund; and

(*h*) do all other matters connected or incidental thereto to achieve the purposes of this Act.

(2) Any information relating to national security of Sri Lanka the disclosure of which is prejudicial, shall be audited personally by the Auditor-General with the concurrence of the Minister assigned the subject of Defence.

(3) Every person shall comply with the provisions of this section, and such compliance shall not be considered as a violation of any written law pertaining to secrecy, confidentiality or non-disclosure.

(4) Where any person is called, by the Auditor-General or any person authorized by him, for the purposes of paragraph (*b*) of subsection (1) and such person is unable to appear in person due to unavoidable circumstances, he may nominate with the consent of the Auditor-General a person conversant on the subject to appear before the Auditor-General or any other person authorized by him, on that behalf.

(5) In the performance and discharge of the duties and functions, the Auditor-General or any officer authorized by him shall not be subject to interference or influence by any person or authority.

Powers, duties and functions to be solely carried out by the Auditor-General.

8. The Auditor-General shall himself exercise, perform and discharge the following powers, duties and functions—

(*a*) the appointment of a qualified auditor or an institution having technical, professional or scientific expertise under Article 154 (4) of the Constitution;

(*b*) reporting to Parliament on the performance and discharge of his duties and functions under Article 154 (6) of the Constitution;

(*c*) administering the Audit Fund.

Non-disclosure of information.

9. (1) The members of the Audit Service Commission, any person appointed to any office under this Act or any other person assisting any such person for the purpose of carrying out the provisions under this Act or a qualified auditor engaged by the Auditor-General for such purpose, except in the performance of his duties under this Act, shall not disclose any information received by him in the performance of his duties under this Act, and shall—

(*a*) not be compelled by any person to disclose any information except on a request of Parliament or by an Order of court or subject to paragraph (*b*) to give effect to the provisions of any written law;

(*b*) not disclose any information under any law requiring the disclosure of information without prior consent given in writing of the relevant person or institution providing such information and until the report or statement prepared by the Auditor-General relating to such information has been presented in Parliament, as may be required; and

(*c*) not enter upon the duties of his office until he makes and subscribes an oath of secrecy as set out in the Schedule hereto. The members of the Audit Service Commission shall subscribe an oath of secrecy before the Speaker of Parliament, while all other persons specified herein shall subscribe the said oath before the Auditor-General.

(2) Subject to the provisions of subsection (1) of this section, any such member or person or qualified auditor who communicates any such matter to any person or suffers or permits any unauthorized person to have access to any books, papers or other records relating to any such matter, commits an offence.

PART III

SUBMISSION OF REPORTS AND STATEMENTS BY THE AUDITOR-GENERAL

Auditor-General to submit a Report to Parliament annually.

10. (1) The Auditor-General shall, after the closure of each financial year submit a report to Parliament, within the time limits specified under written law, on the results of the audits carried out by him during the year. The Auditor-General shall include in such report any observation expressed by any auditee entity in regard to his findings.

(2) The submission of the report to Parliament in respect of a particular year shall be completed by the Auditor-General within the time limits specified under written law.

(3) The report under subsection (1) may be made available by the Auditor-General through the official website of the National Audit Office, after such report has been submitted to Parliament.

Summary Report and Annual Detailed Management Audit Report.

11. (1) The Auditor-General shall issue a Summary Report within five months after the closure of each financial year to an auditee entity in respect of any financial statement or any account submitted by such entity, other than an entity referred to in section (12).

(2) The Auditor-General shall present an Annual Detailed Management Audit Report to the governing body of each auditee entity within the five months after the end of each financial year with a copy each to the Minister to whom the respective auditee entity is assigned and the Minister assigned the subject of Finance.

Content of the Auditor-General's Report pertaining to corporations and companies.

12. The Auditor-General shall, within three months of the receipt of the approved annual financial statement and other relevant documents and information of a public corporation or a company in which the Government or a public corporation holds fifty *per centum* or more of the shares, present a report to the Chairman of the governing

body of such public corporation or company for publication in its annual report, and such report shall state—

(*a*) whether the relevant information and explanations have been obtained reasonably, which in the opinion of the Auditor-General were necessary for the purpose of the audit;

(*b*) whether the financial statements have been prepared in accordance with the Sri Lanka Accounting Standards as may be determined by the Auditing Standards Committee, or Sri Lanka Public Sector Accounting Standards, as the case may be, so as to give a true and fair view of the financial position of the entity and the financial performance and the cash flows thereof;

(*c*) whether the consolidated financial statements have been prepared in accordance with the Sri Lanka Accounting Standards as may be determined by the Auditing Standards Committee or Sri Lanka Public Sector Accounting Standards**,** as the case may be, so as to give a true and fair view of the financial position of the entity and its financial performance and the cash flows of such entity and of its subsidiaries and associates as may be applicable;

(*d*) whether any member of the governing body of such entity has any direct or indirect interest in any contract entered into by such entity, and if so, the nature of such member's interest and the Auditor-General's own views and comments thereon;

(*e*) the reasons for expressing a qualified, disclaimer, adverse or similar audit opinion on the annual financial statements examined by the Auditor-General;

(*f*) whether the auditee entity has or has not complied with any applicable written law or other general or special directions issued by the governing body of the auditee entity;

(*g*) whether the auditee entity has performed according to its powers, functions and duties;

(*h*) whether the resources of the auditee entity had been procured and utilized economically, efficiently and effectively within the time frames and in compliance with the applicable laws; and

(*i*) any other matter the Auditor-General considers necessary to achieve the purposes of the Act.

Special Reports.

13. The Auditor-General shall report to Parliament on any audit carried out during any financial year and may make such report publicly available through the official website of the National Audit Office and shall not publish the report if he has or intends to provide any report, information, document, book, record or computer generated transcript obtained in the course of the audit to the law enforcement authorities.

Triennial Reports.

14. The Auditor-General shall table in Parliament the Status Report of every auditee entity, within nine months after the end of each period of three financial years. The Report shall include the major deficiencies identified, recommendations made by him and preventive measures taken by the auditee entity and the position thereon as at the submission of the report to the Parliament.

Submissions of the financial statements of the Government to the Auditor-General.

15. (1) The Secretary to the Treasury shall submit the financial statements of the Government to the Auditor-General not later than three months after the close of each financial year of the Government.

(2) The annual report of the Ministry of Finance along with the audited financial statements of the Government

and the Auditor-General's opinion thereon shall be tabled in Parliament by the Minister assigned the subject of Finance before 31st May of the following financial year.

(3) For the purposes of this section—

(*a*) "financial statement of the Government" shall include–

(i) the statement of financial performance during the financial year, a statement of financial position showing the assets and liabilities of the Government and a cash flow statement for the financial year, accounting policies applied and notes thereto, together with a performance report for such year;

(ii) any other documents which the Auditor-General may require to express his opinion on the said financial statement; and

(iii) a statement listing of the auditee entities considered in the said financial statement.

(*b*) "Government" means the Government Institutions for which funds are being allocated by the annual Appropriation Act. The President may declare by Order published in the *Gazette* any other institution which may be considered as the Government for the purpose of this section;

(*c*) "Performance report" shall include the objectives achieved, future goals, key performance indicators and progress in the use of resources.

Annual financial statements of audited entities.

16. (1) Every auditee entity shall maintain proper books and records of all its income, expenditure, assets and liabilities, to enable annual and periodic financial statements to be prepared in respect of such entity.

(2) Annual financial statements including the annual appropriation account, the revenue account and the accounts relating to Advance Account Activities in respect of each Ministry, Department, and any other specified institution and Commission and the annual financial statements in respect of every other auditee entity, shall be submitted by the Chief Accounting Officer to the Auditor-General along with the annual performance reports, within such period as may be provided by rules.

Annual report of a public corporation or company.

17. Every public corporation or company in which the Government or a public corporation or a local authority holds fifty *per centum* or more of the shares of that company, shall include in its annual report—

(*a*) the report presented by the Auditor-General under section 12 to the Chairman of the governing body of such entity;

(*b*) the performance report for the relevant year;

(*c*) annual audited financial statements of the entity for the relevant year; and

(*d*) a future projection report, based on sustainable development, which may include details of activities to safeguard the environment and mitigate any negative impact on the environment and where necessary include environment and disaster impact assessment analysis.

Audit fees.

18. (1) The Auditor-General shall charge a fee for conducting an audit from the following auditee entities:—

(*a*) public corporations and statutory Funds or Boards;

(*b*) businesses and other undertakings vested in the Government by or under any written law; and

(c) any company registered or deemed to be registered under the Companies Act, No. 7 of 2007 in which

the Government or a public corporation or local authority holds fifty *per centum* or more of the shares of that company.

(2) The fee to be charged shall be determined by the Auditor-General in consultation with the Secretary to the Ministry of the Minister assigned the subject of Finance with the concurrence of the Secretary to the relevant Ministry of the Minister assigned the respective auditee entity.

(3) The fee received by the Auditor-General under this section shall be credited to the Consolidated Fund after having deducted the costs incurred in carrying out the audit.

(4) An auditee entity shall settle the accounts for audit fees within thirty days from the date of invoice.

(5) If an auditee entity defaults on the payment of audit fees the Auditor-General shall promptly notify the Ministry of Finance and where applicable, the relevant Provincial Council to recover such fees.

(6) The Secretary to the Treasury or the Chief Secretary of the relevant Provincial Council, shall after consulting the relevant parties, direct that the audit fees recoverable from an auditee entity, be defrayed from a vote on the national or a provincial budget identified by the Treasury or relevant Provincial Council.

PART IV

IMPOSITION OF SURCHARGE

Audit Service Commission to impose a surcharge.

19. (1)(*a*) Unless otherwise specifically provided for, in any other written law, the Audit Service Commission shall report the amount of any deficiency or loss in any transaction of an auditee entity where the Audit Service Commission has reasonable grounds to believe that such transaction has been made

contrary to any written law and has caused any deficiency or loss due to fraud, negligence, misappropriation or corruption of those involved in that transaction to the Chief Accounting Officer of the auditee entity for imposition of a surcharge on the value of the deficiency or loss in every transaction of such auditee entity;

(*b*) Any person involved in causing the deficiency or loss referred to in paragraph (*a*) shall hereinafter be referred to as the "person who is responsible for the deficiency or loss".

(2) The Chief Accounting Officer of the auditee entity shall charge the surcharge under subsection (1), against any person who is responsible for the deficiency or loss, either jointly or severally, followed by a formal disciplinary action by the Disciplinary Authority or a judicial process.

(3) The Chief Accounting Officer of the auditee entity shall, in charging the amount to be recovered, adopt the following procedure:—

(*a*) issue a notice to each person in respect of whom the surcharge is to be imposed specifying the reasons for such imposition, and afford an opportunity for each such person to make representation to show cause, in writing in respect of subsections (1) and (2), within a period of twenty one days from the date of receipt of the Notice.The Chief Accounting Officer shall report thereof to the Audit Service Commission;

(*b*) consider the representations made under paragraph (*a*) prior to making a decision on the surcharge to be imposed;

(*c*) where no representations have been made within the time specified, the Chief Accounting Officer of

the auditee entity shall proceed to make a decision on the surcharge to be charged;

(*d*) the surcharge shall be decided on the cumulative of the amount of the deficiency or loss and such interest as may have accrued, as charged on the rates for Treasury bills when the deficiency or loss arose;

(*e*) the decision of the Chief Accounting Officer of the auditee entity under paragraphs (*b*) and (*c*) shall be communicated forthwith to each person who is responsible for the deficiency or loss by issuing a Surcharge Certificate, specifying the following:—

(i) the reasons for surcharging;

(ii) the amount to be charged, which includes the deficiency or loss of the transaction, the surcharge decided and any interest percentage, as may be determined, for any delay of payment of the said amounts exceeding two months from the date of payment specified;

(iii) the action contemplated for its recovery;

(iv) the date on or before which the amount specified under item (ii) is to be paid;

(v) the details of the manner in which payment shall be made.

(4) The Chief Accounting Officer of the auditee entity shall charge the amount specified under subsection (3)(*e*)(ii) from the person who is responsible for the deficiency or loss who may be in-service or not in-service at the time of the

audit, within one month of the date of payment as specified in the Surcharge Certificate.

Appeals to be made to the Surcharge Appeal Committee.

20. (1) Any person aggrieved by a decision made by the Chief Accounting Officer of the auditee entity under section 19 may, within one month from the date of receiving the Surcharge Certificate, appeal against such decision to the Surcharge Appeal Committee appointed under section 21.

(2) The said Surcharge Appeal Committee may—

(*a*) allow the appeal;

(*b*) amend, alter or vary the decision; or

(*c*) disallow the appeal.

(3) (*a*) The decision referred to in subsection (1) shall be communicated in writing to the appellant and the Chief Accounting Officer of the auditee entity and the Chairman of the Audit Service Commission through the Chairman of the Surcharge Appeal Committee;

(*b*) The Chief Accounting Officer of the auditee entity shall immediately execute the decision and report back to the Audit Service Commission in writing, within one month from the date of issue of such communication.

(4) Where any person is dissatisfied by the decision of the Committee, he may appeal to the Court of Appeal within thirty working days from the date of issue of the communication under subsection (3)(*b*) of this section.

(5) The Order of the Court of Appeal shall be communicated by the Chief Accounting Officer of the

auditee entity, in writing to the Chairman of the Audit Service Commission.

Appointment of the Surcharge Appeals Committee.

21. (1) There shall be a Surcharge Appeal Committee (hereinafter referred to as the "Committee"). The Constitutional Council shall appoint the Committee and its Chairman. The Committee shall consist of not less than five members, from among those having experience in the fields of auditing, law and public finance management, public administration and engineering, to hear and determine appeals of any person aggrieved by a decision referred to in section 20.

(2) No member of the National Audit Office and the Sri Lanka State Audit Service shall be a member of the Committee. The Auditor-General shall not be a member of the Committee. The Committee shall act independently of the Auditor-General.

(3) The said Committee shall determine the appeal procedure and rules pertaining to appeal, which shall be published in the *Gazette.*

Crediting of moneys paid as Surcharge.

22. The Chief Accounting Officer of the auditee entity shall credit, all such sums of money collected as surcharge and interest accrued, if any, under section 19 (3)(*e*)(ii), to the Consolidated Fund:

Provided that where the surcharge is related to a transaction made in respect of a Provincial Council or a local authority, the sum collected as surcharge shall be credited to the Provincial Fund of such Provincial Council or the Fund of the relevant local authority, as the case may be.

Proceedings for recovery before a Megistrate.

23. (1) Where any sum to be charged under section 19 (3)(*e*)(ii) has not been paid within the time specified and where the Audit Service Commission is satisfied that

immediate action is necessary for the recovery of such sum, unless an appeal is pending before the Committee under section 20(1), in the Court of Appeal under section 20(4), the Audit Service Commission may issue a certificate containing particulars of such sum to be recovered and the name and last known place of employment or residence of the person who is responsible for the deficiency or loss, to a Magistrate having jurisdiction in the division in which such place is situated within a period of ninety working days.

(2) (*a*) The Magistrate shall thereupon summon such person who is responsible for the deficiency or loss to show cause as to why further proceedings for the recovery of the sum to be recovered shall not be taken against him.

(*b*) Where the person who is responsible for the deficiency or loss fails to show sufficient cause, the sum to be recovered shall be deemed to be a fine imposed by a sentence of the Magistrate on such person who is responsible for the deficiency or loss for an offence punishable with fine only and not punishable with imprisonment.

(3) (*a*) The certificate issued by the Audit Service Commission shall be conclusive proof that the sum to be recovered has been duly assessed and is in default in any proceeding before the Magistrate under subsection (1).

(*b*) The proceeding under this section shall be conducted within thirty days from the date of issue of the certificate under subsection (1) unless an appeal has been made to the Surcharge Appeal Committee under section 20 (1) or to the Court of Appeal under section 20 (4), as the case may be.

(4) The provisions of Chapter XXIV of the Code of Criminal Procedure Act, No. 15 of 1979, shall *mutatis mutandis* apply in relation to default of payment of a fine, and in addition the Magistrate may make any direction which, he could have made at the time of imposing such sentence.

(5) Nothing in subsection (2) to (5) of section 291 of the Code of Criminal Procedure Act, No. 15 of 1979, shall apply in any case referred to in subsection (1).

(6) In any case referred to in subsection (2), where in default of payment of the fine, the person who is responsible for the deficiency or loss shall be sentenced to imprisonment for a period not exceeding one year. The Magistrate may allow time for the payment of the amount of that fine or direct payment of that amount to be made in instalments.

(7) Where a Magistrate directs that the payment be made in instalments and default is made in the payment of any one instalment, proceedings may be taken as if default had been made in payment of all the instalments then remaining unpaid.

(8) Any person aggrieved by the decision of the Magistrate may appeal to the High Court established under Article 154P of the Constitution not later than thirty days from the date of such decision.

(9) Wherever the Audit Service Commission issues a certificate under subsection (1), he shall at the same time issue to the person who is responsible for the deficiency or loss, whether resident or non-resident, a notification thereof by personal service, registered letter sent through the post or tele mail service; and the non- receipt of such notification by the person who is responsible for the deficiency or loss shall not invalidate proceedings under this section.

(10) For the purpose of Part IV of this Act, in the event the Audit Service Commission finds that the Chief Accounting Officer of the auditee entity has caused or has been involved in causing any deficiency or loss due to fraud, negligence, misappropriation or corruption in a transaction made contrary to any written law, the Secretary to the Treasury shall charge the amount as referred to in subsection (3)(*e*)(ii) of section 19 from the Chief Accounting Officer of the auditee entity.

PART V

AUDIT SERVICE COMMISSION

Establishment of an Audit Service Commission.

24. (1) There shall be an Audit Service Commission (hereinafter referred to as "Commission") established under Article 153A (1) of the Constitution consisting of the Auditor-General and four other members appointed by the President on the recommendation of the Constitutional Council.

(2) The Commission shall have its own Secretariat.

Powers, duties and functions of the Commission.

25. In addition to the powers and functions of the Commission as set out under Article 153C of the Constitution, the Commission shall–

(*a*) appoint Committees to assist in the affairs of the Commission;

(*b*) introduce schemes to enhance the quality of performance of the staff of the National Audit Office referred to in section 29; and

(*c*) make rules for which specific provision has been given in this Act.

Meetings of the Commission.

26. (1) The Chairman of the Commission shall preside at all meetings of the Commission and, in his absence, a member elected by the members present from among themselves shall preside at such meeting.

(2) The quorum for a meeting of the Commission shall be three members. All decisions of the Commission shall be made by a majority of the members present at the meeting. In the event of an equality of votes, the member presiding at the meeting as Chairman shall have a casting vote.

(3) The Commission shall have power to act notwithstanding any vacancy in its membership, and no act, proceeding or decision of the Commission shall be or deemed to be invalid by reason only of any such vacancy or any defect in the appointment of a member thereof.

(4) The Commission shall meet at least once in a month.

(5) In the event a written request is made by at least three members to summon an urgent meeting of the Commission, the Chairman of the Commission shall summon such meeting as soon as possible, but in any case not later than ten days after the receipt of such request.

(6) There shall be a Secretary to the Commission who shall be appointed by the Commission. The Secretary shall be responsible for proper recording and maintenance of minutes of the meetings of the Commission and the common seal of the Commission and its custody.

Leave from the discharge of functions as a member of the Commission.

27. (1) The President may grant any member of the Commission leave from the discharge of his functions as a member of the Commission for a period not exceeding two months and shall for the duration of such period, on the recommendation of the Constitutional Council and having

regard to the provisions of Article 153A (1) of the Constitution, appoint a person to be a temporary member of the Commission, for the period of such leave.

(2) A member of the Commission who without obtaining leave from the President is absent from three consecutive meetings of the Commission, shall be deemed to have vacated office with effect from the date of the third of such meetings, and shall not be eligible thereafter to be reappointed as a member of the Commission.

Commission to appoint, promote &c. officers and staff.

28. (1) The appointment, promotion, transfer, disciplinary control and dismissal of the members belonging to the Sri Lanka State Audit Service recruited by the Commission shall be vested in the Commission.

(2) The Commission may appoint a qualified Secretary and such other officers and Non-Audit Staff to the Commission and to the National Audit Office on such terms and conditions as may be determined by the Commission.

(3) The salaries and other allowances and any other benefits of persons recruited by the Commission, except those who have been attached to the National Audit Office from the Combined Services, shall be determined by the Commission, after having obtained the views of the Salaries and Carders Commission, and shall be charged on the Consolidated Fund.

PART VI

Establishment of the National Audit Office and the Sri Lanka State Audit Service

Establishment of the National Audit Office.

29. There shall be a National Audit Office (hereinafter referred to as the "Audit Office") to assist the Auditor General in the discharge of his duties and functions, which shall consist of the Auditor-General and a staff comprising the members belonging to the Sri Lanka State Audit Service established under section 30 of this Act and the Non-Audit Staff (hereinafter referred to as the "staff of the Audit Office").

Establishment of the Sri Lanka State Audit Service.

30. (1) There shall be established a service known as the Sri Lanka State Audit Service.

(2) The members of the Sri Lanka Audit Service and the Audit Examiners' Service serving on the date immediately prior to the date of operation of this Act, shall be deemed to be members of the Sri Lanka State Audit Service as at the date of operation of this Act.

Resignation of a member of the Staff of the Audit Office.

31. Any member of the staff of the Audit Office recruited by the Commission may resign his office by writing under his hand, addressed to the Chairman of the Commission.

Appeals to the Administrative Appeals Tribunal.

32. A person aggrieved by the decision of the Commission in the exercise of its powers under section 28, may appeal against such decision to the Administrative Appeals Tribunal as specified under Article 153G.

Stationing of the Officers.

33. (1) The Auditor-General may deploy any of the officers of the Sri Lanka State Audit Service or qualified auditor or any other person lawfully engaged by him, to carry out any audit of an auditee entity in any part of Sri Lanka.

(2) All auditee entities shall cooperate with the Auditor-General and any officer deployed by him and shall provide a safe and secure working environment to facilitate the carrying out of an effective audit.

The Commission to submit annual budget estimates for incorporation in the national budget.

34. The Commission shall prepare the annual budget estimates of the Audit Office within the period as specified by the Minister assigned the subject of Finance. The said estimates shall be submitted to the Speaker on such date as may be decided by the Speaker after consultation with the said Minister of Finance and the Chairman of the

Commission. The Speaker shall table the said estimates in Parliament for its review with the observations of the Minister assigned the subject of Finance, who shall provide his observations to the Speaker within ten working days from its receipt of such annual budget estimates from the Speaker. The Parliament shall after having reviewed the annual budget estimates of the Audit Office forward the estimates to the Minister assigned the subject of Finance for incorporation in the national budget with such modifications, if any, as Parliament thinks fit.

The Auditor-General to submit annual work programme.

35. (1) At least sixty days before the beginning of each financial year, the Auditor-General shall prepare and submit to the Speaker a draft annual work programme that describes the Auditor-General's proposed work programme for the forthcoming year.

(2) The Speaker shall cause the draft annual work programme to be reviewed by a committee of Parliament established under the Standing Orders calling for any comments or amendments including the programme priorities. The Speaker or the said committee may be required to forward the said comments or amendments within thirty days from the date of receipt of the work programme. The Speaker shall forward the same to the Auditor-General.

(3) Where there are no reviews made under subsection (2) the Speaker shall directly table the work programme submitted by the Auditor-General in Parliament.

(4) Where there are reviews made under subsection (2), the Auditor-General may, after considering any comments or amendments, amend the work programme as suggested by the Speaker or the said committee.

(5) The Auditor -General shall present a completed annual work programme to the Speaker before the beginning of

each financial year and the Speaker shall then table the work programme in Parliament.

Power to appoint an independent qualified auditor to audit the Audit Office.

36. (1) Notwithstanding the provisions in any other law to the contrary, the Speaker shall appoint an independent qualified auditor to carry out the audit of the financial statements, accounts and other information relating to the financial year of the Audit Office and for this purpose the Audit Office shall be deemed an auditee entity under this Act. Any reference to an auditee entity and the Auditor-General shall, *mutatis mutandis* apply in relation to the Audit Office and the independent qualified officer.

(2) The appointment of an independent qualified auditor under subsection (1) shall be subject to such terms and conditions as the Commission may determine, including the remuneration to be paid to such auditor, which shall be defrayed as part of the expenses of the Audit Office.

(3) On completion of the audit, such independent qualified auditor shall be required to submit such report thereon to the Commission, and the Commission shall cause such report to be tabled in Parliament together with any observations or views that the Auditor General may have expressed on such audit at the time of carrying out the same by the independent qualified auditor.

(4) The report of the independent qualified auditor shall include—

(*a*) the audited financial statements prepared in accordance with section 5 of this Act and in compliance with any other written law; and

(*b*) an account of the implementation of the annual work programme required under section 35.

Audit Fund.

37. (1) There shall be established a fund to be known as the Audit Fund (hereinafter referred to as the "Fund").

(2) There shall be paid into the Fund-

(*a*) fifteen *per centum* of the moneys collected by the Auditor-General as Audit fees;

(*b*) all payments credited by the Government, with the concurrence of the Parliament;

(*c*) any cost recovered in any suit or prosecution under section 50.

(3) There shall be paid out of the Fund-

(*a*) any expense incurred in any suit or prosecution under section 50;

(*b*) all expenses incurred in the administration of the Fund;

(c) all payments given as rewards or incentives in accordance with the rules made in that behalf to persons who have shown exceptional performance in the discharge of their duties under this Act;

(4) Any sum not utilized within the financial year shall be credited to the Consolidated Fund.

(5) The accounts of the Fund shall be audited under section 36.

PART VII

Responsibilities of a Chief Accounting Officer and Accounting Officer

Responsibilities of a Chief Accounting Officer or an Accounting Officer.

38. (1) Unless otherwise specified in the provisions of this Act or any other written law, the Chief Accounting Officer or an Accounting Officer of an auditee entity, for the purpose of this Act shall:-—

(*a*) be the Officer responsible within the auditee entity to co-ordinate with the Auditor-General to successfully carry out the audit of such entity;

(*b*) ensure that financial planning, internal controls, maintenance of proper books and accounts, financial management and a mechanism for providing management information, are effectively in place;

(*c*) ensure that an effective internal control system for the financial control exists in each such entity and carry out periodic reviews to monitor the effectiveness of such systems and accordingly make any alterations as required for such systems to be effectively carried out;

(*d*) ensure the timely preparation and submission of annual and other financial statements and in addition the Chief Accounting Officer shall be required to submit annual reports to Parliament pertaining to the auditee entity;

(*e*) ensure that all audit queries be answered within the specified time as required by the Auditor-General;

(*f*) ensure that an effective mechanism exists to conduct an internal audit;

(*g*) ensure that adequate office space and facilities necessary for the officers authorized by the Auditor-General, be provided to discharge their duties in a proper manner; and

(*h*) upon receipt of a notice by the Auditor-General of any apparent fraud or any criminal activity, he shall without delay make a complaint to a law enforcing authority.

(2) The review to be carried out by a Chief Accounting Officer referred to in paragraph (*c*) of subsection (1) shall be in writing and copies of the same shall be made available to the Auditor-General.

Chief Accounting Officer & c., to consider the Detailed Management Audit Report submittedby the Auditor-General.

39. (1) The Chief Accounting Officer of a Ministry, the Accounting Officer of a Department, or the governing body or the Head of any other auditee entity concerned shall, on receipt of the Annual Detailed Management Audit Report of the Auditor-General referred to in section 11, consider such report and inform the Auditor-General, the Secretary to the Treasury and the appropriate Minister, of the concerns and remedial actions proposed.

(2) The remedial actions referred to in subsection (1) shall be submitted to the Auditor-General within three months from the submission of the reports to the auditee entities, giving reasons for the ability or inability, if any, to take action on any of the matters pointed out in such Detailed Management Audit Report.

Internal audit.

40. (1) The Chief Accounting Officer of a Ministry shall appoint an Internal Auditor to such Ministry and the Accounting Officer of each Department coming under such Ministry shall appoint a competent auditor to carry out the Internal Audit of such Department, and every other auditee entity shall have its own Internal Auditor, who is to perform an internal audit duly appointed by the governing body of such auditee entity.

(2) Where an Internal Auditor has not been appointed under subsection (1), such appointment shall be made within a period not exceeding two years from the date of operation of this Act.

(3) An Internal Auditor appointed under subsection (1) shall directly report to the Chief Accounting Officer, the Head or the governing body of such auditee entity, as the case may be, for the purposes of this Act.

(4) Copies of all reports submitted by the internal auditors under subsection (3) shall be forwarded to the Department of Management Audit.

Audit and Management Committees.

41. (1) There shall be an Audit and Management Committee for every auditee entity specified under subsection (2), referred to by that name or by any other name, appointed by the respective Chief Accounting Officer or accounting officer or the respective governing body, as the case may be, to assist him by undertaking continuous review of operations of each auditee entity and, to periodically report to the said Chief Accounting Officer, accounting officer or the respective governing body. The said Committee shall in particular-

(*a*) review all audit and management aspects of the auditee entity to ensure that its resources, are used economically and efficiently for the purpose of achieving the predetermined objectives of such entity as a whole, or in respect of any specific project or programme undertaken giving priority to the resources available in Sri Lanka; and

(*b*) ascertain whether such objectives have actually been achieved within the authorized time limits, for the disbursement of funds allocated for such activity, and whether any completed project or programme is in actual operation as envisaged in the plans.

(2) For the purposes of this section an auditee entity referred to in subsection (1) shall be:–

(*a*) a Ministry;

(*b*) a Provincial Council;

(*c*) a public corporation;

(*d*) a Commission constituted under the Constitution or a Special Presidential Commission of Inquiry;

(*e*) the Presidential Secretariat;

(*f*) the Office of the Secretary General of Parliament;

(*g*) a company registered or deemed to be registered under the Companies Act, No. 7 of 2007 in which the Government or a public corporation or a local authority holds fifty *per centum* or more of the shares of that company;

(*h*) any business or other undertaking vested in the Government under any written Law; and

(*i*) any body corporate or incorporate established by law or otherwise.

PART VIII

Offences and Penalties

Failure to assist the Auditor-General to be an offence.

42. An auditee entity shall fulfill any requirement of the Auditor General or any person authorized by him, in the performance and discharge of the duties and functions under this Act and any person who—

(*a*) fails or refuses to furnish any information, document, explanation, report or material when requested to do so within a period of not less than twenty one working days from the date of receipt of such request;

(*b*) refuses or fails to nominate a person conversant on the subject, to appear before the Auditor-General or any person authorized by him, when requested to do so;

(*c*) makes any statement or submits a document to the Auditor-General or any person authorized by him knowing it to be false or misleading;

(*d*) resists or obstructs the functions and duties of the Auditor-General or any person authorized by him,

commits an offence and shall on conviction after summary trial by a Magistrate, be liable to a fine not less than five thousand rupees and not more than twenty five thousand rupees.

Influencing or attempting to influence a decision of the Commission or any officer of the Sri Lanka State Audit Service &c. to be an offence.

43. (1) A person who otherwise than in the course of his duty, directly or indirectly, in person or through another, influences or attempts to influence, any decision of the—

(*a*) Commission;

(*b*) any member of the Commission;

(*c*) any officer of the Sri Lanka State Audit Service;

(*d*) any Qualified Auditor appointed under section 36; or

(*e*) any person as may be appointed by the Commission or by the Auditor-General to undertake any function under this Act,

commits an offence and shall on conviction be liable to a fine not less than five thousand rupees and not more than twenty five thousand rupees.

(2) Every High Court established under Article 154P of the Constitution shall have jurisdiction to hear and determine any matter referred to in subsection (1).

Offences by bodies of persons.

44. Where an offence under this Act is committed by a body of persons, then—

(*a*) if such body of persons is a body incorporate or unincorporate, or a corporation every director or officer or agent thereof; and

(*b*) if such body of persons is a firm, every partner,

shall be liable to a fine as specified for the respective offences under sections 42 and 43:

Provided however, a director or an officer or agent of such body incorporate, unincorporate or of such corporation or partner of such firm shall not be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he used all such diligence to prevent the commission of such offence.

Other offences.

45. Any person who contravenes the provisions of this Act or any rule made thereunder, commits an offence and shall on conviction after summary trial before a Magistrate

be liable to a fine not more than one hundred thousand rupees or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Convicted persons to be punished for other offences in the process.

46. Any person convicted for an offence under the provisions of this Act shall not be precluded from being punished for any other offence committed in the process under any another written law.

PART IX

General

Establishment of a Centre for Public Audit Training and Development.

47. (1) A Centre for Public Audit Training and Development shall be established under the Audit Office with a view to enhancing the capacity of human resources in the field of public finance and auditing.

(2) The Commission shall formulate rules pertaining to the management of the Centre.

Power of the Commission to make rules.

48. (1) The Commission may make rules in respect of all or any of the matters in respect of which rules are authorized or required to be made under this Act.

(2) Every rule made under subsection (1) shall be published in the *Gazette* and shall come into operation on the date of publication or on such later date as may be specified therein.

(3) Every rule made under subsection (1) shall, within three months from the date of its publication in the *Gazette* be placed before Parliament for approval. Every rule which is not so approved shall be deemed to be rescinded as from the date of disapproval, but without prejudice to anything previously done thereunder.

Auditor-General to give directions.

49. The Auditor-General may, from time to time, give the staff of the Audit Office or any person authorized by him such general and special directions, in writing as to the exercise and discharge of its powers and functions when conducting an audit and the staff or any person authorized by him shall give effect to such direction.

Protection from law suits.

50. (1) No liability, whether civil or criminal, shall attach to the Auditor-General, any officer of the Sri Lanka State Audit Service, any officer of the National Audit Office or any other person assisting in the discharge of the duties of the Auditor-General as referred to in section 9(1)(*a*), for anything which in good faith is done in the performance or exercise of any function or power imposed or assigned under the provisions of this Act.

(2) Any expense incurred by the Auditor-General, an officer of the Sri Lanka State Audit Service, any officer of the National Audit Office or any other person assisting in the discharge of the duties of the Auditor-General as referred to in section 8(*a*), as the case may be, in any suit or prosecution brought against him before any court in respect of any act which is done by him under this Act shall, if the court holds that such act was done in good faith, be paid out of the Consolidated Fund, unless such expenses are recovered by him in such suit or prosecution.

Members of the Commission, officers and staff of the Audit Office deemed to be public servants.

51. All members of the Commission, officers and staff of the Audit Office shall be deemed to be public servants within the meaning and for the purposes of the Penal Code.

The Audit Office deemed to be a Scheduled Institution within the meaning of the Bribery Act.

52. The Audit Office shall be deemed to be a Scheduled Institution within the meaning of the Bribery Act, and the provisions of that Act, shall be construed accordingly.

Repeal of Act, No. 26 of 1958.

53. Auditor-General's Fees Act, No. 26 of 1958 is hereby repealed.

Transitional provisions.

54. (1) The Auditor General's Department shall cease to be in operation from the date of operation of this Act.

(2) Notwithstanding the provision of subsection (1),—

(*a*) all moneys lying to the credit of the Auditor-General's Department on the day immediately preceding the date of operation of this Act, shall stand transferred with effect from that date to the Audit Office established under this Act;

(*b*) all property and other rights over movable or immovable owned by the Auditor-General's Department and used for the purposes of the Department on the day immediately preceding the date of operation of this Act shall vest in the Audit Office with effect from that date;

(*c*) all debts, obligations and liabilities of the Auditor-General's Department subsisting on the day immediately preceding the date of operation of this Act shall be deemed to be debts, obligations and liabilities of the Audit Office with effect from that date;

(*d*) all contracts and agreements entered into for the purposes of the Auditor-General's Department and subsisting on the day immediately preceding the date of operation of this Act shall be contracts and agreements entered into by the Audit Office deemed with effect from that date;

(*e*) all actions and proceedings instituted by or against the Auditor-General's Department and

pending on the day immediately preceding the date of operation of this Act shall be deemed with effect from the date of operation of this Act to be actions and proceedings instituted by or against the Audit Office;

(*f*) all decrees and orders entered or made by any competent court in favour of or against the Auditor-General's Department which remain unsatisfied on the day preceding the date of operation of this Act shall with effect from that date be deemed to have been entered or made in favour of or against the Audit Office and may be enforced accordingly;

(*g*) every rule in force on the day immediately preceding the date of operation of this Act and which are not inconsistent with the provisions of this Act shall be deemed to be a rule made under this Act;

(*h*) all audits that are pending shall be continued by the Auditor-General under this Act.

(3) Where an Internal Auditor is not appointed to an auditee entity, the internal auditors function as carried out immediately before the date of operation of this Act shall continue until such appointment.

(4) Members of the Sri Lanka State Audit Service and the Audit Examiners' Service employed in the Auditor General's Department immediately before the establishment of the National Audit Office shall be deemed to be employees of the National Audit Office and shall be employed under the same terms and conditions as may be applicable to that employee immediately before that date.

(5) The offer of employment to all officers and staff of the Auditor General's Department on the day immediately preceding the date of operation of this Act, shall be as follows:—

(*a*) The Commission shall, within three months of the date of operation of this Act, offer all members of the Sri Lanka Audit Service and the Audit Examiners' Service serving on the date immediately prior to the date of operation of this Act in the Auditor-General's Department, employment in the Audit Office on such terms and conditions of employment as are not less favourable than were applicable to them on the date on which the offer is made;

(*b*) The offer made by the Commission under paragraph (*a*) shall be open until the expiry of a period of two months from the date on which the offer was made, and any member of the Sri Lanka Audit Service and the Audit Examiners' Service serving on the date immediately prior to the date of operation of this Act in the Auditor-General's Department, who opts to join the Audit Office shall become a member of the Sri Lanka State Audit Service;

(*c*) Where a member of the Sri Lanka Audit Service and the Audit Examiners' Service serving on the date immediately prior to the date of operation of this Act or an Non-Audit Staff member recruited by the Auditor-General's Department and employed in the Auditor-General's Department on the date immediately prior to the date of operation of this Act, becomes an employee of the Audit Office, his period of employment in the public service as an employee of the Auditor-General's Department shall be counted as a period of employment as a member of the Sri Lanka State Audit Service and the change in his status of employment shall not break the continuity of his period of employment in the public service;

(*d*) Any member of the Sri Lanka Audit Service and the Audit Examiners' Service serving on the date immediately prior to the date of operation of this Act in the Auditor-General's Department or any Non-Audit Staff member of the Auditor General's Department who does not opt to serve the Audit Office may retire under the provisions of the Minutes on Pensions. Until the Commission formulates its procedural rules relating to appointment, promotions and transfer, the procedural rules formulated and published in *Gazette* Extraordinary No.1589/3 on February 20, 2009 by the Public Service Commission shall *mutatis mutandis* be applied to the members of the Staff of the National Audit Office;

(*e*) A member of the Combined Services or any other Service employed in the Audit Office shall remain in the Audit Office subject to the terms and conditions of the Service Minutes of the respective Combined Services;

(*f*) A member of a Combined Services employed in the Auditor-General's Department on the date immediately prior to the date of operation of this Act shall have the option to serve the Audit Office or to be transferred out of the Audit Office, subject to the terms and conditions of the respective Combined Service Minutes;

(*g*) The Officers who have been directly recruited by the Auditor General and serve in the Auditor General's Department at the time of operation of this Act who opt to remain as the Non-Audit Officers in the Audit Office within the Department Service shall be distinctly separate from the Sri Lanka State Audit Service.

55. In this Act, unless the context otherwise requires— Interpretation.

"any person authorized by the Auditor-General" means any person appointed in writing or whose services are engaged by the Auditor-General by name or office, to discharge the functions assigned to him under this Act or any rules made thereunder, who are members of the State Audit Service of the National Audit Office, qualified auditor or any other person having expertise in a required field; and shall discharge such functions until he ceases to hold office;

"auditee entity" includes -

(*a*) Offices of the Cabinet of Ministers;

(*b*) all Departments of the Government;

(*c*) the Presidential Secretariat;

(*d*) Office of the Secretary to the Prime Minister;

(*e*) the Judicial Service Commission;

(*f*) the Constitutional Council;

(*g*) the Commissions referred to in the Schedule to Article 41B of the Constitution and the Special Presidential Commission of Inquiry established under the special Presidential Commissions of Inquiry (Special Provisions) Act, No. 4 of 1978;

(*h*) the Parliamentary Commissioner for Administration;

(*i*) the Office of the Secretary General of Parliament;

(*j*) Provincial Councils and local authorities;

(*k*) public corporations and statutory Funds or Boards;

(*l*) businesses and other undertakings vested in the Government by or under any written law;

(*m*) any company registered or deemed to be registered under the Companies Act, No. 7 of 2007 in which the Government or a public Corporation or local authority holds fifty *per centum* or more of the shares of that company;

"Auditing Standards Committee" means the Auditing Standards Committee established under the provisions of the Sri Lanka Accounting and Auditing Standards Act, No.15 of 1995;

"Accounting Officer" includes, except where other arrangements are made by the Ministry of the Minister assigned the subject of Finance or as provided for in any other written law, Head of each Department who shall be immediately responsible to the Chief Accounting Officer in the manner specified in the Financial Regulations;

"Auditor-General" means the Auditor General appointed under Article 153 of the Constitution;

"Concurrent Audit" includes examination of the financial transactions at the time the transaction takes place or examining any parallel transaction;

"Chief Accounting Officer" includes, unless otherwise specifically provided for in any other written law-

(*a*) the Secretary to a Ministry, appointed to be the Chief Accounting Officer of such Ministry, by the Minister assigned the subject of Finance;

(*b*) an officer in charge of a department specified in Article 52(4) of the Constitution; or

(*c*) an officer in charge of any other department or entity, not supervised by a Secretary to a Ministry as specified in paragraph (*a*);

"Constitution" means the Constitution of the Democratic Socialist Republic of Sri Lanka;

"financial institution" includes –

(*a*) any licensed commercial bank within the meaning of the Banking Act, No 30 of 1988;

(*b*) any licensed specialized bank within the meaning of the Banking Act, No. 30 of 1988;

(*c*) any banking institution within the meaning of the Monetary Law Act (Chapter 422);

(*d*) any registered finance company within the meaning of the Finance Business Act, No. 42 of 2011;

(*e*) any finance leasing company within the meaning of Finance Leasing Companies Act, No. 56 of 2000;

(*f*) any money broker within the meaning of the Money Broking Regulations No.1 of 2013 published in the *Gazette* Extraordinary No. 1796/ 21 dated February 8, 2013 issued under the Monetary Law Act (Chapter 422);

(*g*) any primary dealer within the meaning of the Registered Stock and Securities Ordinance (Chapter 420) and the Local Treasury Bills Ordinance (Chapter 417);

(*h*) any insurance company within the meaning of the Regulation of Insurance industry Act, No. 43 of 2000;

(*i*) any insurance broker and loss adjuster within the meaning of the Regulation of Insurance industry Act, No. 43 of 2000;

(*j*) any insurance agent adjuster within the meaning of the Regulation of Insurance industry Act, No. 43 of 2000;

(*k*) any stock exchange within the meaning of the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987;

(*l*) any stock broker or stock dealer within the meaning of the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987;

(*m*) any managing company to operate a unit trust within the meaning of the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987; and

(*n*) any person who carries on business as a market intermediary within the meaning of the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987;

"governing body" means the body entrusted with the administration and management of the affairs of any statutory body or entity or any company registered or deemed to be registered under the Companies Act, No. 7 of 2007 in which the Government or a public corporation or a local authority holds fifty *per centum* or more of the shares of that company;

"Head" means the Head of a Department coming under a Ministry;

"information" shall include any oral or written evidence including data generated by electronic means;

"local authority" means a Municipal Council, Urban Council or a Pradeshiya Sabha and includes any authority created or established by or under any law to exercise, perform and discharge powers, duties and functions corresponding or similar to the powers, duties and functions exercised, performed or discharged by any such Council or Sabha;

"Non-Audit Staff" means persons other than members of the Sri Lanka Audit Service and the Audit Examiners' Service serving on the date immediately prior to the date of operation of this Act in the Auditor General's Department and persons recruited by the Commission after the operation of this Act and includes persons attached to the Combined Services Staff;

"Provincial Council" means a Provincial Council established for a Province by virtue of Article 154A of the Constitution;

"public corporation" means any corporation, board or other body which was or is established by or under any written law other than the Companies Act, No. 7 of 2007, with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise;

"resources" includes public finance, public property, human, physical or natural resources and debt;

"Sri Lanka Accounting Standards" means the Sri Lanka Accounting Standards specified under the Sri Lanka Accounting and Auditing Standards Act, No. 15 of 1995;

"Sri Lanka Public Sector Accounting Standards" means the Sri Lanka Public Sector Accounting Standards issued from time to time by the Ministry of the Minister assigned the subject of Finance, under section 8 (3) and section 12 of the Finance Act, No. 38 of 1971 and as may be specified under the provisions of the Sri Lanka Accounting and Auditing Standards Act, No. 15 of 1995;

"Sri Lanka State Audit Service" means the Sri Lanka State Audit Service established under Article 153B (2) of the Constitution of the Democratic Socialist Republic of Sri Lanka; and

"transaction" includes any activity connected with a finance business or non-finance business; and in relation to property includes:–

(*a*) a purchase, sale, loan, charge, mortgage, lien, pledge, transfer, delivery, assignment, subrogation, transmission, gift, donation, creation of a trust, settlement, deposit including the deposit of any article, withdrawal, transfer between assets, extension of credit;

(*b*) any agency or grant of power of attorney;

(*c*) any other disposition or dealing of property in whatever form, or whatsoever description or nature, however described, which results in any right, title, interest or privilege, whether present or future, or whether vested or contingent, in the whole or any part of such property being conferred on any person.

Sinhala text to prevail in case of inconsistency.

56. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

SCHEDULE [Section 9 (c)]

Oath of Secrecy

In terms of Section 9 of the National Audit Act, No……. of 2018.

I, ……..…… being member of the Audit Service Commission/ an employee of the ……*, and expert person assisting in the discharge of the duties of the Auditor-General as referred to in section 8(a), do solemnly declare and affirm / swear that I shall maintain in utmost secrecy the information whatsoever which is given, stated, discussed or otherwise gathered in the performance of my duties and such information will not be disclosed, discussed or stated in any form whatever to any person in public or private, except–

(*a*) when required to do so by a Court of Law;

(*b*) when required by Parliament; or

(*c*) when specified under any written law, subject to section 9(*b*) of the National Audit Act, No. of 2018.

The obligations herein set out shall bind me during my term of office in the .....* and shall continue thereafter except in relation to any information that has come into public domain due to no breach of my obligations hereunder.

I append my signature to this oath on this ..... day of..... Two Thousand .....

……
Signature

Taken oath on this …… day of ……. 20…… in…… before me.

……..
Speaker / Auditor-General

* National Audit Office/Auditor General's Department/Combined Services

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

NATION BUILDING TAX (AMENDMENT) ACT, No. 20 OF 2018

[Certified on 30th of July, 2018]

Printed on the Order of Government

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Nation Building Tax (Amendment) Act, No. 20 of 2018

[Certified on 30th of July, 2018]

L.D.—O. 10/2018

AN ACT TO AMEND THE NATION BUILDING TAX ACT, NO. 9 OF 2009

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Short title.

1. This Act may be cited as the Nation Building Tax (Amendment) Act, No. 20 of 2018.

Amendment of section 3 of Act, No. 9 of 2009.

2. Section 3 of the Nation Building Tax Act, No. 9 of 2009 (hereinafter referred to as the "principal enactment") as last amended by Act, No. 22 of 2016, is hereby further amended in subparagraph (13) of paragraph (iv) of subsection (2) thereof, by the substitution for the words, "importer himself." of the words and figures, "importer himself, prior to April 1, 2018.".

Amendment of the First Schedule to the principal enactment.

3. The First Schedule to the principal enactment as last amended by Act, No. 13 of 2017 is hereby further amended as follows:-

(1) in Part I of that Schedule-

(*a*) by the substitution for the item (XLVI) thereof, of the following:-

"(XLVI) (*a*) locally manufactured coconut oil at the point of sale by the manufacturer, for a period of three years commencing from January 1, 2014;

(*b*) locally manufactured coconut milk, coconut oil, poonac,

pairing, coconut shells or coconut water at the point of sale by the manufacturer, for a period of three years commencing from April 1, 2018;";

(*b*) by the substitution for item (L) thereof, of the following item:-

"(L) for any period commencing prior to the date of commencement of this (Amendment) Act, liquor identified under the Harmonized Commodity Description and Coding Numbers for customs purposes and liable to Custom Duty under the Revenue Protection Act, No. 19 of 1962 and Cess under Sri Lanka Export Development Act, No. 40 of 1979 on the importation, or Excise Duty under the Excise Ordinance (Chapter 52) on the manufacture, as the case may be, including such manufactured liquor in the stock that remains unsold as at October 25, 2014, which would have been otherwise liable to the same Duty, if manufactured after October 25, 2014.";

(*c*) by the addition immediately after (LI), the following new items:—

"(LII) importation of non-motorised equipment and accessories for water

sports including Kayaks, Canoes, Kite surfing and diving;

(LIII) non-powered equipment and accessories for aero sports including hang gliding, ballooning, dirigibles, parachuting and para-gliding, classified under Harmonized Commodity Description and Coding Numbers for customs purposes at the point of importation;

(LIV) importation of gem stones for the purpose of re-export upon being cut and polished; and

(LV) importation of equipment for greenhouses and polytunnels and materials for the construction of greenhouses by any grower of agricultural products or plants of any type, subject to the condition that such items are not manufactured in Sri Lanka, and are approved by the Director-General, Department of Fiscal Policy on the recommendation of the Secretary to the Ministry of the Minister assigned the subject of Agriculture.";

(2) in Part II of that Schedule—

(*a*) in paragraph (*a*) of item (ii) thereof by the substitution for the words and figures "April 1, 2017, supply of electricity" of the words and figures "November 1, 2016 supply of electricity;

(*b*) in paragraph (*c*) of item (vii) thereof, by the substitution for the words "a construction sub-contractor," of the

words and figures "a construction sub-contractor or if such service is provided under a contract agreement executed prior to August 1, 2017, a construction contractor or a sub-contractor"; and

(*c*) by the addition immediately after the item (xxxix) of the following new item:—

"(xl) with effect from April 1, 2018, any service provided by Sri Lanka Deposit Insurance Scheme established by regulations made under the Monetary Law Act, (Chapter 422).".

Sinhala text to prevail in case of inconsistency.

4. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

LAND (RESTRICTIONS ON ALIENATION) (AMENDMENT) ACT, No. 21 OF 2018

[Certified on 30th of July, 2018]

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This Act can be downloaded from www.documents.gov.lk

Land (Restrictions on Alienation)
(Amendment) Act, No. 21 of 2018

[Certified on 30th of July, 2018]

L.D.—O. 11/2018

AN ACT TO AMEND THE LAND (RESTRICTIONS ON ALIENATION) ACT, NO. 38 OF 2014

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

Short title and date of operation.

1. This Act may be cited as the Land (Restrictions on Alienation) (Amendment) Act, No. 21 of 2018 and shall be deemed to have come into operation on April 1, 2018.

Amendment of section 3 of Act, No. 38 of 2014.

2. Section 3 of the Land (Restrictions on Alienation) Act, No. 38 of 2014 (hereinafter referred to as the "principal enactment") is hereby amended in subsection (1) —

(*a*) by the repeal of paragraph (*b*) of that subsection and the substitution therefor of the following paragraph:—

"(*b*) a condominium parcel specified under the Apartment Ownership Law:

Provided that, the entire value shall be paid upfront through an inward foreign remittance prior to the execution of the relevant deed of transfer;";

(*b*) in paragraph (*h*) of that subsection by the substitution for the words "transfer of such land." of the words "transfer of such land; and";

(*c*) immediately after paragraph (*h*) of that subsection by the addition of the following new paragraph:—

"(*i*) any land, the title of which is transferred on or after April 1, 2018, to a company

referred to in paragraph (*b*) of subsection (1) of section 2, listed in the Colombo Stock Exchange.".

Amendment of section 5A of the principal enactment.

3. Section 5A of the principal enactment is hereby amended —

(*a*) by the substitution for the words and figures "January 8, 2017." of the words and figures "January 1, 2016.";

(*b*) in the marginal note thereof, by the substitution for the words and figures "January 8, 2017." of the words and figures "January 1, 2016.".

Sinhala text to prevail in case of inconsistency.

4. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

BRIBERY (AMENDMENT) ACT, No. 22 OF 2018

[Certified on 30th of July, 2018]

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This Act can be downloaded from www.documents.gov.lk

[Certified on 30th of July, 2018]

L.D.—O. 3/2018

AN ACT TO AMEND THE BRIBERY ACT (CHAPTER 26)

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Short title.

1. This Act may be cited as the Bribery (Amendment) Act, No. 22 of 2018.

Amendment of section 70 of Chapter 26.

2. Section 70 of the Bribery Act (Chapter 26) is hereby amended by the substitution for the words, "upon summary trial and conviction by a Magistrate" of the words "upon trial and conviction by a High Court or upon summary trial and conviction by a Magistrate".

Sinhala text to prevail in case of inconsistency.

3. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

APARTMENT OWNERSHIP (SPECIAL PROVISIONS) ACT, No. 23 OF 2018

[Certified on 15th of August, 2018]

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This Act can be downloaded from www.documents.gov.lk

Apartment Ownership (Special Provisions)
Act, No. 23 of 2018

[Certified on 15th of August, 2018]

L.D.—O. 50/2013

AN ACT TO FACILITATE THE REGISTRATION AND DISPOSITION OF CERTAIN CONDOMINIUM PROPERTIES OWNED BY THE STATE OR BY A STATE AGENCY; AND TO MAKE PROVISION FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Short title.

1. This Act may be cited as the Apartment Ownership (Special Provisions) Act, No. 23 of 2018.

Duration of the Act.

2. The provisions of this Act shall be in operation for a period of five years from the date of commencement of this Act.

Registration of certain Condominium Properties.

3. (1) The Registrar shall register under section 6 of the Apartment Ownership Law, No 11 of 1973, the plans of all such Condominium Properties as are owned by-

(*a*) the Commissioner for National Housing;

(*b*) the National Housing Development Authority;

(*c*) the Urban Development Authority;

(*d*) the Sri Lanka Land Reclamation and Development Corporation; or

(*e*) the State or any other agency by which a Condominium Property has been constructed on State owned land under the Tsunami Resettlement Programme of the Government,

and which were constructed prior to December 31, 2009 and the possession of which has been handed over to any person or persons by way of sale, lease, rent or rent purchase, notwithstanding-

(i) the non-availability of the building plans approved by the local authority;

(ii) the non-availability of the Certificate of Conformity issued by the local authority;

(iii) not having an assessment number or other symbol for each condominium parcel;

(iv) such Condominium Properties not being in conformity with building plans approved by the local authority;

(v) the Condominium Property has not been constructed according to prevailing laws; or

(vi) that a certificate has not been issued by the General Manager of the Condominium Management Authority.

(2) Any registration made under subsection (1) shall be deemed for all purposes to have been registered under the provisions of this Act.

(3) The owner of a Condominium Property referred to in subsection (1) shall submit to the Registrar at the time of registration, a written declaration obtained from the Director-General of the Department of Buildings certifying the safety of occupation of the Condominium Property.

(4) A certificate issued under the hand of the Commissioner for National Housing, General Manager of the National Housing Development Authority, Chairman of the Urban Development Authority, Chairman of the Sri Lanka Land Reclamation and Development Corporation or the Minister assigned the subject of Lands and Land Development or the head of such other State agency responsible for constructing such Condominium Property on State land under the Tsunami Resettlement Programme of the Government, to the effect that a particular Condominium Property is owned by the institutions

specified in pragraphs (*a*) to (*e*) (both inclusive) of subsection (1), as the case may be, and was constructed prior to December 31, 2009, and that the possession of such Property has been handed over to any person by way of sale, lease, rent or rent purchase shall be *prima facie* proof of the facts contained therein.

Interpretation.

4. In this Act, unless the context otherwise requires-

"Commissioner for National Housing" means the Commissioner of National Housing appointed under the National Housing Act (Chapter 401);

"Condominium Management Authority" or "Authority" means the Condominium Management Authority established under the Condominium Management Authority Law, No. 10 of 1973;

"Condominium Property" means the Condominium Property within the meaning of the Apartment Ownership Law, No. 11 of 1973;

"Minister" means the Minister assigned the subject of Housing under Article 43 of the Constitution;

"National Housing Development Authority" means the National Housing Development Authority established under the National Housing Development Authority Act, No. 17 of 1979;

"Registrar" means the Registrar of Lands appointed under the Registration of Documents Ordinance (Chapter 117) having jurisdiction over the registration district in which the Condominium Property to be registered is situated;

"Sri Lanka Land Reclamation and Development Corporation" means the Sri Lanka Land Reclamation and Development Corporation established under the Land Reclamation and Development Corporation Act, No. 15 of 1968;

"Urban Development Authority" means the Urban Development Authority established under the Urban Development Authority Law, No. 41 of 1978.

Sinhala text to prevail in case of inconsistency.

5. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

MUTUAL ASSISTANCE IN CRIMINAL MATTERS (AMENDMENT) ACT, No. 24 OF 2018

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This Act can be downloaded from www.documents.gov.lk

Mutual Assistance in Criminal Matters (Amendment) Act, No. 24 of 2018

[Certified on 15th of August, 2018]

L.D.—O. 67/2016

AN ACT TO AMEND THE MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT, NO. 25 OF 2002

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:–

Short title.

1. This Act may be cited as the Mutual Assistance in Criminal Matters (Amendment) Act, No. 24 of 2018.

Replacement of section 2 of Act, No. 25 of 2002.

2. Section 2 of the Mutual Assistance in Criminal Matters Act, No. 25 of 2002 (hereinafter referred to as the "principal enactment") is hereby repealed and the following section substituted therefor:-

"Application of the Act.

2. (1) The Minister may by Order published in the *Gazette* declare that the provisions of this Act shall apply to–

(*a*) every country that is a party to an international or a regional Convention or other agreement which is in the interest of mutual assistance in criminal matters, to which Sri Lanka has become a party, whether before or after the date of commencement of this Act;

(*b*) a country which has entered into an agreement with Sri Lanka for mutual assistance in criminal matters;

(*c*) a country which has not entered into any agreement with Sri Lanka, where the Minister may determine that it is in the best interests of the sovereign nations that Sri Lanka extends and obtains assistance on the basis of reciprocity;

(*d*) an intergovernmental organization combatting corruption, money laundering or financing of terrorism, on such terms and conditions as may be necessary and on the assurance of reciprocity.

(2) Every Order made under this section shall recite the terms of the agreement, if any, in consequence of which it was made. Such Order shall come into operation on the date of publication of such Order in the *Gazette* or on such later date as may be specified therein and shall remain in force so long as may be specified in such Order or for such period as the agreement in consequence of which it was made, remains in force.

(3) Every Order made by the Minister shall as soon as convenient after its publication in the *Gazette*, be brought before Parliament for its approval. Any Order, which is not approved, shall be deemed to be rescinded as from the date of such disapproval, but without prejudice to anything previously done thereunder.

(4) A notification of the date on which an Order is rescinded shall be published in the *Gazette*.

(5) Every country or intergovernmental organization in respect of which an Order is made and is for the time being in force shall hereinafter be referred to as the "specified country or specified organization.". "

Replacement of section 3 of the principal enactment.

3. Section 3 of the principal enactment is hereby repealed and the following section substituted therefor:–

"Object of the Act.

3. (1) The object of this Act is to facilitate the provision and obtaining by Sri Lanka of

assistance in criminal and related matters, including-

(*a*) the locations and identification of witnesses or suspects;

(*b*) the service of documents;

(*c*) the examination and interviewing of witnesses or suspected persons;

(*d*) the provision and obtaining of evidence, documents, other articles or information;

(*e*) the execution of requests for search and seizure;

(*f*) the effecting of temporary transfer of a person in custody to appear as a witness;

(*g*) the facilitation of the personal appearance of witnesses;

(*h*) the criminal infringement of intellectual property including copyright infringement;

(*i*) the information relating to the location of a computer system or any other property connected with any criminal activity;

(*j*) the enforcement of any orders for the payment of fines;

(*k*) the forfeiture or freezing of property pursuant to the relevant laws on such matters;

(*l*) the tracing of crimes committed *via* internet, information communications technology, cloud computing, blockchain technology and other computer networks including the trading in of any digital currencies;

(*m*) the bribery of any foreign public official or official of a public international organization and their respective proxies and beneficiaries;

(*n*) the expedited preservation of stored computer data and expedited disclosure of preserved traffic data and data retention;

(*o*) the location of proceeds of a criminal activity;

(*p*) the use of documentary evidence obtained in a specified country through specific authorization to be made admissible in a judicial proceeding; and

(*q*) the admissibility and applicability of evidence led from a specified country through video conferencing technology.

(2) Nothing in this Act shall preclude the granting or obtaining of any other form or nature of assistance for investigation in connection with judicial proceedings, connected with criminal matters to or from a specified country or specified organization. Such assistance may include controlled operations, joint investigations, the use of other special investigative techniques including the use of diverse search engines and the transfer of criminal proceedings to another court.".

Replacement of section 4 of the principal enactment.

4. Section 4 of the principal enactment is hereby repealed and the following new sections are substituted therefor:–

"Central Authority to administer the Act.

4. (1) The Secretary to the Ministry of the Minister, shall be the Central Authority for the purposes of this Act (hereinafter referred to as the "Central Authority").

(2) The Central Authority may authorize an Additional Secretary, in writing to act on behalf of the Central Authority for the purpose of this Act.

(3) The Central Authority shall designate competent authorities who shall process information to requests as directed by the Central Authority.

(4) Where the Central Authority is unable to carry out his duties on account of ill health or other infirmity or being convicted of an offence, the Minister shall appoint an Additional Secretary to administer the Act, within three days of such inability.

Duties and functions of the Central Authority.

4A. The Central Authority–

(*a*) shall take all reasonable steps to ensure prompt action in respect of all requests, together with the assistance of such other entities or persons, as may be necessary;

(*b*) may direct a request received under section 5, to a competent authority to provide necessary information or assistance;

(*c*) shall prioritize the execution of urgent requests;

(*d*) shall maintain contact details of relevant local and foreign authorities;

(*e*) shall have a dedicated unit to maintain a proper system to manage incoming and outgoing requests; and

(*f*) may issue guidelines and circulars to administer the provisions of the Act.".

Replacement of section 5 of the principal enactment.

5. Section 5 of the principal enactment is hereby repealed and the following new sections are substituted therefor:–

"Application made by a specified country or specified organization.

5. (1) An application shall be made to the Central Authority by the appropriate authority of a specified country or specified organization requesting for information or assistance in respect of such criminal and related matters referred to in this Act. Such information shall be obtained to prevent, detect, investigate or institute proceedings in respect of a criminal activity within or outside that country.

(2) The Application shall be made substantially in the Form set out in the Schedule hereto and shall be accompanied by such documents as may be specified for that purpose by the Central Authority to enable prompt action under section 5A.

(3) Notwithstanding the provisions of subsection (1), a request which conforms to the provisions of subsection (2) may be forwarded

through electronic means directly to the relevant competent authority through the appropriate authority of a specified country or specified organization.

(4) Where a request is made directly to a competent authority under subsection (3), the said competent authority shall immediately inform the Central Authority by forwarding a copy of the relevant request.

(5) Assistance or information on a request made under this section referred to the competent authority by the Central Authority shall, subject to the provisions of section 6, be transmitted to the appropriate authority of a specified country or specified organization directly–

(*a*) by the Central Authority; or

(*b*) by the relevant competent authority,

and the said competent authority shall report to the Central Authority on the progress made or on the completion of the request.

(6) No court in Sri Lanka may reject a request on the grounds that the Central Authority did not receive such request directly from the appropriate authority of a specified country or specified organization.

Prompt response to requests.

5A. (1) The Central Authority, on receiving a request may as soon as possible either approve, approve partially, approve subject to such conditions as may be necessary, postpone or refuse such request.

(2) Upon receipt of a request the Central Authority shall promptly–

(*a*) direct a competent authority to process the information in respect of the request;

(*b*) inform the appropriate authority of a specified country or specified organization–

(i) of the outcome of the execution of the request, with reasons;

(ii) of any reasons that render impossible the execution of the request or are likely to delay it significantly.

Transmission of information spontaneously in exigent situations.

5B. (1) The Central Authority may direct a competent authority to spontaneously transmit information requested relating to a criminal matter to an appropriate authority of a specified country or specified organization in exigent situations, on the assurance of reciprocity and on such conditions as may be necessary for the purposes of confidentiality.

(2) For the purpose of this section an "exigent situation" shall be determined by the Central Authority, having considered the gravity of the offence or the insidious nature of the criminal matter, setting out reasons in writing.".

Amendment of section 6 of the principal enactment.

6. Section 6 of the principal enactment is hereby amended in subsection (1) thereof as follows:–

(1) by the substitution for the words "in the opinion of the Central Authority-" of the words "in the opinion of the Central Authority or the competent authority having consulted the Central Authority-"; and

(2) by the repeal of paragraph (*d*) of that subsection and the substitution therefor, of the following paragraph:–

"(*d*) a request relates to the prosecution of a person in connection with a criminal matter, where–

(i) criminal investigations or proceedings has commenced in Sri Lanka; or

(ii) such person has been acquitted or convicted in accordance with the laws of Sri Lanka,

in respect of that offence or another offence constituted by the same act or omission as that which constituted the offence;".

Insertion of new section 6A in the principal enactment.

7. The following new section is hereby inserted immediately after section 6 of the principal enactment and shall have effect as section 6A of that enactment:–

"Confidentiality.

6A. (1) Every officer referred to under section 4 shall consider all matters strictly confidential.

(2) Unless otherwise authorized by law, a person who, because of his official capacity or office, and being aware of the confidential nature of the request, has knowledge of-–

(*a*) the contents of such request made under this Act;

(*b*) the fact that such request has been, or is about to be made; or

(*c*) the fact that such request has been granted or refused,

shall not disclose such content or facts except to the extent that the disclosure is necessary to execute the foreign request.

(3) In order to comply with a request, if confidentiality cannot be upheld as specified in subsection (2), the Central Authority shall be promptly informed and the Central Authority shall in turn inform the appropriate authority of a specified country or specified organization, which shall then determine whether the request should nevertheless be executed.

(4) Any person who fails to comply with this section, commits an offence and shall be liable on conviction by the High Court of the Province to a fine exceeding one hundred thousand rupees taking into consideration the nature and gravity of the non-compliance. Provided, however, such fine shall not exceed a sum of five million rupees in any given case.

(5) For the purposes of this Act, a request for information relating to a criminal matter may be granted after ensuring the authenticity of the requesting person.".

Amendment of section 7 of the principal enactment.

8. Section 7 of the principal enactment is hereby amended as follows:-

(1) by the repeal of subsection (2) of that section and the substitution of the following subsection therefor:–

"(2) Where there are reasonable grounds to believe that a person who is suspected to be involved in or is able to provide evidence or assistance in any criminal matter within the jurisdiction of a criminal court in Sri Lanka,-

(*a*) is in a specified country, the Central Authority shall on his own volition or on the request of a competent authority, request the appropriate authority of a specified country or specified organization in such specified country to assist in locating such person;

(*b*) where the identity of such person is not known, the Central Authority may in his discretion or on the request of a competent authority, request the appropriate authority of a specified country or specified organization to–

(i) interview;

(ii) record statements;

(iii) obtain documents or articles,

from such persons believed to be connected with such person and forward such information to the Central Authority. The Central Authority shall where necessary, forward the same to the relevant competent authority. Documents or articles obtained shall be clearly marked by the appropriate authority.";

(2) by the insertion immediately after subsection (3) of that section, of the following new subsection:–

"(4) Subject to sections 10 and 21, the interviewing and recording of a statement of a person as specified in subsection (2), shall be done by a law enforcement authority in Sri Lanka or a law enforcement authority as may be assigned by an appropriate authority or by a combined team of the said law enforcement authorities.";

(3) by the repeal of the marginal note to that section and the substitution of the following marginal note therefor:-

"Reciprocating assistance

in relation to locating and

identifying persons.".

Amendment of section 8 of the principal enactment.

9. Section 8 of the principal enactment is hereby amended by the repeal of subsection (1) thereof and the substitution therefor of the following subsection:–

"(1) Where the Central Authority approves a request from the appropriate authority of a specified country or a specified organization for the service of–

(*a*) summons or other process requiring a person to appear as a defendant or attend as a witness in criminal proceedings in that country;

(*b*) a document issued by a court exercising criminal jurisdiction in that country and recording a decision of the court made in the exercise of that jurisdiction,

the Central Authority shall promptly forward such request together with the decision of that court to the Magistrate in Sri Lanka within whose jurisdiction such person is residing, for service.".

Amendment of section 10 of the principal enactment.

10. Section 10 of the principal enactment is hereby amended in subsection (1) thereof by the repeal of all the words from "for the purpose of proceeding" to the end of that paragraph and the substitution therefor of the following:-

"for the purposes of a proceeding in relation to a criminal matter in the specified country or specified organization, the Central Authority shall promptly refer such request to a competent authority or as required, to the Chief Magistrate of the Colombo Magistrate's Court to take such evidence or to receive such documents or articles, and shall, upon receipt of such evidence, documents or articles from such Magistrate or competent authority, as the case may be, transmit the same to the appropriate authority of the specified country or specified organization.".

Replacement of section 11 of the principal enactment.

11. Section 11 of the principal enactment is hereby repealed and the following section substituted therefor:–

"Request by Central Authority for evidence to be taken in and documents &c. to be produced in a specified country or specified organization.

11. (1) The Central Authority may, on the request of a court or a competent authority, request the appropriate authority of a specified country or specified organization to arrange for–

(*a*) evidence including computer evidence to be taken;

(*b*) investigative material to be produced;

(*c*) bank statement to be produced; or

(*d*) any other documents or other articles to be produced,

for the purposes of investigating a criminal matter and a proceeding of a criminal matter.

(2) Where the Central Authority receives from the appropriate authority of a specified country or specified organization,–

(*a*) any evidence taken, and where such evidence is in relation to computer evidence, being certified as a true copy by any judicial authority or the appropriate authority, such evidence;

(*b*) investigative material, bank statement produced, any other document or other article produced in such specified country or specified organization, duly authenticated under section 21,

shall be admissible in any proceeding to which such request relates.

(3) Any information received under this section shall not be used for any purpose other than the criminal matter specified in such request, without the written consent of such appropriate authority.".

Amendment of section 12 of the principal enactment.

12. Section 12 of the principal enactment is hereby amended in subsection (2) thereof, by the substitution for the words "shall be deemed to authorize-", of the words "shall be sufficient authorization for–".

Amendment of section 13 of the principal enactment.

13. Section 13 of the principal enactment is hereby amended in subsection (2) thereof, by the substitution for the words "shall be deemed to authorize the", of the words "shall be sufficient authorization for".

Insertion of new sections 13A and 13B in the principal enactment.

14. The following new sections are hereby inserted immediately after section 13 of the principal enactment and shall have effect as sections 13A and 13B of that enactment:-

"Facilitation of video conferencing technology.

13A. Where a court or competent authority considers that oral evidence is necessary for identification of a person or thing or any other form of assistance under this Act, such court or competent authority may use video or audio transmission technology to lead evidence in such manner as may be prescribed, from a witness who is physically present in a foreign State and unable to attend court in Sri Lanka. The hearing shall be conducted directly by a judicial officer or law enforcement officer.

Joint investigations.

13B. When a request is made where an offence is committed involving persons or property in multiple countries, the Central Authority shall facilitate provisions to establish a joint investigation, comprising of investigators from Sri Lanka and any specified countries or specified organizations.".

Insertion of new Part VA in the principal enactment.

15. The following new Part (sections 14A and 14B) is hereby inserted immediately after section 14 of the principal enactment and shall have effect as PART VA of that enactment:–

"PART VA

ASSISTANCE IN RELATION TO FINDINGS OF BRIBERY OF FOREIGN PUBLIC OFFICIAL OR OFFICIAL OF A PUBLIC INTERNATIONAL ORGANIZATION

Request by a specified country or specified organization for identifying &c. of bribery of a foreign official.

14A. Where an appropriate authority of a specified country or specified organization makes a request, having reasonable grounds to believe that a foreign public official or an official of a public international organization has been involved in bribery, the provisions of this Act shall apply in order to identify or locate the said official or to assess the value and locate the proceeds of bribery relating to the said foreign official, his proxies and beneficiaries.

Request by Sri Lanka for identifying &c. of bribery of a foreign official.

14B. Where there are reasonable grounds to believe that an offence under the Bribery Act (Chapter 26) has been committed in which a foreign public official or an official of a public international organization is involved, the Central Authority may request the appropriate authority of a specified country or specified organization in which such foreign official is resident to identify and locate such official and assess the value and locate the proceeds of bribery, relating to the said foreign official, his proxies and beneficiaries.".

Replacement of section 17 of the principal enactment.

16. Section 17 of the principal enactment is hereby repealed and the following section substituted therefor:–

"Request by a specified country or specified organization for tracing proceeds of crime.

17. Where–

(*a*) a person has been charged with, or convicted of, or is suspected on reasonable grounds of having committed a serious offence in a specified country;

(*b*) there are reasonable grounds to believe that any property derived or obtained, directly or indirectly, from the commission of that offence, is in Sri Lanka,

and the appropriate authority requests assistance from the Central Authority, the Central Authority may require the relevant law enforcement authority to provide assistance to identify, locate a person or assist in assessing the value of the property.".

Amendment of section 19 of the principal enactment.

17. Section 19 of the principal enactment is hereby amended in paragraph (*a*) of subsection (1) thereof, by the substitution for the words "criminal matter,", of the words "criminal or related matter,".

Insertion of new Part VIIA in the principal enactment.

18. The following new Part (sections 20A to 20F) is hereby inserted immediately after section 20 of the principal enactment and shall have effect as PART VIIA of that enactment:-

"PART VIIA

EXPEDITED PRESERVATION OF STORED DATA IN RELATION TO COMPUTER CRIMES

Relevant Secretary to a Ministry to make order to preserve data.

20A. Where the Central Authority is of the opinion that expedited preservation is required of stored computer data or traffic data, the Central Authority shall inform the Secretary to the Ministry of the Minister assigned the relevant subject to make an order for the expedited preservation of stored computer data or traffic data, as the case may be, or to both such data, for the period specified under section 20B.

Period of preservation of data.

20B. All data for which an order is made under section 20A shall be preserved for a minimum period of six years.

Mode of preservation.

20C. (1) Records of data preserved under this Part shall be maintained in a manner and form that will enable an institution to immediately comply with the request for information in the form in which it is requested.

(2) A copy of the record may–

(*a*) be kept in a machine readable form to conveniently obtain a print thereof;

(*b*) be kept in an electronic form, to enable a readable copy to be readily obtained and an electronic signature of the person who keeps the records is inserted for purposes of verification;

(*c*) where necessary, entail freezing of the stored computer data; or

(*d*) be updated, if necessary.

Release of preserved data.

20D. (1) Preserved data shall be released for the purpose of criminal investigation or judicial proceedings on a request duly made by the appropriate authority for such period as specified in the request.

(2) Every order made under section 20A shall lapse on the expiry of the time period specified under section 20B or on the expiry of the period specified in the request.

(3) Where in the course of granting a request to preserve traffic data concerning a specific communication, the Central Authority is informed that a service provider in another country was involved in the transmission of the communication, the Central Authority shall instruct the relevant competent authority to disclose, such amount of traffic data as is sufficient to identify that service provider and the path through which the communication was transmitted, prior to receipt of the request for production.

Production of stored computer data.

20E. Subject to any written law on admissibility of computer data and notwithstanding the provisions of Part VI of this Act, upon the request of an appropriate authority of a specified country or specified organization, for computer data or information to investigate the criminal matter, the Magistrate may issue an order to enable the production of–

(*a*) specified computer data in the possession or control of a person stored in a computer system or a computer data storage medium; and

(*b*) the necessary subscriber information in the possession or control of a service provider.

Search and seizure of computer data.

20F. (1) Upon the request by an appropriate authority of a specified country or specified organization, a warrant may be issued under section 15, *mutatis mutandis*, to search or otherwise access any computer system or part thereof as well as any computer storage medium in which computer data may be stored.

(2) The search warrant issued by the Magistrate within whose jurisdiction such computer or computer system is believed to be located, may authorize the police officer or any other designated person, where necessary, to–

(*a*) seize or otherwise secure a computer system or part thereof, or a computer data storage medium;

(*b*) make and retain a copy of that computer data;

(*c*) maintain the integrity of the relevant stored computer data; and

(*d*) render inaccessible or remove that computer data in the accessed computer system.".

Insertion of new sections 21A and 21B in the principal enactment.

19. The following new sections are hereby inserted immediately after section 21 of the principal enactment and shall have effect as sections 21A and 21B respectively, of that enactment–

"Principles of mutuality and reciprocity.

21A. For the purposes of this Act, the principles of mutuality and reciprocity shall at all times be upheld.

Language.

21B. The request and the accompanying documents for assistance under this Act shall be in the English language.".

Replacement of section 24 of the principal enactment.

20. Section 24 of the principal enactment is hereby repealed and the following section substituted therefor:-

"Interpretation.

24. In this Act, unless the context otherwise requires–

"appropriate authority" in relation to–

(*a*) a specified country means the person, howsoever described, designated to receive and transmit requests for assistance in criminal matters, by or under any law of that country;

(*b*) a specified organization means the person howsoever described, designated to receive and transmit requests for assistance in criminal matters;

"blockchain technology" means distributed ledger technology that uses a distributed, decentralized, shared and replicated ledger, which may be public or private, with

necessary permission or without permission, or driven by crypto economics or not. The data on the ledger shall be protected with cryptography, be immutable and auditable and shall provide true information;

"competent authority" means a law enforcement authority or any other authority established by law;

"computer data" means any representation of facts, information or concepts in a form suitable for processing in a computer system including a program suitable to cause a computer system to perform a function;

"computer system" shall have the same meaning as in the Computer Crime Act, No. 24 of 2007;

"controlled operation" includes an operation that–

(*a*) involves the participation of law enforcement officers;

(*b*) is conducted for the purpose of–

(i) obtaining evidence that may lead to the prosecution of a person for a serious offence;

(ii) arresting any person involved in criminal activity or corrupt conduct;

(iii) frustrating criminal activity or corrupt conduct;

(iv) carrying out an activity that is reasonably necessary to facilitate the achievement of any purpose referred to in sub-paragraph (i), (ii) or (iii);

(*c*) may involve the supervision of a law enforcement officer or any other authorized person, where such conduct constitutes an offence in Sri Lanka;

"country" or "foreign State" includes a colony, territory, protectorate or other dependency of such country or foreign State, or a ship or an aircraft registered in such country or foreign State, and shall be deemed to include the Hong Kong Special Administration Region of the Peoples Republic of China;

"criminal matter" means–

(*a*) violation of any law relating to a criminal offence; and

(*b*) an investigation, prosecution or judicial proceedings related to a criminal offence and includes-

(i) the forfeiture or confiscation of any property or proceeds of crime upon conviction or non conviction basis;

(ii) the imposition or recovery of a pecuniary penalty;

(iii) the tracing, freezing and restraint of property that may be forfeited or confiscated;

"digital currency"–

(*a*) includes a digital representation of value that–

(i) is used as a medium of exchange, unit of account or store of value; and

(ii) may not be denominated in legal tender; and

(*b*) does not include–

(i) a transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged with the merchant for legal tender, bank credit or digital currency; or

(ii) a digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform;

"document" includes-

(*a*) any of, or any part of any of, the following things:-

(i) any paper or other material on which there is writing;

(ii) a map, plan, drawing, photograph or similar thing;

(iii) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;

(iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;

(v) any article on which information has been stored or recorded, either mechanically or electronically;

(vi) any other record of information; or

(*b*) any copy, reproduction or duplicate of such a thing; or

(*c*) any part of such a copy, reproduction or duplicate;

"duly authenticated" in relation to a document, means a document authenticated as provided for in section 21;

"foreign law immunity certificate" means a certificate given or declaration made, by the appropriate authority of a specified country or under the law of a specified country, certifying or declaring that under the law of that specified country, persons referred to generally or specifically, could or could not, either generally or in specified proceedings or either generally or under specified circumstances, be required to answer a specified question, or to produce a specified document;

"foreign public official" means–

(*a*) an employee or official of a foreign government body; or

(*b*) an individual who performs work for a foreign government body under a contract; or

(*c*) an individual who holds or performs the duties of an appointment, office or a position under a law of a foreign State or of a part of a foreign State; or

(*d*) an individual who holds or performs the duties of his appointment, office or position created by custom or convention of a foreign State or of a part of a foreign State; or

(*e*) an individual who is otherwise in the service of a foreign government body including service as a member of a military force or police force; or

(*f*) a member of the executive, judiciary or magistracy of a foreign State or of part of a foreign State; or

(*g*) a member or officer of the legislature of a foreign State or of a part of a foreign State; or

(*h*) an individual who–

(i) is an authorized intermediary of a foreign public official covered by any of the above paragraphs; or

(ii) holds himself or herself out to be the authorized intermediary of a foreign public official covered by any of the above paragraphs;

"freezing" means to prohibit the transfer, conversion, disposition or movement of property, any assets or computer data on the basis of, and for the duration of the action initiated by the appropriate authority or a court;

"Minister" means the Minister appointed under Article 43 or Article 44 of the Constitution, to whom the subject of Justice is assigned;

"official of a public international organization" means–

(*a*) an employee of a public international organization; or

(*b*) an individual who performs work for a public international organization under a contract; or

(*c*) an individual who holds or performs the duties of an office or position in a public international organization; or

(*d*) an individual who is otherwise in the service of a public international organization; or

(*e*) an individual who–

(i) is an authorized intermediary of an official of a public international organization covered by any of the above paragraphs; or

(ii) holds himself or herself out to be the authorized intermediary of an official of a public international organization covered by any of the above paragraphs;

"proceeds of crime" includes any property, benefit or advantage that is wholly or partly obtained, derived or realized directly or indirectly as a result of the commission of a criminal act or omission;

"property" means any currency, and includes any asset of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible whether situated in Sri Lanka or elsewhere, and legal documents or instruments in any form whatsoever including electronic or digital form, evidencing title to, or interest in, such assets, including but not limited to bank credits, travelers' cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit and includes any legal or equitable interest in any such property;

"public international organization" means–

(*a*) an organization–

(i) of which two or more countries, or the governments of two or more countries, are members; or

(ii) that is constituted by persons representing two or more countries, or representing the governments of two or more countries; or

(*b*) an organization established by, or a group of organizations constituted by–

(i) organizations of which two or more countries, or the governments of two or more countries, are members; or

(ii) organizations that are constituted by the representatives of two or more countries, or the governments of two or more countries; or

(*c*) an organization that is–

(i) an organ of, or office within, an organization described in paragraph (*a*) or (*b*); or

(ii) a commission, council or other body established by an organization so described or such an organ; or

(iii) a committee, or subcommittee of a committee, of an organization described in paragraph (*a*) or (*b*), or of such an organ, council or body;

"serious offence" means an offence punishable with death or with imprisonment for a term not less than one year; and

"traffic data" shall have the same meaning as in the Computer Crime Act, No.24 of 2007.".

General amendment.

21. (1) In the principal enactment and in any other written law relating to mutual assistance in criminal matters there shall be substituted for the words "specified country" the words "specified country or specified organization".

(2) Every reference to the "specified country" in any notice, notification, contract, communication or other document relating to mutual assistance in criminal matters, shall be read and construed as a reference to the "specified country or specified organization".

Replacement of the Schedule to the principal enactment.

22. The Schedule to the principal enactment is hereby repealed and the following Schedule substituted therefor:-

"SCHEDULE

[Section 5(2)]

MUTUAL ASSISTANCE REQUEST FORM

TO THE CENTRAL AUTHORITY OF SRI LANKA

1. Name of the Country or Intergovernmental Organization:.....

2. Details of the Appropriate Authority:

2.1 Name:.....

2.2 Title or Function:.....

2.3 Ministry, Institution or Department:.....

2.4 Address:.....

2.5 Telephone:.....

2.6 Fax:.....

2.7 Email:.....

2.8 Website:.....

3. Legal basis of the request:

3.1 Mention the legal basis of the request:*

❒ International or Regional Convention (Please specify).....

❒ Agreement(Please specify).....

❒ Intergovernmental Organization (Please specify).....

❒ Other (Please specify).....

*Please tick "P" in the relevant box

3.2 Statement of reciprocity: [If space is insufficient, please provide necessary attachments.]
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3.3 Any other additional information required under the Convention or Agreement: [If space is insufficient, please provide necessary attachments.]
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4. Assistance type:

4.1 Mention the assistance type:*

❒ Locating and identifying suspects/witnesses/other persons.

❒ Arrangement for obtaining of the evidence, documents, other articles or information.

❒ Service of summons.

❒ Arrangement for the removal of prisoner or witness for the purposes of giving evidence.

❒ Arrangement for the issue of a search warrant for the search and seizure.

❒ Joint Investigations.

❒ Enforcement of orders.

❒ Forfeiture or freezing of property.

❒ Locating, identifying and assessing the value of property.

❒ Expedited preservation of computer data or traffic data.

❒ Releasing of preserved data.

❒ Other. (Please specify)…….....

*Please tick "✓" in the relevant box(es)

4.2 Full description of important information: [If space is insufficient please provide necessary attachments]
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5. Relevant Competent Authority:

5.1 Mention the category of the relevant competent authority:*

❒Law Enforcement or Investigating Authority

❒Prosecuting Authority

❒Judicial Authority

❒Other (Please specify).....

*Please tick "✓" in the relevant box(es)

5.2 Provide the name and the other relevant details (including functions, the main responsibilities and contact details) of the relevant competent authority: [If space is insufficient please provide necessary attachments.]
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6. Prior Contacts:

Please provide details of prior contacts concerning this request made with any person or competent authority in Sri Lanka: [If space is insufficient please provide necessary attachments.]
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7. List of Offences:

Please provide the following details of offence(s). [If space is insufficient please provide necessary attachments.]

7.1 Offence:

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7.1.1 Details of national legislation(s) related to the offence:

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7.1.2 Relevant provisions:

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7.1.3 Maximum penalties for the offence:

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8. Details of person(s):

8.1 Suspects/Offenders:

If known please provide the information on identification of the person or persons who are the subject of the request including Full Name, aliases, Gender, Address(es), Date of Birth, Place of Birth, Nationality at birth, Passport Number and location, Citizenship(s), Language(s), etc. [If space is insufficient please provide necessary attachments.]

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8.2 Company/Organization:

If known please provide the information on identification of the company or organization who are connected with the request including Name, Place of Incorporation, Date of Incorporation, Address(es), Director's/Principal's/Controller's details including Officer's identification information, Full Name, Title/ Position, Address, History. [If space is insufficient please provide necessary attachments.]

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9. Provide a short summary of all relevant facts including details:

- Leading to the arrest, charging or conviction of persons involved;
- Leading to making of any restraining or forfeiture order;
- Leading to any seizure of property for evidentiary purposes;
- Indicating the connection of the criminal behavior in issue and the assistance requested;
- Showing clearly how execution of the request will contribute to the case outcomes;
- Any other information.

[If space is insufficient please provide necessary attachments.]

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10. Provide a short summary of the current status of the case including, if appropriate:

- Investigations (Commenced, Continuing, Concluded);
- Relevant properties (restrained, freezed, seized, confiscated);
- Arrests (date, warrants, etc.);
- Charges laid;
- Prosecution (Commenced, Continuing, Concluded);
- Trial (Commenced, Continuing, Concluded);
- Convicted/ Condemned and the date;

- Appeal(s);
- Any other information.

[If space is insufficient please provide necessary attachments.]
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11. Urgency:

11.1 Is the request urgent? (Yes/ No)*
*delete whatever is inapplicable.

11.2 Please provide the reason(s) for urgency and provide relevant deadlines:

[If space is insufficient please provide necessary attachments.]
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12. Provide any other particular information to process the request:

If space is insufficient please provide necessary attachments.]
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13. List of Annexures:

[If space is insufficient please provide necessary attachments.]
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14. Instructions:

(1) Translations of documents to be sent in English, translated by a sworn or authorized translator.

(2) A document shall be deemed to be duly authenticated if-

(*a*) signed or certified by a Judge, Magistrate or Officer in, or of, the respective country; and

(*b*) authenticated by the oath of a witness or an officer of the Government of the respective country or to be sealed with the official or public seal of the respective country or of a Minister of State or of a Department or officer of the Government of the respective country.

(3) All documents forwarded with the request shall be comprehensive, precise and easily understandable manner.

15. Declaration:

I, (Full Name).....**, am signing this request at** (City/Place) ..... (Code)....., (Country).....**on** (Date) ..... **under the power to make such requests vested directly in me/ as the Appropriate Authority.***

.....
Signature

Appropriate Authority of the Specified Country/Organization*

.....
Official Seal

*delete whatever is inapplicable.".

23. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to prevail in case of any inconsistency.

English Acts of the Parliament can be purchased at the "PRAKASHANA PIYASA", DEPARTMENT OF GOVERNMENT PRINTING, NO. 118, DR. DANISTER DE SILVA MAWATHA, COLOMBO 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

VALUE ADDED TAX (AMENDMENT) ACT, No. 25 OF 2018

[Certified on 16th of August, 2018]

Printed on the Order of Government

Published as a Supplement to Part II of the **Gazette of the Democratic Socialist Republic of Sri Lanka** of August 17, 2018

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This Act can be downloaded from www.documents.gov.lk

Value Added Tax (Amendment)
Act, No. 25 of 2018

[Certified on 16th of August, 2018]

L.D.—O. 70/2016

AN ACT TO AMEND THE VALUE ADDED TAX ACT, NO. 14 OF 2002.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Short title.

1. This Act may be cited as the Value Added Tax (Amendment) Act, No. 25 of 2018.

Amendment of section 5 of Act, No.14 of 2002.

2. Section 5 of the Value Added Tax Act, No. 14 of 2002 (hereinafter referred to as the "principal enactment") is hereby amended in subsection (15) thereof, by the substitution for the words "dialysis and, services provided by the Out Patients Department but excluding medical consultation services;" of the words "dialysis, any healthcare services provided by the Out Patients Department health care of any medical institution or professionally qualified person providing such care and medical consultation services:".

Amendment of section 22 of the principal enactment.

3. Section 22 of the principal enactment is hereby amended in paragraph (*a*) of the first proviso to subsection (1) thereof, by the substitution for the words starting from "shall be" and ending with the words "within Sri Lanka" of the following:–

"shall be–

(i) rupees twenty five for each such garment, for any period commencing prior to November 1, 2016;

(ii) rupees seventy five for each such garment, for any period commencing on or after November 1, 2016 but

ending on or immediately after the date of commencement of this (Amendment) Act;

(iii) rupees seventy five for each such garment other than panties, socks, briefs and boxer shorts identified under the Harmonized Commodity Description and Coding System Numbers for Custom Purposes, for any period commencing on or after the date of commencement of this (Amendment) Act;

(iv) rupees seventy five for six pieces of panties, socks, briefs and boxer shorts, identified under the Harmonized Commodity Description and Coding System Numbers for Custom Purposes, for any period commencing on the date of commencement of this (Amendment) Act,

supplied within Sri Lanka.".

Amendment of section 25A of the principal enactment.

4. Section 25A of the principal enactment is hereby amended in paragraph (iv) of subsection (1) thereof, by the substitution for the words and figures "established by the Monitory Law Act, (Chapter 422) (with effect from July 1, 2003)" of the words and figures "established by the Monitory Law Act, (Chapter 422) (with effect from July 1, 2003), or the Sri Lanka Deposit Insurance Scheme established by regulation made under the said Act, (with effect from April 1, 2018)".

Amendment of section 25C of the principal enactment.

5. Section 25C of the principal enactment is hereby amended in subsection (3) thereof as follows:–

(1) in paragraph (*e*) of that subsection, by the substitution for the words and figures "(*e*) commencing from

January 1, 2015, but prior to May 2, 2016" of the words and figures "(*e*) commencing from January 1, 2015 but prior to May 2, 2016 and commencing from July 12, 2016 but prior to November 1, 2016";

(2) in paragraph (*f*) of that subsection, by the substitution for the words and figures "(*f*) commencing from May 2, 2016" of the words and figures "(*f*) commencing from May 2, 2016, but prior to July 12, 2016 and commencing from November 1, 2016".

Insertion of new section 58A in the principal enactment.

6. The following new section is hereby inserted immediately after section 58 of the principal enactment and shall have effect as section 58A of that enactment:–

"Refund of tax to tourists.

58A. (1) From such date as shall be determined by the Minister by Order published in the *Gazette*, where a tourist has proved by a claim in writing in the specified form to the satisfaction of the Commissioner-General of Inland Revenue or any person authorized by him in writing in that behalf,–

(*a*) that such tourist has purchased any specified goods in Sri Lanka as shall be prescribed, from an authorized retailer;

(*b*) that the value of such goods are in excess of the minimum value as shall be prescribed; and

(*c*) that such tourist has paid the tax on such purchases as per the tax invoice as specified by the Commissioner-General of Inland Revenue and issued to him by such authorized retailer,

such tourist shall if he produces the relevant goods to the authorized person for inspection

at the point of departue and if such goods are being removed from Sri Lanka at the time of his departure from Sri Lanka, the Commissioner-General of Inland Revenue or the authorized person may on being satisfied with the facts specified in paragraphs (*a*), (*b*) and (*c*), refund or make necessary arrangements to refund to such tourist such amount of the tax paid, on the basis of a refund scheme as shall be prescribed, at the time of such removal of goods from Sri Lanka.

(2) any authorized retailer who violates any conditions subject to which his registration is made commits an offence and shall on conviction after summary trial before a Magistrate be liable to a fine of rupees One Hundred Thousand and to the cancellation of his registration.

(3) For the purposes of this section–

(*a*) "authorized retailer" means any registered person who has been issued with a certificate of registration as an authorized retailer by the Commissioner-General of Inland Revenue on the application made to him or any person authorized by the Commissioner-General of Inland Revenue in that behalf, to register under this Act as an authorized retailer on the fulfilment of the conditions as specified by the Commissioner-General of Inland Revenue;

(*b*) "tourist" means any individual who is not a citizen of Sri Lanka or resident in Sri Lanka and who is not less than eighteen years old as at the date of first day of his visit to Sri Lanka, and stays in Sri Lanka for less than ninety days on a visitor Visa issued by the Controller of Immigration and Emigration.".

Amendment of the First Schedule to the principal enactment.

7. The First Schedule to the principal enactment is hereby amended in PART II thereof as follows:–

(1) in paragraph (*a*) of that PART–

(*a*) by the repeal of item (i) and the substitution therefor of the following:–

"(i) wheat, wheat flour or infant milk powder with effect from November 1, 2016";

(*b*) by the substitution, in item (iv) for the words "Aircrafts, Helicopters," of the words and figures "Aircrafts or Helicopters, [prior to the date of commencement of this (Amendment) Act];

(*c*) by the repeal of item (v) and the substitution therefor of the following:–

"(v) books (other than cheque books, periodicals, magazines, newspapers, diaries, ledger books and exercise books), for any period prior to November 11, 2016;

books, magazines, jouranals or periodicals (other than newspapers)

for any period on or after November 11, 2016 identified under the Harmonized Commodity Description and Coding System Numbers for Custom purposes; and

unused postage and revenue stamps of the Government of the Democratic Socialist Republic of Sri Lanka or of a Provincial Council;";

(*d*) in item (xxii) of that paragraph–

(i) by the substitution in sub-item (i) for the words "sunglasses" of the words and figures "sunglasses [prior to the date of commencement of this (Amendment) Act]";

(ii) by the substitution in sub-item (iv) for the words "wood (sawn)" of the words and figures "wood (sawn) [prior to the date of commencement of this (Amendment) Act]";

(iii) by the substitution in sub-item (v) for the words and figures "Sri Lanka Export Development Act, No. 40 of 1979" of the words "Sri Lanka Export Development Act, No.40 of 1979 [prior to the date of commencement of this (Amendment) Act]";

(iv) by the repeal of sub-item (vii) and the substitution therefor of the following:–

"(vii) energy saving bulbs, for any period with effect from January 1, 2017 and raw material for the manufacture of energy saving bulbs;";

(*e*) by the addition immediately after item (xxvi), of the following:–

"(xxvii) plants, machinery or accessories for renewable energy generation identified under the Harmonized Commodity Description and Coding System Numbers for Custom Purposes with effect from November 11, 2016;

(xxviii) electrical goods identified under the Harmonized Commodity Description and Coding System Numbers for Custom Purposes with effect from November 1, 2016;

(xxix) medical machinery or medical equipment identified under the Harmonized Commodity Description and Coding System Numbers for Custom Purposes with effect from November 11, 2016;

(xxx) hot air balloons identified under the Harmonized Commodity Description and Coding System Numbers for Custom Purposes with effect from January 1, 2017.".

(2) (*a*) in item (xi) of paragraph (*b*) of that PART–

(i) in sub-item (*b*), by the substitution for the words and figures "on or after November 1, 2016 by any person" of the words and figures "on or after November 1, 2016 but prior to the date of commencement of this (Amendment) Act by any person";

(ii) by the addition immediately after sub-item (*b*), of the following new sub-item:–

"(*c*) if such supply has taken place on or after April 1, 2019, other than any lease or rent by any person, and where such supply-

(i) is not relating to a sale of any condominium housing unit; or

(ii) is a supply of a condominium housing unit of a condominium housing project and the maximum price or the market value (whichever is higher) of any single unit of that project does not exceed rupees fifteen million.";

(*b*) by the repeal of item (xii) and the substitution therefor of the following:–

"(xii)(*a*) all healthcare services provided by medical institutions or professionally qualified persons providing such care, prior to May 2, 2016 and for the period commencing from July 11, 2016, but ending on or before November 1, 2016;

(*b*) on or after the date of commencement of this (Amendment) Act, all healthcare services provided by medical institutions or professionally qualified persons providing such care other than hospital room charges.";

(*c*) by the repeal of item (xxx) and the substitution therefor of the following:–

"(xxx) locally manufactured jewellery, prior to November 1, 2016 and for any period from November 22, 2016.";

(*d*) by the insertion immediately after item (L) of the following:–

"(Li) geriatric services or child care services;

(Lii) international telecommunication services provided by "External Gateway Operators" to local telecommunication operators.".

(3) in paragraph (*c*) of that PART,–

(*a*) by the substitution in item (xx) for the words and figures "purposes (effective from 17.7.2007)" of the words and figures "purposes [effective from 17.7.2007, but prior to the date of commencement of this (Amendment) Act] ";

(*b*) by the substitution in item (xxviii) for the words and figures "cinematogaphic cameras and projector parts and accessories" of the words "cinematogaphic cameras, projector parts and accessories, prior to the date of commencement of this (Amendment) Act";

(*c*) by the substitution in item (xxix) for the words and figures "(with effect from January 1, 2011)" of the words and figures "[with effect from January 1, 2011, but prior to the date of commencement of this (Amendment) Act]";

(*d*) by the substitution in item (xxxiii) for the words "agricultural products or plants of any type" of the words and figures "agricultural products or plants of any type, prior to the date of commencement of this (Amendment) Act"; and

(*e*) by the substitution in item (xxxvi) for the words "fabric, specified under the Harmonized Commodity Description and Coding System Numbers for Custom Purposes" of the words and figures "fabric, specified under the Harmonized Commodity Description and Coding System Numbers for Custom Purposes, prior to the date of commencement of this (Amendment) Act".

Sinhala text to prevail in case of inconsistency.

8. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

EXCISE (AMENDMENT) ACT, No. 26 OF 2018

[Certified on 03rd of September, 2018]

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This Act can be downloaded from www.documents.gov.lk

[Certified on 03rd of September, 2018]

L.D.—O. 21/2018

AN ACT TO AMEND THE EXCISE ORDINANCE (CHAPTER 52)

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Short title.

1. This Act may be cited as the Excise (Amendment) Act, No. 26 of 2018.

Amendment of section 30 of the Excise Ordinance (Chapter 52).

2. Section 30 of the Excise Ordinance (Chapter 52) (hereinafter referred to as the "principal enactment") is hereby amended as follows:—

(1) in subsection (1) by the substitution for the words "Every person who manufactures or sells any excisable article under a licence" of the words "Every person who imports, exports, transports, manufactures, sells, possess or stores any excisable article under a licence, permit or pass;

(2) in the marginal note to that section for the words "certain licensees" of the words "holder of a licence, permit or pass".

Amendment of section 32 of the principal enactment.

3. Section 32 of the principal enactment is hereby amended by the insertion immediately after paragraph (*j*) of the following new paragraphs:—

"(*ja*) prescribing the types of security features to be affixed on any excisable article when such excisable article is imported, exported, transported, manufactured, sold, possessed or stored;

(*jb*) levying charges for issuing of the security features referred to in paragraph (*ja*) to be affixed on any excisable article when such excisable article is imported, exported, transported, manufactured, sold, possessed or stored;".

Sinhala text to prevail in case of any inconsistency.

4. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "PRAKASHANA PIYASA", DEPARTMENT OF GOVERNMENT PRINTING, NO. 118, DR. DANISTER DE SILVA MAWATHA, COLOMBO 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

AMARADEVA AESTHETIC AND RESEARCH CENTRE ACT, No. 27 OF 2018

[Certified on 03rd of September, 2018]

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Amaradeva Aesthetic and Research Centre
Act, No. 27 of 2018

[Certified on 03rd of September, 2018]

L.D.—O. 46/2017

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF AN AESTHETIC AND RESEARCH CENTRE CALLED "THE AMARADEVA AESTHETIC AND RESEARCH CENTRE" IN GRATITUDE OF THE LEGENDARY MUSIC ICON IN SRI LANKA, LATE PANDITH WANNAKUWATTAWADUGE DON AMARADEVA; TO SPECIFY ITS OBJECTS AND POWERS AND TO PROVIDE FOR THE MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it therefore enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

Short title.

1. This Act may be cited as the Amaradeva Aesthetic and Research Centre Act, No. 27 of 2018.

Establishment of Amaradeva Aesthetic and Research Centre.

2. (1) There shall be established an aesthetic and research centre which shall be called the Amaradeva Aesthetic and Research Centre (hereinafter referred to as "the Centre") and also known as Amaradeva Asapuwa equipped with a research laboratory, an archive, a library and a museum.

(2) The Centre shall, by the name assigned to it by subsection (1), be a body corporate with perpetual succession, and a common seal and may sue and be sued in such name.

General objects of the Centre.

3. The general objects for which the body corporate is established are —

(*a*) to secure and archive the instruments of the Centre;

(*b*) to facilitate research activities of graduate and postgraduate courses on aesthetic studies; and

(*c*) to conduct workshops, lectures and appreciation programmes or any other function to promote the style of music of late Pandith Wannakuwattawaduge Don Amaradeva (hereinafter referred to as "W. D. Amaradeva").

Centre to ensure no conflict with work of Ministry or Department etc.

4. The objects of the Centre shall be carried out in such manner so as not to create any conflict between the work of the Centre and any work being carried out simultaneously by any Ministry or Department of the Government or of any Provincial Council or "Amaradeva Foundation".

Composition of the Board of Management.

5. (1) The administration and management of the affairs of the Centre shall be vested in a Board of Management (hereinafter referred to as "the Board").

(2) The Board shall consist of the following members:—

(*a*) *Ex-officio* members:–

(i) Secretary to the Ministry of Higher Education or a representative of the Ministry nominated by him;

(ii) the Secretary to the Ministry to which the Centre for the time being assigned to or a representative nominated by him;

(iii) the Director General of the Department of National Archives or any person nominated by him;

(iv) Chairman of the National Library and Documentation Services Board or any person nominated by him;

(v) the Director of the Department of National Museums or any person nominated by him; and

(vi) the Director of the Department of Cultural Affairs or any person nominated by him.

(*b*) Nominated or appointed members:–

(i) a member appointed by the President;

(ii) a member appointed by the Prime Minister;

(iii) the family members of late W. D. Amaradeva namely Wimala Amaradeva, Ranjana Amaradeva, Priyanvada Amaradeva and Subhanie Amaradeva;

(iv) a member nominated by the "Amaradeva Foundation" incorporated under the Companies Act, No. 07 of 2007; and

(v) four members, who have experience and shown capacity in the fields of aesthetics and literature, appointed by the Minister with the concurrence of the "Amaradeva Foundation".

(3) The President shall appoint one of the members of the Board to be the Chairman of the Board.

(4) A vacancy occurring as a result of a member appointed under subparagraphs (i) or (ii) of paragraph (*b*) of subsection (2) vacating office by death, resignation or removal shall be filled by the President or the Prime Minister as the case may be. Any person so appointed to fill a vacancy shall hold office for the unexpired period of the term of the predecessor.

(5) A vacancy occurring as a result of a member appointed under subparagraph (iii) of paragraph (*b*) of subsection (2) vacating office by death, resignation or removal, the successive member shall be appointed with the concurrence of the majority of the remaining family members and such appointee shall not necessarily be a family member of late Pandith W. D. Amaradeva:

Provided that, where there are no family members remaining on the Board, the successive member shall be appointed with the concurrence of the majority of the members of the Board.

(6) A vacancy occurring as a result of a member appointed under subparagraphs (iv) and (v) of paragraph (*b*) of subsection (2) vacating office by death, resignation, cessation of office as a member or removal shall be filled by the Board by nominating a member from the Amaradeva Foundation or by appointing a member as the case may be for the unexpired period of the term of office.

(7) The members of the Board may be paid such remuneration out of the Fund of the Centre as may be determined by the Minister.

Terms of office of members of the Board.

6. (1) All members specified in paragraph (*b*) of subsection (2) of section 5 shall hold office for a period of three years from the date of nomination or appointment:

Provided however, if any nominated or appointed member vacates his office prior to the expiry of his term, his successor shall, unless he vacates his office earlier, hold office for the unexpired period of the term of office of his predecessor.

(2) Where the Chairman or any other member of the Board becomes by reason of illness, infirmity or absence from Sri Lanka, unable to perform the duties of his office for a period of not less than one month, another person may having regard to the provisions of section 5, be appointed to act in his place.

Staff of the Centre.

7. (1) The Director General of the Centre shall be the Chief Executive Officer of the Centre and shall be appointed by the Board.

(2) The Director General shall be responsible for general management and administration of officers and employees of the Centre.

(3) The required number of officers and employees for the management and administration of the Centre shall be determined by the Board and they shall be paid such remuneration determined by the Board in consultation with the Minister to whom the subject of Finance is assigned.

Appointment of public officers to the staff of the Centre.

8. (1) At the request of the Board any officer in the public service may with the consent of that officer and the Secretary to the Ministry of the Minister in charge of the subject of Public Administration, be temporarily appointed to the staff of the Centre for such period as may be determined by the Board, or with like consent be permanently appointed to such staff.

(2) Where any officer in the public service is temporarily appointed to the staff of the Centre, the provisions of subsection (2) of section 14 of the National Transport Commission Act, No. 37 of 1991, shall, *mutatis mutandis,* apply to and in respect of such officer.

(3) Where any officer in the public service is permanently appointed to the staff of the Centre, the provisions of subsection (3) of section 14 of the National Transport Commission Act, No. 37 of 1991, shall, *mutatis mutandis,* apply to and in respect of such officer.

(4) Where the Board employs any person who has agreed to serve the Government for a specified period, any period of service to the Centre by that person shall be regarded as service to the Government for the purpose of discharging the obligations of such agreement.

(5) At the request of the Board, any member of the Local Government Service or any officer or servant of a local authority may, with the consent of such member, officer or servant and the Local Government Service Commission or the local authority, as the case may be, be temporarily appointed to the staff of the Centre for such period as may be determined by the Board or with like consent be permanently appointed to such staff on such terms and conditions, including those relating to pension or provident fund rights, as may be agreed upon by the Centre and the Local Government Service Commission or the Local Authority.

(6) At the request of the Board any officer or servant of a public corporation may, with the consent of such officer or servant and the governing body of such public corporation, be temporarily appointed to the staff of the Centre for such

period as may be determined by the Board or with like consent be permanently appointed to such staff on such terms and condidtions, including those relating to pension or provident fund rights, as may be agreed upon by the Board and the governing body of such public corporation.

(7) Where any person is temporarily appointed to the staff of the Centre under subsection (5) or (6) of this section, such person shall be subject to the same disciplinary control as any other member of such staff.

Powers of the Centre.

9. Subject to the provisions of this Act and any other written law, the Centre shall have the power—

(*a*) to accept and receive books, documents, files, photographs, films, disks, audio and video tapes, significant personal belongings and souvenirs of the childhood and youth of late Pandith W. D. Amaradeva, his creations and collections with personal interest, official portraits, grants, awards and gifts received by him to be deposited, and to take all measures to secure, archive, administer and exhibit those instruments;

(*b*) to purchase, lease and rent, lands or buildings which may be required for the purposes of the Centre and to transfer, sell or exchange of the same as may be deemed expedient with a view to promoting the objects of the Centre;

(*c*) to construct and renovate any building required for the objects specified herein;

(*d*) to borrow or raise funds with or without securities and to receive grants, gifts or donations in cash or kind:

Provided that, the Board shall obtain the prior written approval of the Department of External Resources of the Ministry of the Minister assigned the subject of Finance, in respect of all foreign grants, gifts or donations made to the Centre;

(*e*) to make, draw, accept, discount, endorse, negotiate, buy, sell and issue bills of exchange, cheques, promissory notes and other negotiable instruments, and to open, operate, maintain and close accounts in any bank;

(*f*) to invest any funds that are not immediately required for the purposes of the Centre, in such manner as may be determined by the Centre;

(*g*) to undertake, accept, execute, perform and administer any lawful trust or any real or personal property of the Centre with a view to promoting the objects of the Centre;

(*h*) to appoint, employ, dismiss or terminate the services of officers and servants of the Centre and exercise disciplinary control over them and to pay them such salaries, allowances and gratuities in terms of the written laws;

(*i*) to organize lectures, seminars and conferences with a view to promoting the objectives of the Centre;

(*j*) to liaise and co-ordinate with other local and foreign institutions having similar objects to that of the Centre; and

(*k*) to do all other things as are necessary or expedient for the proper and effective carrying out of the objects of the Centre.

Rules of the Centre.

10. (1) It shall be lawful for the Board, from time to time, at any general meeting and by a majority of not less than two-thirds of the members present and voting, to make rules, not inconsistent with the provisions of this Act or any other written law, for all or any of the following matters:—

(*a*) admission, expulsion or resignation of members and any other matter relating to membership;

(*b*) the qualifications or disqualifications to be a member of the Board;

(*c*) the procedure to be followed for the summoning and holding of meetings of the Centre and of the Board, the quorum of such meeting and the exercise and performance of the powers and duties of the Board;

(*d*) the appointment, powers, duties and functions of the various officers, agents and employees of the Centre; and

(*e*) the administration and management of the property of the Centre.

(2) Any rule made by the Board may be amended, altered, added to or rescinded at a like meeting and in like manner, as a rule made under subsection (1).

(3) The rules made under subsection (1) shall be published in the *Gazette*.

(4) The members of the Board shall at all times be subject to the rules of the Centre.

Fund of the Centre.

11. (1) The Centre shall have its own Fund called and known as "Amaradeva Asapuwa Development Fund" (hereinafter referred to as the "Fund") and all moneys heretofore or hereafter to be received by way of gifts,

bequests, donations, subscriptions, contributions, fees or grants for and on account of the Centre shall be deposited to the credit of the Fund in one or more banks as the Board shall determine.

(2) All such sums of money as are required to defray the expenses incurred by the Centre in the exercise, performance and discharge of the powers, duties and functions of the Centre shall be paid out of the Fund.

Centre may hold property movable and immovable.

12. Subject to the provisions of this Act, the Centre shall be able and capable in law to acquire and hold any property, both movable and immovable, which may become vested in it by virtue of any purchase, grant, lease, gift, testamentary disposition or otherwise and all such property shall be held by the Centre for the purposes of this Act and subject to the rules made under section 10, with power to sell, mortgage, lease, exchange, or otherwise dispose of the same.

Application of money and property.

13. The moneys and property of the Centre however derived shall be applied solely towards the promotion of its objects as setforth herein and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bouns, profit or otherwise howsoever to the members of the Board.

Property remaining on dissolution.

14. (1) If upon the dissolution of the Centre there remains, after the satisfaction of all its debts and liabilities any property whatsoever, such property shall not be distributed among the members of the Board but shall be given or transferred to some other institution or institutions having objects similar to those of the Centre which is or are by its or their rules, prohibited from distributing any income or property among their members.

(2) For the purposes of subsection (1), the appropriate institution or institutions shall be determined by the members of the Board immediately before the dissolution at a general meeting by the majority of votes of the members present.

Audit of Accounts.

15. (1) The Centre shall cause proper books of accounts to be kept of its income and expenditure, assets and liabilities and all other transactions of the Centre.

(2) The financial year of the Centre shall be the calendar year.

(3) The accounts of the Centre shall be audited annually by the Auditor-General or a qualified auditor appointed by the Auditor-General in terms of the provisions of Article 154 of the Constitution.

(4) For the purposes of this section "qualified auditor" means:-

(*a*) an individual who, being a member of the Institute of Chartered Accountants of Sri Lanka or of any other Institute established by law, possesses a certificate issued by the Council of such Institute to practice as an accountant; or

(*b*) a firm of accountants, each of the resident partners of which, being a member of the Institute of Chartered Accountants of Sri Lanka or of any other Institute established by Law, possesses a certificate issued by the Council of such Institute to practice as an accountant.

Annual report.

16. (1) The Board shall prepare a report of the activities of the Centre for each financial year and submit such report together with the audited statement of accounts to the Secretary to the Ministry of the Minister to whom the Centre for the time being is assigned before the expiration of six months of the year succeeding the year to which such report relates.

(2) A separate account relating to the foreign and local funds received by the Centre during the financial year shall be attached to the report referred to in subsection (1).

Seal of the Centre.

17. (1) The seal of the Centre shall not be affixed to any instrument whatsoever except in the presence of such number of persons as may be provided for in the rules made under section 10 who shall sign their names to the instrument in token of their presence and such signing shall be independent of the signing of any person as a witness.

(2) The seal of the Centre shall be in the custody of the persons as may be determined by the rules made under section 10.

Regulations.

18. (1) The Minister may make regulations in respect of matters required by this Act to be prescribed or in respect of which regulations are authorized to be made.

(2) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made under subsection (1) shall be placed before the Parliament within three months from the date of publication of such regulation in the *Gazette*.

(4) A notification specifying the date on which the Parliament has approved the regulation shall be published in the *Gazette*. Any regulation which is not so approved shall be deemed to be rescinded from the date of disapproval but without prejudice to anything previously done thereunder.

(5) Notification of the date on which any regulation is deemed to be rescinded shall be published in the *Gazette*.

Savings of the rights of the Republic.

19. Nothing in this Act contained shall prejudice or affect the rights of the Republic of any body politic or corporate.

Interpretation.

20. In this Act, unless the context otherwise requires:-

"Aesthetics" means fine arts including music, dancing, art, sculpture and the literary arts including poems, short stories, novels and any activity in the field of cinema; and

"Minister" means the Minister of the Ministry to whom the Centre is assigned to.

Sinhala text to prevail in case of inconsistency.

21. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

MEDICAL (AMENDMENT) ACT, No. 28 OF 2018

[Certified on 19th of September, 2018]

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This Act can be downloaded from www.documents.gov.lk

[Certified on 19th of September, 2018]

L.D.—O. 55/2015

AN ACT TO AMEND THE MEDICAL ORDINANCE (CHAPTER 105)

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :–

Short title.

1. This Act may be cited as the Medical (Amendment) Act, No. 28 of 2018.

Amendment of section 12 of Chapter 105.

2. Section 12 of the Medical Ordinance (Chapter 105) (hereinafter referred to as the "principal enactment") is hereby amended in subsection (1), by the insertion immediately after paragraph (*c*) thereof of the following paragraphs:–

"(*cc*) three members elected by the medical specialists referred to in subsections (1) , (3) and (4) of section 39A;

(*ccc*) one member elected by the dental specialists referred to in subsection (2) of section 39A;".

Amendment of section 20 of the principal enactment.

3. Section 20 of the principal enactment is hereby amended in subsection (1), by the insertion immediately after paragraph (*a*) thereof of the following paragraph:-–

"(*aa*) a register of medical and dental specialists which contains the names of every medical specialist and dental specialist who possesses a qualification referred to in section 39A and has obtained registration under section 39B;".

Insertion of new sections 39A, 39B, 39C and 39D in the principal enactment.

4. The following new sections are hereby inserted immediately after section 39 of the principal enactment and shall have effect as sections 39A, 39B, 39C and 39D of that enactment:–

"Qualifications required for registration as a medical or dental specialist.

39A. (1) A medical practitioner registered under section 29, who possesses a qualification required for Specialist Medical Officer Grade, as specified in the Medical Service Minutes, shall be eligible to be registered as a medical specialist under section 39B.

(2) A dentist registered under section 43, who possesses a qualification required for Specialist Medical Officer Grade, as specified in the Medical Service Minutes, shall be eligible to be registered as a dental specialist under section 39B.

(3) A medical practitioner registerd under section 29 or a dentist registered under section 43, who has successfully completed specialist training in a country other than Sri Lanka and obtained a specialist medical or dental qualification which satisfies the eligibility criteria of the Post Graduate Institute of Medicine to practice the respective specialty, shall be eligible to be registered as a medical or dental specialist, as the case may be, under section 39B.

(4) Any person who has obtained a graduate and post graduate qualification in medicine or dentistry from any university or medical or dental school of any country other than Sri Lanka, recognized by the Medical Council and satisfies the eligibility criteria of the Post Graduate Institute of Medicine to practice the respective specialty shall be eligible to be registered as a medical or dental specialist, as the case may be, under section 39B.

Registration as a medical or dental specialist.

39B. Any medical practitioner, dentist or a person who possesses any one of the specialist medical or dental qualifications referred to in section 39A shall, upon application made to the Medical Council in the prescribed form, along with the prescribed fee for registration, be registered as a medical or dental specialist in the respective field of medicine or dentistry, if-

(*a*) he is of good character; and

(*b*) (i) he produces a certificate of registration under section 29, in the case of a medical practitioner who possesses a qualification referred to in subsection (1) of section 39A; or

(ii) he produces a certificate of registration under section 43, in the case of a dentist who possesses a qualification referred to in subsection (2) of section 39A; or

(iii) he produces a certificate of registration under section 29 or section 43, in the case of a medical practitioner or a dentist who possesses a qualification referred to in subsection (3) of section 39A; or

(iv) he has obtained the provisional registration required for the Board certification, in the case of a person who possesses a qualification referred to in subsection (4) of section 39A; and

(*c*) he produces a Board Certification or a Certificate of Accreditation in respect of Board Certification, as the case may

be, issued by the Post Graduate Institute of Medicine, upon satisfying the eligibility criteria of the Post Graduate Institue of Medicine.

No person to practice as a medical or dental specialist without registration.

39C. No person, not being a medical or dental specialist registered under section 39B, shall take or use any name, title or addition implying or tending to the belief that he is a medical or dental specialist who possesses a qualification referred to in section 39A or, by any act or omission intentionally cause or permit any person to believe that he is a medical or dental specialist registered under section 39B, and to act upon such belief.

Registered medical or dental specialists entitled to practice in the respective field.

39D. Every medical or dental specialist registered under section 39B shall be entitled to practise the respective specialty in Sri Lanka and to demand and recover reasonable professional charges including the cost of medicines and surgical appliances supplied, or other services rendered during the course of such practice.".

Amendment of section 74 of the principal enactment.

5. Section 74 of the principal enactment is hereby amended–

(1) by the insertion immediately after the definition of the expression "estate apothecary" of the following definition:–

" "eligibility criteria of the Post Graduate Institute of Medicine" means the eligibility criteria for Board Certification or Certificate of Accreditation in respect of Board Certification in the respective specialty, recommended by the respective Board of Study of the Post Graduate Institute of Medicine, prescribed by regulations under the Post Graduate Institute of Medicine Ordinance No. 1 of 1980;";

(2) by the insertion immediately after the definition of the expression ''medical practitioner'' of the following definition:–

" ''Medical Service Minutes'' means the Medical Service Minutes published in *Gazette* No. 662/11, dated May 17, 1991, as may be amended from time to time and last amended by the Medical Service Minutes published in the *Gazette* No. 1883/17, dated October 11, 2014;'';

(3) by the insertion immediately after the definition of the expression "pharmacist'' of the following definition:-

" ''Post Graduate Institute of Medicine'' means the Post Graduate Institute of Medicine established by the Post Graduate Institute of Medicine Ordinance No. 1 of 1980, made under section 18 of the Universities Act, No. 16 of 1978 and published in *Gazette* Extraordinary No. 83/7 of April 10, 1980, as amended from time to time;''.

Transitional provision applicable to medical and dental specialists engaged in the practice.

6. Every medical practitioner or dentist who possesses any qualification eligible to be registered as a medical or dental specialist under section 39B, on the date of commencement of this Act and has been engaged in the practice of respective specialty, prior to that date, shall be required to obtain registration under section 39B, within a period of twelve months from the date of commencement of this Act.

Sinhala text to prevail in case of inconsistency.

7. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

CARRIAGE BY AIR ACT, No. 29 OF 2018

[Certified on 28th of September, 2018]

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[Certified on 28th of September, 2018]

L.D.—O. 35/2012

AN ACT TO GIVE EFFECT TO THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH AND INCIDENTAL THERETO.

Preamble.

WHEREAS the Convention for the Unification of Certain Rules for International Carriage by Air was done at Montreal on the Twenty eighth day of May One Thousand Nine Hundred and Ninety-Nine:

AND WHEREAS Sri Lanka intends to accede to the aforesaid Convention:

AND WHEREAS it is necessary to make legal provisions to give effect to Sri Lanka's obligations under the aforesaid Convention:

NOW THEREFORE, BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

Short title and the date of operation.

1. This Act may be cited as the Carriage by Air Act, No. 29 of 2018 and shall come into operation on such date as the Minister, by Order published in the *Gazette*, certifies as the date on which the Convention for the Unification of Certain Rules for International Carriage by Air (hereinafter referred to as "the Convention") adopted at Montreal on May 28, 1999 enters into force in respect of Sri Lanka.

Provisions of the Convention for the Unification of Certain Rules for International Carriage by Air to apply to Sri Lanka.

2. The Articles contained in the Schedule to this Act, being the provisions of the Convention shall in so far as they relate to the rights and liabilities of carriers, passengers, consignors, consignees and other persons and subject to the provisions of this Act have the force of law in Sri Lanka in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage.

Notification of reservations and States Parties.

3. (1) The Minister may, from time to time by Notification published in the *Gazette* specify any reservation under Article 57 of the Convention as may be declared to the Depositary.

(2) The Minister may, from time to time by Order published in the *Gazette* notify the States and territories of the States Parties to the Convention and the reservations made by such States Parties, and agreed stopping place within the territory of non-State Parties.

Action for compensation.

4. Notwithstanding anything contrary in any written law, no action for compensation shall be instituted against the carrier under any contract or in tort or otherwise except subject to the provisions of the Convention and such limits of liabilities as are set out therein.

Modification of Convention.

5. (1) The provisions of the Schedule to this Act shall *mutatis mutandis* apply to such carriage by air, not being international carriage by air as defined therein.

(2) Nothing in PART II (WARSAW-HAGUE CARRIAGE BY AIR CONVENTION) of the Air Navigation (Special Provisions) Act, No. 55 of 1992 shall apply in respect of any carriage by air to which the Convention applies.

Review of limits.

6. Upon the receipt of any notification relating to any revision of limits under Article 24 of the Convention, the Minister may, from time to time by Order published in the *Gazette*, specify the limits of liability as may be reviewed by the Depositary.

Advance payments.

7. In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall make advance payments as provided by Article 28 of the Convention.

Interpretation.

8. In this Act unless the context otherwise requires-

"Minister" means the Minister to whom the subject of Civil Aviation is assigned.

Sinhala text to prevail in case of inconsistency.

9. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

SCHEDULE (Section 2)

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR
(Montreal, 28 May 1999)

CHAPTER I

GENERAL PROVISIONS

Article 1 - Scope of Application

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

2. For the purposes of this Convention, the expression "international carriage" means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

3. Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

Article 2 - Carriage Performed by State and Carriage of Postal Items

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

2. In the carriage of postal items, the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.

3. Except as provided in paragraph 2 of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

CHAPTER II

DOCUMENTATION AND DUTIES OF THE PARTIES RELATING TO THE CARRIAGE OF PASSENGERS, BAGGAGE AND CARGO

Article 3 - Passengers and Baggage

1. In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing:

(*a*) an indication of the places of departure and destination;

(*b*) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.

5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 4 - Cargo

1. In respect of the carriage of cargo, an air waybill shall be delivered.

2. Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor,

deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

Article 5 - Contents of Air Waybill or Cargo Receipt

The air waybill or the cargo receipt shall include:

(*a*) an indication of the places of departure and destination;

(*b*) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place; and

(*c*) an indication of the weight of the consignment.

Article 6 - Document relating to the Nature of the Cargo

The consignor may be required, if necessary, to meet the formalities of customs, police and similar public authorities to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom.

Article 7 - Description of Air Waybill

1. The air waybill shall be made out by the consignor in three original parts.

2. The first part shall be marked "for the carrier"; it shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier who shall hand it to the consignor after the cargo has been accepted.

3. The signature of the carrier and that of the consignor may be printed or stamped.

4. If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 8 - Documentation for Multiple Packages

When there is more than one package:

(*a*) the carrier of cargo has the right to require the consignor to make out separate air waybills;

(*b*) the consignor has the right to require the carrier to deliver separate cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.

Article 9 - Non-Compliance with Documentary Requirements

Non-compliance with the provisions of Articles 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 10 - Responsibility for Particulars of Documentation

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

2. The consignor shall indemnify the carrier against all damage suffered by it, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on its behalf.

3. Subject to the provisions of paragraphs 1 and 2 of this Article, the carrier shall indemnify the consignor against all damage suffered by it, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

Article 11 - Evidentiary Value of Documentation

1. The air waybill or the cargo receipt is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

2. Any statements in the air waybill or the cargo receipt relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12 - Right of Disposition of Cargo

1. Subject to its liability to carry out all its obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.

3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the cargo receipt.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

Article 13 - Delivery of the Cargo

1. Except when the consignor has exercised its right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, on payment of the charges due and on complying with the conditions of carriage.

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

Article 14 - Enforcement of the Rights of Consignor and Consignee

The consignor and the consignee can respectively enforce all the rights given to them by Articles 12 and 13, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

Article 15 - Relations of Consignor and Consignee or Mutual Relations of Third Parties

1. Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the cargo receipt.

Article 16 - Formalities of Customs, Police or other Public Authorities

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents.

2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

LIABILITY OF THE CARRIER AND EXTENT OF COMPENSATION FOR DAMAGE

Article 17 - Death and Injury of Passengers - Damage to Baggage

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on

board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

4. Unless otherwise specified, in this Convention the term "baggage" means both checked baggage and unchecked baggage.

Article 18 - Damage to Cargo

1. The carrier is liable for damage sustained in the event of the destruction or loss of or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.

2. However, the carrier is not liable if and to the extent it proves that the destruction or loss of, or damage to, the cargo resulted from one or more of the following:–

(*a*) inherent defect, quality or vice of that cargo;

(*b*) defective packing of that cargo performed by a person other than the carrier or its servants or agents;

(*c*) an act of war or an armed conflict;

(*d*) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.

4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air. If a

carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 19 – Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 20 – Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in this Convention, including paragraph 1 of Article 21.

Article 21 - Compensation in case of Death or Injury of Passengers

1. For damages arising under paragraph 1 of Article 17 not exceeding 100,000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

2. The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 100,000 Special Drawing Rights if the carrier proves that:

(*a*) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or

(*b*) such damage was solely due to the negligence or other wrongful act or omission of a third party.

Article 22 - Limits of Liability in Relation to Delay, Baggage and Cargo

1. In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4,150 Special Drawing Rights.

2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1,000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.

3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4. In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

5. The foregoing provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.

6. The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

Article 23 - Conversion of Monetary Units

1. The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.

2. Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 21 is fixed at a sum of 1,500,000 monetary units per passenger in judicial proceedings in their territories; 62,500 monetary units per passenger with respect to paragraph 1 of Article 22; 15,000 monetary units per passenger with respect to paragraph 2 of Article 22; and 250 monetary units per kilogram with respect to paragraph 3 of Article 22. This monetary unit corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph I of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national

currency of the State Party as far as possible the same real value for the amounts in Articles 21 and 22 as would result from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 24 - Review of Limits

1. Without prejudice to the provisions of Article 25 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 23.

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 percent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 percent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described

in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

Article 25 - Stipulation on Limits

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

Article 26 - Invalidity of Contractual Provisions

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Article 27 - Freedom to Contract

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

Article 28 - Advance Payments

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

Article 29 - Basis of Claims

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

Article 30 - Servants, Agents - Aggregation of Claims

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.

2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

3. Save in respect of the carriage of cargo, the provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 31 - Timely Notice of Complaints

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.

2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.

3. Every complaint must be made in writing and given or dispatched within the times aforesaid.

4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Article 32 - Death of Person Liable

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his or her estate.

Article 33 – Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

3. For the purposes of paragraph 2—

(*a*) "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;

(*b*) "principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.

4. Questions of procedure shall be governed by the law of the court seized of the case.

Article 34 – Arbitration

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.

2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 33.

3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.

4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

Article 35 - Limitation of Actions

1. The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating that period shall be determined by the law of the court seized of the case.

Article 36 - Successive Carriage

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Convention and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 37 - Right of Recourse against Third Parties

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

CHAPTER IV

COMBINED CARRIAGE

Article 38 - Combined Carriage

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

CHAPTER V

CARRIAGE BY AIR PERFORMED BY A PERSON OTHER THAN THE CONTRACTING CARRIER

Article 39 - Contracting Carrier - Actual Carrier

The provisions of this Chapter apply when a person (hereinafter referred to as "the contracting carrier") as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as "the actual carrier") performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

Article 40 - Respective Liability of Contracting and Actual Carriers

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 39, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

Article 41 - Mutual Liability

1. The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.

Article 42 - Addressee of Complaints and Instructions

Any complaint to be made or instruction to be given under this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Article 12 shall only be effective if addressed to the contracting carrier.

Article 43 - Servants and Agents

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention.

Article 44 - Aggregation of Damages

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

Article 45 - Addressee of Claims

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seized of the case.

Article 46 - Additional Jurisdiction

Any action for damages contemplated in Article 45 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in Article 33, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

Article 47 - Invalidity of Contractual Provisions

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Chapter.

Article 48 - Mutual Relations of Contracting and Actual Carriers

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

CHAPTER VI

OTHER PROVISIONS

Article 49 - Mandatory Application

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

Article 50 - Insurance

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

Article 51 - Carriage Performed in Extraordinary Circumstances

The provisions of Articles 3 to 5, 7 and 8 relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

Article 52 - Definition of Days

The expression "days" when used in this Convention means calendar days, not working days.

CHAPTER VII

FINAL CLAUSES

Article 53 - Signature, Ratification and Entry into Force

1. This Convention shall be open for signature in Montreal on May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 6 of this Article.

2. This Convention shall similarly be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a "Regional Economic Integration Organisation" means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention. A reference to a "State Party" or "States Parties" in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1(b) of Article 3, paragraph (b) of Article 5, Articles 23, 33, 46 and paragraph (b) of Article 57, applies equally to a Regional Economic Integration Organisation. For the purpose of Article 24, the references to "a majority of the States Parties" and "one-third of the States Parties" shall not apply to a Regional Economic Integration Organisation.

3. This Convention shall be subject to ratification by States and by Regional Economic Integration Organisations which have signed it.

4. Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary.

6. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such instrument. An instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.

7. For other States and for other Regional Economic Integration Organisations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.

8. The Depositary shall promptly notify all signatories and States Parties of:

(*a*) each signature of this Convention and date thereof;

(*b*) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;

(*c*) the date of entry into force of this Convention;

(*d*) the date of the coming into force of any revision of the limits of liability established under this Convention;

(*e*) any denunciation under Article 54.

Article 54 – Denunciation

1. Any State Party may denounce this Convention by written notification to the Depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

Article 55 - Relationship with other Warsaw Convention Instruments

This Convention shall prevail over any rules which apply to international carriage by air:

1. between States Parties to this Convention by virtue of those States commonly being Party to—

(*a*) the Convention for the Unification of Certain Rules relating to International Carriage by Air Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);

(*b*) the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929, Done at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);

(*c*) the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);

(*d*) the Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as amended by the Protocol Done at The Hague on 28 September 1955, Signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);

(*e*) additional Protocol Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol, Signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or

2. within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

Article 56 - States with more than One System of Law

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.

3. In relation to a State Party which has made such a declaration:

(*a*) references in Article 23 to "national currency" shall be construed as referring to the currency of the relevant territorial unit of that State; and

(*b*) the reference in Article 28 to "national law" shall be construed as referring to the law of the relevant territorial unit of that State.

Article 57 – Reservations

No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to:

(*a*) international carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or

(*b*) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Montreal on the 28th day of May of the year one thousand nine hundred and ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all States Parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol and the Montreal Protocols.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

PRADESHIYA SABHAS (AMENDMENT) ACT, No. 30 OF 2018

[Certified on 28th of September, 2018]

Printed on the Order of Government

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This Act can be downloaded from www.documents.gov.lk

Pradeshiya Sabhas (Amendment)
Act, No. 30 of 2018

[Certified on 28th of September, 2018]

L.D.—O. 3/2016

AN ACT TO AMEND THE PRADESHIYA SABHAS ACT, NO. 15 OF 1987

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

Short title.

1. This Act may be cited as the Pradeshiya Sabhas (Amendment) Act, No. 30 of 2018.

Amendment of section 19 of Act, No. 15 of 1987.

2. Section 19 of the Pradeshiya Sabhas Act, No. 15 of 1987 (hereinafter in this Act referred to as the "principal enactment") is hereby amended in subsection (1) of that section as follows:—

(1) by the substitution, in paragraph (xiv) for the words "improvement or maintenance of village works," of the words "improvement or maintenance of village works or estate settlements,";

(2) by the substitution, in paragraph (xxii) for the words "integrated development of selected villages," of the words "integrated development of selected villages, estate settlements,".

Amendment of section 33 of the principal enactment.

3. Section 33 of the principal enactment is hereby amended as follows:—

(1) by the renumbering of that section as subsection (1) thereof and in the renumbered subsection (1), by the substitution for all the words from "enterprises in question," to the end of that subsection of the following:—

"enterprises in question.";

(2) by the insertion, immediately after the renumbered subsection (1), of the following subsections:—

"(2) In the case of plantation regions, the Pradeshiya Sabhas may, upon adoption of a special resolution and in consultation with the administrative authority of the relevant estate, utilise the Pradeshiya Sabha fund to facilitate the residents of the respective plantation regions with roads, wells and other common amenities necessary for the welfare of such residents.

(3) (*a*) The roads, wells and common amenities constructed, maintained or facilitated under subsection (1) or (2) shall be vested in the Pradeshiya Sabha by an appropriate instrument and shall be constituted public roads, wells and common amenities.

(*b*) The Pradeshiya Sabha shall require the owners of the estates or industrial enterprises, administrative authorities of the relevant estates or the residents of such plantation regions, as the case may be, to pay such contribution towards the expenses of construction, maintenance or facilitation of such roads, wells and common amenities, as may be approved by the Pradeshiya Sabha and all such contributions shall be deemed to be special rates imposed upon such lands and plantation regions benefited and shall be recoverable as a rate imposed under the provisions of this Act.

(4) For the purpose of this section, "plantation regions" means the estates coming under the Divisional Secretary's Divisions in the Districts in the Central, Uva, Sabaragamuwa, Southern, Western, North Central and North Western Provinces, in which the resident labourers live and tea, rubber, coconut, cinnamon, pepper, clove or oil palm are cultivated.".

Sinhala text to prevail in case of inconsistency.

4. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

INSTITUTE OF PERSONNEL MANAGEMENT, SRI LANKA (AMENDMENT) ACT, No. 31 OF 2018

[Certified on 28th of September, 2018]

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This Act can be downloaded from www.documents.gov.lk

Institute of Personnel Management,
Sri Lanka (Amendment) Act, No. 31 of 2018

[Certified on 28th of September, 2018]

L.D.—O. 7/2018

AN ACT TO AMEND THE INSTITUTE OF PERSONNEL MANAGEMENT, SRI LANKA LAW, NO. 24 OF 1976

Preamble.

WHEREAS the members of the Institute of Personnel Management, Sri Lanka, incorporated by the institute of Personnel Management, Sri Lanka Law, No. 24 of 1976 have passed a resolution to amend its name :

AND WHEREAS the Institute of Personnel Management, Sri Lanka has applied to amend its name in order to give effect to such resolution, it will be expedient to grant such application:

NOW THEREFORE be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

Short title.

1. This Act may be cited as the Institute of Personnel Management, Sri Lanka (Amendment) Act, No. 31 of 2018.

Amendment of Law, No. 24 of 1976 and written law & etc.

2. (1) The Institute of Personnel Management, Sri Lanka Law, No. 24 of 1976 (hereinafter referred to as the "principal enactment") is hereby amended by the substitution for the words "Institute of Personnel Management, Sri Lanka" wherever they appear in the principal enactment of the words "Chartered Institute of Personnel Management, Sri Lanka".

(2) In any written law, there shall be substituted for the words "Institute of Personnel Management, Sri Lanka" of the words "Chartered Institute of Personnel Management, Sri Lanka".

(3) Every reference to the "Institute of Personnel Management, Sri Lanka" in any notice, contract, communication or other document shall be read and construed as a reference to the "Chartered Institute of Personnel Management, Sri Lanka".

Validity of acts done prior to the commencement of this Act.

3. Any power exercised, duty or function performed by the Institute of Personnel Management, Sri Lanka prior to the date of commencement of this Act in pursuance of any power conferred on it by the principal enactment shall be deemed for all purposes to have been validly exercised and performed.

Sinhala text to prevail in case of inconsistency.

4. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

NEW VILLAGES DEVELOPMENT AUTHORITY FOR PLANTATION REGION ACT, No. 32 OF 2018

[Certified on 04th of October, 2018]

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Price : Rs. 28.00 **Postage : Rs. 35.00**

This Act can be downloaded from www.documents.gov.lk

New Villages Development Authority for Plantation Region Act, No. 32 of 2018

[Certified on 04th of October, 2018]

L.D.—O. 52/2016

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF AN AUTHORITY TO BE CALLED AND KNOWN AS THE NEW VILLAGES DEVELOPMENT AUTHORITY FOR PLANTATION REGION TO DEVELOP NEW VILLAGES IN THE PLANTATION REGION OF SRI LANKA; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :-

Short title and the date of operation.

1. This Act may be cited as the New Villages Development Authority for Plantation Region Act, No. 32 of 2018, and shall come into operation on such date as the Minister may appoint (hereinafter referred to as "the appointed date") by Order published in the *Gazette.*

PART I

ESTABLISHMENT OF THE NEW VILLAGES DEVELOPMENT AUTHORITY FOR PLANTATION REGION.

Establishment of the New Villages Development Authority for Plantation Region.

2. (1) There shall be established an Authority which shall be known as the New Villages Development Authority for Plantation Region (hereinafter in this Act referred to as "the Authority").

(2) The Authority shall, by the name assigned to it by subsection (1), be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in that name.

Designated areas of the Authority.

3. The Authority shall be responsible for co-coordinating the planning and implementation of development projects under this Act within the areas in the plantation region as may be declared by the Minister with the

concurrence of the relevant Ministers as designated areas by Order published in the *Gazette.*

Objects of the Authority.

4. The objects of the Authority shall be to –

(*a*) ensure inclusion of the plantation community in the designated areas into the social mainstream by socio, economic, cultural and infrastructure development in the plantation region; and

(*b*) empower the plantation community in the designated areas socially and economically in order to enable them to contribute to the national development process.

Powers of the Authority.

5. The Authority may, for the purpose of discharging its functions, exercise all or any of the following powers, subject to the provisions of any other written law:-

(*a*) enter into contracts or agreements with any person including a Government Department, Local Authority, public corporation or any other institution, whether private or public, to enable the Authority to exercise, perform and discharge its powers, duties and functions under the Act effectively;

(*b*) accept grants, gifts or donations, whether in cash or otherwise, from persons or bodies of persons within or outside Sri Lanka and apply them in the discharge of its functions under the Act:

Provided that, notwithstanding anything to the contrary in any other provisions of this Act, the Authority shall obtain prior written approval of the Department of External Resources, in respect of all foreign grants, gifts or donations;

(*c*) open and maintain current, savings or deposit accounts in any State bank or State financial institution as may be determined by the Authority;

(*d*) invest in State banks and State financial institutions any funds not immediately required for the purposes of the Authority in such manner as the Authority may think appropriate;

(*e*) purchase and hold any movable or immovable property or give on lease, mortgage, pledge, sell or otherwise dispose of any movable or immovable property purchased or held by the Authority for the purposes of the Authority; and

(*f*) maintain any office, branch office or stores outside the designated areas and execute outside such designated areas any such work as may be necessary for the discharge of functions under the Act.

6. The functions of the Authority shall be to- Functions of the Authority.

(*a*) implement plans, programmes and projects of the Government for the development of new villages in the designated areas in consultation with the Minister;

(*b*) co-ordinate with other national, provincial and district level implementing agencies in the plantation region in working towards the achievement of the objects of the Authority;

(*c*) ensure participation of community based organizations in the plantation region in the formulation and implementation in the designated areas, of plans, programmes and projects of the Government for the development of new villages;

(*d*) facilitate the issuance of title deeds for the legal occupants of the houses in the Estates within the designated areas to grant them ownership of such houses;

(*e*) provide assistance to the youth in the estate sector in the designated areas to enter the tertiary and higher educational institutions for their educational development;

(f) work with Provincial Council Ministries and other regional level offices of the Government Ministries to facilitate the provision of essential services to the communities in the designated areas;

(*g*) promote alternative livelihood opportunities and provide necessary guidance and inputs in respect thereof to the Estate communities in the designated areas;

(*h*) empower the different community groups in the estate sector including women, children, elders and differently abled people to uplift their livelihood;

(*i*) ensure that descendants of legal occupants of the houses in Estates are provided with all facilities that are enjoyed by such legal occupants in Estates in the designated areas;

(j) strengthen conservation measures at all levels, both preventive and remedial, aimed at minimizing physical degradation of land and water resources and eliminating environmental pollution in the designated areas;

(*k*) identify hazardous sites, in consultation with the National Building Research Organization

and the National Disaster Management Centre, in the designated areas and convert them into alternative productive use, thereby protecting them from illegal occupation for residential purposes; and

(*l*) promote the provision of adequate social services and adequate sustainable infrastructure facilities in the designated areas.

PART II

MANAGEMENT AND ADMINISTRATION OF THE AUTHORITY

Board of Management of the Authority.

7. The affairs of the Authority shall be managed and administered by a Board of Management (hereinafter referred to as the "Board") consisting of the following :-

(*a*) seven *ex-officio* members, namely-

(i) an officer of the Ministry of the Minister assigned the subject of Hill Country New Villages, Infrastructure and Community Development and nominated by the Secretary to such Ministry;

(ii) an officer of the Ministry of the Minister assigned the subject of Finance and nominated by the Secretary to such Ministry;

(iii) an officer of the Ministry of the Minister assigned the subject of Plantation Industries and nominated by the Secretary to such Ministry;

(iv) an officer of the Ministry of the Minister assigned the subject of Public Enterprise Development and nominated by the Secretary to such Ministry;

(v) an officer of the Ministry of the Minister assigned the subject of Provincial Councils and Local Government and nominated by the Secretary to such Ministry;

(vi) an officer of the Ministry of the Minister assigned the subject of Housing and Construction and nominated by the Secretary to such Ministry;

(vii) an officer of the Ministry of the Minister assigned the subject of Land and nominated by the Secretary to such Ministry;

(*b*) six members who shall be appointed by the Minister (hereinafter referred to as "Appointed Members") from among persons possessing expertise in the fields of infrastructure development, community development, finance and provincial administration. One of these members shall be appointed from the Planters Association of Ceylon to represent the plantation companies.

Chairman and Vice-Chairman of the Board.

8. (1) The Minister shall, from among the appointed members, appoint -

(*a*) one member to be the Chairman of the Board; and

(*b*) one member to be the Vice-Chairman of the Board.

(2) The Chairman and Vice-Chairman shall hold office for a period of three years and shall be eligible for re-appointment subject to the provisions of section 7.

(3) The Chairman and Vice-Chairman shall not engage in any paid employment outside the duties of his office, without the approval of the Minister.

(4) The Chairman or Vice-Chairman may at any time resign from office by letter addressed to the Minister, and such resignation shall be effective from the date on which it is accepted by the Minister.

(5) The Minister may, for reasons assigned, remove the Chairman or Vice-Chairman from their respective offices.

(6) Where the Chairman is temporarily unable to perform the duties of his office due to ill health, other infirmity, absence from Sri Lanka or any other cause, the Minister may appoint the Vice Chairman to act as Chairman.

(7) Where both the Chairman and the Vice-Chairman are temporarily unable to perform the duties of their offices due to ill health, other infirmity, absence from Sri Lanka or any other cause, the Minister may appoint any other appointed member to act as Chairman in addition to such member's normal duties as an appointed member.

(8) Where the office of Chairman or Vice-Chairman becomes vacant upon the death, removal from office, or resignation by the holder of that office, the Minister may appoint a member of the Board to perform the duties of such office, until an appointment is made under subsection (1).

Financial interest of the members of the Board.

9. (1) The Minister shall, prior to appointing a person as a member of the Board, satisfy himself that such person has no financial or other interest in the affairs of the Authority, as is likely to affect prejudicially, the discharging of his functions as a member of the Board.

(2) The Minister shall also satisfy himself, from time to time, that no member of the Board has since being appointed to the Board acquired any such interest.

(3) A member of the Board who is in any way, directly or indirectly, interested in any contract made or proposed to be made by the Authority shall disclose the nature of his interest at a meeting of the Board and such disclosure shall be

recorded in the minutes of the Authority and such member shall not participate in any deliberation or decision of the Authority with regard to that contract.

(4) For the purposes of this section, a member of the Board includes the Chairman, the Vice-Chairman, an ex-officio member and an appointed member of the Board.

Disqualifications to be a member of the Board.

10. A person shall be disqualified from being appointed or continuing as a member of the Board, if such person –

(*a*) is or becomes a Member of Parliament, of any Provincial Council or of any Local Authority;

(*b*) is not, or ceases to be, a citizen of Sri Lanka;

(*c*) directly or indirectly holds or enjoys any right or benefit under any contract made by or on behalf of the Authority;

(*d*) has any financial or other interest as is likely to affect prejudicially the discharge by such person of the functions as a member of the Board;

(*e*) absents himself from three consecutive meetings of the Board, without obtaining prior approval of the Board therefor;

(f) is under any law in force in Sri Lanka or any other country, found or declared to be of unsound mind;

(*g*) is a person who, having been declared as insolvent or bankrupt under any law in force in Sri Lanka or in any other country, is an undischarged insolvent or bankrupt; or

(*h*) is serving or has served a sentence of imprisonment imposed by any court in Sri Lanka or any other country.

Provisions relating to appointed members.

11. (1) Every appointed member of the Board shall, unless he vacates office earlier by death, resignation or removal, hold office for a period of three years, and shall be eligible for re-appointment, unless removed on disciplinary grounds.

(2) The Minister may for reasons assigned remove any appointed member from office.

(3) Any appointed member may resign from office at any time by letter addressed in that behalf to the Minister and such resignation shall take effect upon it being accepted by the Minister.

(4) (*a*) In the event of the death, resignation or removal from office of any appointed member, the Minister may, having regard to the provisions of this Act in relation to the appointment of that particular appointed member, appoint another member to act in his place.

(*b*) The Minister shall appoint a member for the purposes of paragraph (*a*) within one month of the occurrence of the vacancy.

(*c*) The member appointed under paragraph (*a*) shall hold office for the unexpired period of the term of office of the member whom he succeeds.

(5) Where any appointed member is temporarily unable to perform the duties of the office due to ill health or absence from Sri Lanka or for any other reason, the Minister may, having regard to the provisions of paragraph (*b*) of section 7, appoint another person to act in his place.

(6) Subject to the preceding provisions, an appointed member may continue to hold office after the lapse of the period of three years referred to in subsection (1), until he is re-appointed or a new member is appointed in his place by the Minister.

Meetings of the Board.

12. (1) The Chairman shall, if present, preside at every meeting of the Board. Where the Chairman is absent, the Vice-Chairman shall preside at such meeting. Where both the Chairman and the Vice-Chairman are absent from any meeting, the members present shall elect a Chairman for that meeting from among themselves.

(2) All matters for decision by the Board shall be dealt with at a meeting of the Board and shall be determined by the majority of the members present and voting.

(3) In the event of an equality of votes on any question considered at a meeting, the Chairman of that meeting shall have a casting vote in addition to his original vote.

(4) All decisions of the Board shall be supported by reasons, in writing and the seal of the Authority shall be affixed thereto.

(5) Any member of the Board may, by written notice, request the Chairman to call a meeting and the Chairman shall not, otherwise than for justifiable reasons, refuse to do so.

(6) The Director-General of the Authority appointed under section 16 shall summon all meetings of the Board.

(7) No act, decision or proceedings of the Board shall be deemed to be invalidated by reason only of the existence of any vacancy of the Board or any defect in the appointment of any member thereof.

(8) The quorum for any meeting of the Board shall be five members.

(9) Subject to the preceding provisions of this section, the Board may regulate the procedure in regard to the meetings of the Board and the transaction of business at such meetings.

The seal of the Authority.

13. (1) The seal of the Authority shall be as determined by the Board.

(2) The seal of the Authority –

(*a*) may be altered in such manner as may be determined by the Board;

(*b*) shall be in the custody of such person or persons as the Board may determine;

(*c*) shall not be affixed to any instrument or document without the sanction of the Board and except in the presence of two members of the Board, both of whom shall sign the instrument or document in token of their presence.

(3) The Board shall maintain a register of documents to which the seal of the Authority has been affixed.

Board to invite experts to meetings.

14. (1) The Board may invite experts on a relevant subject matter to any meeting of the Board for the purpose of obtaining their views on such subject matter for the effective discharge of the functions of the Board.

(2) The Board shall have the absolute discretion of accepting or rejecting the views of the experts.

(3) The experts shall have no voting rights.

Remuneration for attending meetings of the Board.

15. The members of the Board and the experts may be paid such remuneration for attendance at meetings of the Board, as may be determined by the Minister with the concurrence of the Minister assigned the subject of Finance.

PART III

APPOINTMENT OF THE DIRECTOR-GENERAL AND STAFF OF THE AUTHORITY

Director-General of the Authority.

16. (1) The Minister shall, on the recommendation of the Board, appoint to the staff of the Authority a Director-General (hereinafter referred to as the "Director-General"), who shall be the Chief Executive Officer of the Authority.

(2) The Director- General shall, subject to the general or special directions and supervision of the Board –

(*a*) be charged with the administration of the affairs of the Authority including the administration and control of the staff;

(*b*) be responsible for the execution of all decisions of the Board;

(*c*) carry out all such functions as may be assigned to him by the Board; and

(*d*) function as the Secretary to the Board and also as the Chief Accounting Officer of the Authority.

(3) The Director- General shall be entitled to be present and speak at any meeting of the Board, but shall not be entitled to vote at such meeting.

(4) The Director–General may, with the written approval of the Board, whenever he considers it necessary to do so, delegate in writing to any officer of the Authority any of his powers, duties or functions and such officer shall exercise, perform or discharge such power, duty or function subject to the general or special direction of the Director–General.

(5) The Minister may remove the Director-General from office-

(*a*) if he becomes permanently incapable of performing his duties; or

(*b*) if he has done any act which, in the opinion of the Minister, is of a fraudulent or illegal character or is prejudicial to the interests of the Authority; or

(*c*) if he has failed to comply with any directions issued by the Authority.

(6) The term of office of the Director-General shall be three years from the date of appointment and shall, unless removed from office under subsection (5), be eligible for re-appointment.

(7) The office of the Director-General shall become vacant upon the death, removal from office under subsection (5) or resignation by letter in that behalf addressed to the Minister by the holder of that office.

(8) If any vacancy occurs in the office of the Director-General, the Minister may appoint a member of the Board to perform the duties of the Director-General until an appointment is made under subsection (1).

Staff of the Authority.

17. (1) The Authority may appoint as staff of the Authority such number of officers and other employees as may be necessary for the efficient discharge of its functions.

(2) The Authority may, in respect of the officers and employees appointed to the Authority under subsection (1)–

(*a*) determine the terms and conditions of employment of such officers and employees;

(*b*) fix the rates at which such officers and employees shall be remunerated in keeping with related guidelines of the Government;

(*c*) exercise disciplinary control over or dismiss such officers and employees; and

(*d*) establish staff welfare and social security schemes for the benefit of such officers and employees and make contribution to any such schemes.

(3) The Board may make rules in respect of all or any of the matters referred to in subsection (2).

(4) The Authority shall not, however, appoint as an officer or other employee of the Authority, any person who has been dismissed from any previous position held by such person in the public or private sector.

Public officers to be appointed to the Staff of the Authority.

18. (1) At the request of the Authority, any officer in the public service may, with the consent of that officer and the Secretary to the Ministry under which that officer is employed and the Secretary to the Ministry of the Minister assigned the subject of Public Administration, be temporarily appointed to the staff of the Authority for such period as may be determined by the Authority or with like consent, be permanently appointed to such staff.

(2) Where any officer in the public service is temporarily appointed to the staff of the Authority, the provisions of section 14(2) of the National Transport Commission Act, No. 37 of 1991 shall, *mutatis mutandis*, apply to and in relation to such officer.

(3) Where any officer in the public service is permanently appointed to the staff of the Authority, the provisions of section 14(3) of the National Transport Commission Act, No. 37 of 1991 shall, *mutatis mutandis*, apply to and in relation to such officer.

(4) Where the Authority employs any person who has entered into a contract with the Government by which he has agreed to serve the Government for a specified period, any period of service with the Authority by that person shall be regarded as service to the Government for the purpose of discharging the obligations of such contract.

Appointment of officers and other employees of public corporations to the Staff of the Authority.

19. (1) At the request of the Authority, any officer or other employee of a public corporation may, with the consent of such officer or employee and the governing board of such corporation, be temporarily appointed to the staff of the Authority for such period as may be determined by the Authority, or with like consent be permanently appointed

to the staff of the Authority on such terms and conditions, including those relating to pension or provident fund rights, as may be agreed upon by the Authority and the governing board of such corporation.

(2) Where any person is appointed, whether temporarily or permanently, under subsection (1) to the staff of the Authority, he shall be subject to the same disciplinary control as any other member of the staff of the Authority.

(3) For the purpose of this section 'governing board' in relation to a public corporation means the Board of Directors or other body in which the administration and management of that public corporation has been vested.

PART IV

FINANCE

Fund of the Authority.

20. (1) The Authority shall have its own Fund.

(2) There shall be paid into the Fund –

(*a*) all such sums of money as may be voted upon from time to time by Parliament for the use of the Authority;

(*b*) all such sums of money as may be received by the Authority in the exercise, performance and discharge of its powers and functions under this Act;

(*c*) all such sums of money as may be received by the Authority by way of loans, donations, gifts or grants from any source whatsoever;

(*d*) all such sums of money received by alienating, leasing or renting of property owned by the Authority.

(3) There shall be paid out of the Fund of the Authority all such sums of money required to defray the expenditure incurred by the Authority in the exercise, performance and discharge of its powers, duties and functions under this Act.

Authority to maintain accounts.

21. The Authority may open and maintain any account with any bank as it may think appropriate and such account shall be operated in accordance with prevailing financial regulations of the Government pertaining to financial transactions of public corporations.

Financial year and audit of accounts.

22. (1) The financial year of the Authority shall be the calendar year.

(2) The Authority shall cause proper books of accounts to be kept of the income, expenditure, assets and liabilities and all other financial transactions of the Authority.

(3) For the purpose of presenting a true and fair view of the financial performance and financial condition of the Authority, the Authority shall prepare the accounts in accordance with the Sri Lanka Accounting Standards adopted by the Institute of Chartered Accountants of Sri Lanka under the Sri Lanka Accounting and Auditing Standards Act, No. 15 of 1995.

(4) The provisions of Article 154 of the Constitution relating to the audit of accounts of public corporations shall apply to the audit of the accounts of the Authority.

Investment of funds.

23. Moneys belonging to the Authority may, with the approval of the Minister and with the concurrence of the Minister assigned the subject of Finance, be invested in Government approved securities.

Borrowing powers of the Authority.

24. (1) The Authority may, with the written consent of the Minister and the Minister assigned the subject of Finance and in accordance with the terms of any general authority given, borrow or obtain on credit such sums as the Authority may require for meeting the obligations of the Authority.

(2) The aggregate of the amount outstanding in respect of any loans raised by the Authority under this section shall not at any time exceed such amount as may be determined by the Minister.

Exemption of Authority from payments of duties.

25. The Authority shall, with the concurrence of the Minister assigned the subject of Finance, be exempt from the payment of any tax on the income or profits of the Authority to such extent as is permitted in terms of the Inland Revenue Act, No.24 of 2017.

PART V

GENERAL

Annual Report.

26. (1) The Authority shall, within six months of the end of each financial year, submit to the Minister an annual report of the activities carried out by the Authority during that financial year and cause a copy of each of the following documents relating to that year to be attached to the report–

(*a*) the audited accounts of the Authority for the year along with the Auditor-General's report; and

(*b*) a report of proposed activities for the year immediately following the year to which such report and accounts relate.

(2) The Minister shall lay copies of the report and documents submitted under subsection (1) before Parliament, within six months from the date of receipt of such report.

Declaration of secrecy.

27. Every member of the Board and every officer and other employee of the Authority shall, before entering upon his duties, sign a declaration pledging to observe strict secrecy in respect of all matters connected with the affairs of the Authority, which has come to his knowledge in the

performance or exercise of his powers and functions under this Act and shall, by such declaration, pledge himself not to disclose any such matter, except –

(*a*) when required to do so by a court of law; or

(*b*) when required to do so under any written law.

Delegation of powers of the Authority.

28. (1) The Board may, in writing and subject to such conditions as may be specified therein, delegate to the Director-General or any officer of the Authority any of the powers or functions of the Authority and the Director-General or such officer shall exercise or perform such power or function in the name and on behalf of the Authority.

(2) The Board may, notwithstanding any delegation made under subsection (1), by itself exercise or perform any power or function so delegated and may at any time revoke any such delegation.

Directions by the Minister.

29. (1) The Minister may, from time to time, issue to the Authority such general or special directions in writing as to the exercise and performance of its powers and functions so as to give proper effect to the Government policy relating to the objects of the Authority, and it shall be the duty of the Authority to give effect to such directions.

(2) The Minister may direct the Authority to furnish to him in such form as he may require, returns, accounts and any other information relating to the work of the Authority, and it shall be the duty of the Authority to give effect to such directions.

Officers and other employees of the Authority deemed to be public officers.

30. The Director-General and the officers and other employees of the Authority shall be deemed to be public officers within the meaning of and for the purposes of the Penal Code (Chapter 19).

Authority deemed to be a Scheduled Institution.

31. The Authority shall be deemed to be a Scheduled Institution within the meaning and for the purposes of the Bribery Act (Chapter 26) and the provisions of that Act shall be construed accordingly.

Compulsory acquisition of land.

32. (1) Where any private land or any interest in any private land within any designated area is required by the Authority for any of its purposes and the Minister by Order published in the *Gazette*, approves the acquisition of such land for such purpose, such land or any interest in such land shall be deemed to be required for a public purpose and may accordingly be acquired under the Land Acquisition Act (Chapter 460) and be transferred to the Authority.

(2) Any sum payable as compensation for the acquisition of any land or any interest in such land under subsection (1) for the Authority, shall be paid by the Authority**.**

Expenses in suit or prosecution to be paid out of the Fund.

33. (1) Any expenses incurred by the Authority in any suit or prosecution brought by or against it before any Court, shall be paid out of the Fund of the Authority and any costs paid to or recovered by the Authority in any such suit or prosecution shall be credited to the Fund of the Authority.

(2) Expenses incurred by any member of the Board, the Director -General or any officer or other employee of the Authority in any suit or prosecution brought against such person before any Court or Tribunal in respect of any act which is done or purported to be done by such person under the provisions of this Act or any other written law or on the direction of the Authority shall, if the court holds that such act was done in good faith, be paid out of the Fund of the Authority, unless such expenses are recoverable by such person in such suit or prosecution.

Regulations.

34. (1) The Minister may make regulations in respect of all matters required by this Act to be prescribed or in respect of which regulations are authorized by this Act to be made.

(2) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) (*a*) Every regulation made by the Minister shall, within three months after its publication in the *Gazette*, be brought before Parliament for approval.

(*b*) Any such regulation which is not so approved shall be deemed to be rescinded as from the date of its disapproval, but without prejudice to anything previously done thereunder.

(4) Notification of the date on which any regulation made by the Minister is so deemed to be rescinded shall be published in the *Gazette.*

Power of the Board to make rules.

35. (1) Subject to the provisions of this Act, the Board may make rules in respect of all or any of the following matters:–

(*a*) the meetings of the Authority and the procedure to be followed at such meetings; and

(*b*) any other matter connected with the management of the affairs of the Authority.

(2) Every rule made by the Board shall be published in the *Gazette*.

Offences and penalties.

36. (1) Every person who –

(*a*) obstructs, without any justifiable or lawful basis, any person acting in the exercise of his powers under this Act or any regulation made thereunder;

(*b*) being a person acting under the authority of this Act, behaves or conducts himself in a vexatious or provocative manner, while exercising or discharging any power or function under this Act;

(*c*) contravenes any of the provisions of this Act or any regulation made thereunder, or fails to comply with any direction given to him under the provisions of this Act; or

(*d*) fails to furnish any return or information in compliance with any requirement imposed on him under this Act or knowingly makes any false statement in any return or information furnished by him,

shall commit an offence.

(2) Every person who commits an offence under subsection (1) shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding fifty thousand rupees or to imprisonment for a period not exceeding one month or to both such fine and imprisonment.

Interpretation.

37. For the purposes of this Act –

"development project" means, any activity whether public or private which generates production, income, employment or improves economic, social or environmental conditions in the designated areas;

"Disaster Management Centre" means, the Disaster Management Centre established under the Sri Lanka Disaster Management Act, No. 13 of 2005;

"Estates" means, the areas of land where tea, rubber, coconut or oil palm are cultivated in more than 20 acres with more than 10 resident labourers;

"implementing agencies" means, the government Ministries and Departments that are assigned with the task of implementing various programmes of the Government at national, provincial, district and divisional levels;

"Minister" means, the Minister assigned the subject of Hill Country New Villages, Infrastructure and Community Development;

"National Building Research Organization" means, the National Building Research Organization functioning under the Ministry of the Minister assigned the subject of Disaster Management;

"new villages" means, the villages that are set up by replacing the existing line room housing in Estates with single houses and improved basic infrastructure facilities within those Estates;

"plantation community" means, the legal residents comprising workers and non - workers living in the Estates;

"plantation companies" means, the plantation companies incorporated by a certificate of incorporation issued under section 15(1) of the Companies Act, No. 17 of 1982 as repealed and replaced by Act, No. 7 of 2007, in terms of section 2 of the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act, No. 23 of 1987, and in respect of which long term lease agreements have been entered into with the Janatha Estate Development Board (JEDB) or the Sri

Lanka State Plantation Corporation established by the Sri Lanka State Plantations Corporation Act, No. 4 of 1958, as the case may be, for the management of identified tea, rubber and coconut estates for a given period;

"Plantation Region" means, the areas coming under the Divisional Secretary's Divisions in the Districts of the Central, Uva, Sabaragamuwa, Southern, Western, North Central and North Western Provinces, where the resident labourers live in the Estates in which tea, rubber, coconut or oil palm is cultivated**;**

"relevant Ministers" means, the Minister assigned the subject of Finance, the Minister assigned the subject of Plantation Industries, the Minister assigned the subject of Public Enterprise Development and the Minister assigned the subject of Lands who have been legally mandated to oversee the utilization of estate lands.

Sinhala text to prevail in case of inconsistency.

38. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

ECONOMIC SERVICE CHARGE (AMENDMENT) ACT, No. 33 OF 2018

[Certified on 04th of October, 2018]

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Economic Service Charge (Amendment) Act, No. 33 of 2018

[Certified on 04th of October, 2018]

L.D.—O. 9/2018

AN ACT TO AMEND THE ECONOMIC SERVICE CHARGE ACT, NO.13 OF 2006

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

Short title.

1. This Act may be cited as the Economic Service Charge (Amendment) Act, No. 33 of 2018.

Amendment of section 2 of Act, No. 13 of 2006.

2. Section 2 of the Economic Service Charge Act, No. 13 of 2006 (hereinafter referred to as the "principal enactment") is hereby amended as follows:—

(1) in subsection (1) of that section—

(*a*) in paragraph (*a*) of that subsection by the substitution for the words "for that relevant quarter; and", of the words "for that relevant quarter;";

(*b*) in paragraph (*b*) of that subsection—

(i) by the substitution, in sub-paragraph (ii) thereof, for the words "gold or other precious metal; or", of the words "gold or other precious metal;"; and

(ii) by the repeal of sub-paragraph (iii) thereof, and the substitution therefor of the following:—

"(iii) on or after April 1, 2017, but prior to the date of commencement of

this Act in respect of every consignment of imports of motor vehicles; or";

(*c*) by the addition, immediately after sub-paragraph (iii) thereof, of the following new sub-paragraph:—

"(iv) on or after the date of commencement of this Act in respect of every consignment of imports of motor vehicles, which are not liable for excise duty imposed under the Excise (Special Provisions) Act, No. 13 of 1989; and"; and

(*d*) by the addition, immediately after paragraph (*b*) thereof, of the following new paragraph:—

"(*c*) on or after the date of commencement of this Act, on the amount of excise duty imposed under the Excise (Special Provisions) Act, No. 13 of 1989 in respect of every consignment of imports of motor vehicles, which are liable for excise duty;".

(2) the proviso to paragraph (*b*) of subsection (3) of that section is hereby amended as follows:—

(*a*) in paragraph (*a*) by the substitution for the words "turnover of such bank; and", of the words "turnover of such bank;";

(*b*) in paragraph (*b*) by the substitution for the words "turnover of such person.", of the words "turnover of such person; and"; and

(*c*) immediately after paragraph (*b*) by the insertion of the following new paragraph:—`

"(*c*) in the case of Central Bank of Sri Lanka, unrealized gain from price revaluation and foreign exchange revalution, shall be deemed not to form part of the turnover of Central Bank of Sri Lanka.".

Amendment of Schedule IV of the principal enactment.

3. (1) Schedule IV to the principal enactment is hereby amended as follows:—

(*a*) in the item 1 of that Schedule, by the substitution for the words "partnership of the retail", of the words "partnership from the wholesale or retail" ; and

(*b*) in the item 2 of that Schedule, by the substitution for the words "partnership from the retail", of the words "partnership from the wholesale or retail".

(2) The amendments made to the principal enactment by this section, shall be deemed to have come into operation on April 1, 2017.

Sinhala text to prevail in case of inconsistency.

4. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

OFFICE FOR REPARATIONS ACT, No. 34 OF 2018

[Certified on 22nd of October, 2018]

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L.D.—O. 12/2018

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF THE OFFICE FOR REPARATIONS; TO IDENTIFY AGGRIEVED PERSONS ELIGIBLE FOR REPARATIONS, AND TO PROVIDE FOR THE PROVISION OF INDIVIDUAL AND COLLECTIVE REPARATIONS TO SUCH PERSONS; TO REPEAL THE REHABILITATION OF PERSONS, PROPERTIES AND INDUSTRIES AUTHORITY ACT, NO. 29 OF 1987 AND TO PROVIDE FOR ALL MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Preamble.

WHEREAS the Constitution of the Democratic Socialist Republic of Sri Lanka recognizes the inherent dignity and equal and inalienable human rights of all Sri Lankans and the State's obligation to respect, secure and advance these rights:

AND WHEREAS a comprehensive reparations scheme anchored in the rights of all Sri Lankans to an effective remedy will contribute to the promotion of reconciliation for the wellbeing, and security of all Sri Lankans including future generations:

NOW THEREFORE BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

Short title.

1. This Act may be cited as the Office for Reparations Act, No. 34 of 2018.

Objectives of this Act.

2. The objectives of this Act shall be –

(*a*) to formulate and recommend to the Cabinet of Ministers, Policies on Reparations to grant individual and collective reparations to aggrieved persons;

(*b*) to facilitate and implement such Policies on reparations as approved by the Cabinet of Ministers,

by the Office for Reparations, including specialized policies on public education, memorialization and on children, youths, women and victims of sexual violence and persons with disabilities;

(*c*) to establish links to ensure the compatibility of the Office for Reparations with other mechanisms aimed at reconciliation; and

(*d*) to monitor and evaluate the progress of delivery of reparations to eligible aggrieved persons.

PART I

Establishment of the Office for Reparations

Establishment of the Office for Reparations.

3. (1) There shall be established an office which shall be called the Office for Reparations.

(2) The Office for Reparations shall be a body corporate having perpetual succession and a common seal and may sue and be sued in its corporate name.

Constitution of the Office for Reparations.

4. (1) The Office for Reparations shall consist of five members appointed by the President on the recommendation of the Constitutional Council.

(2) The Constitutional Council shall recommend three names out of the members of the Office for Reparations to be appointed as the Chairperson of the Office for Reparations.

(3) One of the members recommended under subsection (2) shall be appointed by the President as the Chairperson of the Office for Reparations.

(4) In making recommendations for the appointment of members to the Office for Reparations, the Constitutional Council shall have due regard to –

(*a*) ensure that the composition of the Office for Reparations reflects the pluralistic nature of Sri Lankan society including gender; and

(*b*) ensure that the members of the Office for Reparations shall be persons of integrity and possess experience and qualifications relevant to the carrying out of the functions of the Office for Reparations.

Appointment of Chairperson and members of the Office for Reparations.

5. (1) The President shall, within a period of fourteen days of receiving the recommendations under section 4, appoint such persons as members and, a person as Chairperson out of the names recommended under section 4(2) for the Office for Reparations.

(2) In the event of the President failing to make the necessary appointments within such period of fourteen days –

(*a*) the persons recommended to be appointed as members of the Office for Reparations shall be deemed to have been appointed as the members of the Office for Reparations; and

(*b*) the person whose name appears first in the list of names recommended to be appointed as the Chairperson, shall be deemed to have been appointed as the Chairperson of the Office for Reparations,

with effect from the date of expiry of such period of fourteen days.

Terms of office of members.

6. Every member of the Office for Reparations shall, unless such member vacates office earlier by death, resignation or removal, hold office for a term of three years from the date of such member's appointment and shall, unless such member has been removed, be eligible for reappointment.

Removal of members.

7. (1) The office of a member of the Office for Reparations shall become vacant –

(*a*) upon the death of such member;

(*b*) upon such member resigning such office by writing addressed to the President;

(*c*) upon such member being removed from office on any ground specified in subsection (2); or

(*d*) on the expiration of such member's term of office.

(2) A member of the Office for Reparations may be removed from office by the President, if such person –

(*a*) is adjudged an insolvent by a court of competent jurisdiction;

(*b*) is found to have a conflict of interest, which in the opinion of the President, formed on the recommendation of the Prime Minister made upon consultation with the Speaker and the Leader of the Opposition, conflicts with his duties as a member of the Office for Reparations;

(*c*) is unfit to continue in office by reason of illness or other infirmity of mind or body;

(*d*) is declared to be of unsound mind by a court of competent jurisdiction;

(*e*) is convicted of an offence involving moral turpitude; or

(*f*) absents himself from three consecutive meetings without previously obtaining leave from the Office for Reparations.

(3) The Chairperson may resign from the office of Chairperson by letter addressed to the President.

(4) Subject to the provisions of subsections (1) and (2), the term of office of the Chairperson shall be such member's period of membership of the Office for Reparations.

(5) (*a*) If the Chairperson becomes temporarily unable to perform the duties of his office, by reason of illness or other

infirmity or due to absence from Sri Lanka or any other such reason, the President may appoint subject to the provisions of section 4 (1), any other member of the Office for Reparations to act as the Chairperson.

(*b*) If a member of the Office for Reparations becomes temporarily unable to perform the duties of his office, by reason of illness or other infirmity or due to absence from Sri Lanka or any other such reason, the President may subject to the provisions of section 4(1), appoint any other qualified person to temporarily act in place of such member during such period.

(6) No act or proceeding of the Office for Reparations shall be deemed to be invalid by reason only of the existence of any vacancy among its members, or defect in the appointment of any member thereof.

Meetings of the Office for Reparations.

8. (1) The Chairperson of the Office for Reparations shall preside at all meetings of the Office for Reparations. In the absence of the Chairperson of any meeting of the Office for Reparations, the members of the Office for Reparations present at such meeting shall elect one of the members of the Office for Reparations to preside at such meeting.

(2) The Chairperson or the member presiding at any such meeting of the Office for Reparations shall, in addition to his own vote, have a casting vote.

(3) The quorum for meetings of the Office for Reparations shall be three members.

(4) Subject to the other provisions of this Act, the Office for Reparations may make rules, to regulate the procedure in regard to the conduct of its meetings, and the transaction of business at such meetings.

Information officer and designated officer.

9. The Office for Reparations shall, within a period of three months of the commencement of the functions of the Office for Reparations, appoint a member from amongst themselves or any other officer of the Office for Reparations as the Information Officer of the Office for Reparations in terms of section 23 of the Right to Information Act, No. 12 of 2016 and the Chairperson of the Office for Reparations shall be the Designated Officer for purposes of the said Act.

Headquarters and Regional Offices.

10. (1) The headquarters of the Office for Reparations shall be situated in Colombo.

(2) The Office for Reparations may, from time to time, establish such number of regional, temporary or mobile offices, divisions and units including an outreach unit as may be necessary, for the purpose of achieving its objectives and to ensure that reparations are accessible to aggrieved persons.

PART II

Powers and functions of the Office for Reparations

Powers and functions of the Office for Reparations.

11. (1) The Office for Reparations shall have the following powers and functions:–

(*a*) to receive recommendations with regard to reparations to be made to aggrieved persons from the Office on Missing Persons established under the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. 14 of 2016 (hereinafter referred to as the "OMP") or such other relevant bodies or institutions;

(*b*) to receive applications for reparations from aggrieved persons or representatives of such aggrieved persons and to verify the authenticity of such applications, for the purpose of assessing the eligibility for reparations;

(*c*) to identify the aggrieved persons who are eligible for reparations as well as their level of need;

(*d*) to identify and collate information relating to previous or on-going reparation programmes carried out by the State, including any expenditure on similar reparation programmes through a centralized database;

(*e*) to make rules with regard to ensure the effective functioning of the Office for Reparations, including but not limited to –

(i) the manner in which recommendations and claims shall be received;

(ii) the manner in such recommendations and claims shall be processed and verified; and

(iii) the administration of the Office for Reparations;

(*f*) to make rules and issue guidelines from time to time which shall include gender and child responsive policies, to be followed by the staff of the Office for Reparations relating to the exercise and performance of its powers and functions;

(*g*) to formulate and recommend to the Cabinet of Ministers, Policies on Reparations and guidelines with regard to the grant of individual and collective reparations, including –

(i) the criteria for eligibility for aggrieved persons to obtain reparations, including criteria relating to the nature and severity of grievances for which reparations will be available;

(ii) the form, and where appropriate, the quantum of reparations that will be provided to eligible aggrieved persons;

(iii) the criteria of eligibility of aggrieved persons to financial compensation;

(iv) the criteria of eligibility of aggrieved persons to urgent reparations;

(v) a list of bodies which may assist in the provision or delivery of different forms of reparations to aggrieved persons;

(vi) recommendations on reparations which may be provided directly by other State institutions;

(vii) the criteria on which verified applications for reparations shall be prioritized;

(*h*) to implement such Policies on Reparations and guidelines as may be approved by the Cabinet of Ministers and grant individual and collective reparations as envisaged by such approved Policies on Reparations and guidelines;

(*i*) to provide training including gender responsiveness to the staff of the Office for Reparations;

(*j*) to provide support, including administrative support, travel reimbursements and psychosocial support, where necessary, for the aggrieved persons who appear before the Office for Reparations;

(*k*) to provide protection, with the assistance of law enforcement authorities, if there is a positive

assessment of threat to the physical integrity of aggrieved persons;

(*l*) to provide information and advice to aggrieved persons on their rights, the procedures involved in receiving reparations, truth-seeking mechanisms and other mechanisms through which they might receive redress or remedies;

(*m*) to consider and implement the claims made prior to the date of commencement of this Act to the Rehabilitation of Persons, Properties and Industries Authority established under section 2 of the repealed Act, subject to the availability of resources allocated therefor;

(*n*) to implement such programmes of the Rehabilitation of Persons, Properties and Industries Authority established under section 2 of the repealed Act approved by the Cabinet of Ministers prior to the date of commencement of this Act, until such time as such programmes may be discontinued;

(*o*) to facilitate the provision of other forms of assistance provided by other person or body of persons, including restitution, rehabilitation, administration and other assistance, and welfare services including health services, psycho-social support, educational and vocational training programmes, to the aggrieved persons;

(*p*) to appoint and exercise disciplinary control over or dismiss officers, employees and servants;

(*q*) to gather information necessary for the Office for Reparations to achieve its objectives including

requesting reports, records, documents or information from governmental authorities or any other sources;

(*r*) to establish in addition to any unit or division specifically mentioned in this Act, such committees, divisions and units as are required for the effective administration and functioning of the Office for Reparations;

(*s*) to enter into such contracts as may be necessary for the exercise of the powers and the achieving of the objectives of the Office for Reparations;

(*t*) to request and receive assistance necessary for the achieving of its objectives, from any State, governmental, provincial or local authority or agency, or any officer thereof, or from any other person or body of persons;

(*u*) to create, manage and maintain a database which will include all particulars concerning recommendations made with regard to reparations to be granted to aggrieved persons. Such database shall also include details of reparations previously granted by any other State authority or agency;

(*v*) to periodically inform aggrieved persons or representatives of such aggrieved persons of the status of the applications made for reparations, and to respond in a timely manner to queries related to the progress of such applications;

(*w*) to manage funds that will be used to provide reparations to eligible aggrieved persons through the Office for Reparations and which will be used in operationalizing this Office; and

(*x*) to do all such other things as are necessary for the exercise and discharge of its powers and functions or to achieve its objectives.

Formulation of Policies on Reparations.

12. (1) In formulating Policies on Reparations, and issuing guidelines, the Office for Reparations shall –

(*a*) consult through appropriate methods, aggrieved persons, organizations representing aggrieved persons and any other authority, person or body of persons;

(*b*) ensure the availability at all times of Advisors with relevant expertise to advise the Office for Reparations with regard to gender responsiveness, and the specific needs of aggrieved persons who are women, children and persons with disabilities;

(*c*) be guided by the principles of non-discrimination, victim-centrality and fairness, and with due consideration to the special needs of women, children and persons with disabilities;

(*d*) have due regard to all relevant factors, including –

(i) the seriousness of the violation of the aggrieved person's rights;

(ii) the impact, including continuing physical, psychological and economic impact, of such violation on the aggrieved persons;

(iii) the need to provide special measures for vulnerable aggrieved persons including women, children, and persons with disabilities;

(iv) the need to account for reparations already received by the aggrieved persons with regard to the violation of the right in question;

(v) in the case of the award of monetary reparations, factors to be considered, including availability of resources, and in deciding the manner of payments including between lump sum payments and staggered payments, the best interests of the aggrieved persons;

(vi) the appropriateness of non-monetary reparations;

(vii) in granting individual reparations which are monetary, the need to restrict such reparations to aggrieved persons who have the most serious grievance;

(viii) the need to prioritize the grant of monetary reparations considering the severity of the violation of the aggrieved persons' rights, the indigence of the aggrieved persons and the availability of resources;

(ix) the need to formulate a scheme of distribution where multiple relatives make claims with regard to a deceased or a missing person;

(*e*) in the case of collective reparations, have regard to the need to ensure –

(i) non-discrimination, facilitation of reconciliation and sensitivity to the experiences of all aggrieved persons;

(ii) that the design of such reparations should be informed by consultations with relevant aggrieved persons, organizations representing such aggrieved persons and any other authority, person or body of persons.

(2) For the avoidance of doubt, it is specifically provided that the receipt of reparations shall not preclude aggrieved persons from pursuing any remedy available in law to such persons, against any person who may have violated the rights of such persons.

(3) Aggrieved persons shall be informed of their ability to appear before any other appropriate authority, person or body of persons, by the Office's outreach unit of the Office for Reparations.

(4) The Office for Reparations shall coordinate with the OMP and other relevant institutions, in obtaining information with regard to aggrieved persons who have appeared before such institutions, regardless of whether such persons have submitted applications to the Office for Reparations.

Confidentiality.

13. (1) Notwithstanding anything to the contrary in any other written law, except in the exercise and performance of its powers and functions under this Act, every member, officer and servant, appointed to the Office for Reparations shall preserve and aid in preserving confidentiality with regard to matters communicated to them in confidence, except to the extent that the requirement of confidentiality is waived by the person providing such information.

(2) The Office for Reparations shall take all necessary steps including technical safeguards to ensure the security of all its databases and data.

PART III

SECRETARIAT

Secretariat.

14. (1) The Office for Reparations shall have a Secretariat which shall be charged with the responsibility for the administration of the affairs of the Office for Reparations.

(2) The Office for Reparations shall appoint a Director General, who shall be the Chief Executive Officer of the Office for Reparations.

(3) There may be appointed, by the Office for Reparations, such other officers and servants as may be necessary to assist the Office for Reparations in the exercise and performance of its powers and functions.

Appointment of public officers to the staff of the Office for Reparations.

15. (1) At the request of the Office for Reparations, any officer in the public service may with the consent of that officer and the Secretary to the Ministry of the Minister assigned the subject of Public Administration, be temporarily appointed to the staff of the Office for Reparations for such period as may be determined by the Office for Reparations or with like consent, be permanently appointed to such staff.

(2) Where any officer in the public service is temporarily appointed to the staff of the Office for Reparations, the provisions of subsection (2) of section 14 of the National Transport Commission Act, No. 37 of 1991, shall, *mutatis mutandis* apply to and in relation to him.

(3) Where any officer in the public service is permanently appointed to the staff of the Office for Reparations, the provisions of subsection (3) of section 14 of the National Transport Commission Act, No. 37 of 1991, shall, *mutatis mutandis* apply to and in relation to him.

PART IV

FINANCE AND REPORTING

Fund of the Office for Reparations.

16. (1) The Office for Reparations shall have its own fund. There shall be credited to the fund of the Office for Reparations –

(*a*) all such balances as on the date of the commencement of this Act that are lying to the credit of the Rehabilitation of Persons, Properties and Industries Authority, with regard to claims made to the Rehabilitation of Persons, Properties and Industries Authority, in terms of the Rehabilitation of Persons, Properties and Industries Authority Act, No. 29 of 1987;

(*b*) all such sums as may be voted by Parliament from time to time for the purposes of this Act;

(*c*) all such sums as may be received by the Office for Reparations by way of donations, grants or gifts, whether local or foreign:

Provided that, all foreign funds shall be channelled through the External Resources Department.

(2) There shall be paid out of the Fund, all such sums as may be required to defray any expenditure incurred in the administration and implementation of this Act and all such sums as are required to be paid out of the Fund by or under any provision of this Act.

Salaries of members of the Office for Reparations.

17. The salaries of the members of the Office for Reparations shall be determined by Parliament, and be charged on the Consolidated Fund, and shall not be diminished during their terms of office.

Financial year.

18. (1) The financial year of the Office for Reparations shall be the calendar year.

(2) The Office for Reparations shall cause proper accounts to be kept of its income and expenditure, and assets and liabilities.

(3) The accounts of the Office for Reparations shall be audited by the Auditor General in terms of Article 154 of the Constitution.

Reporting.

19. The Office for Reparations shall submit annual reports, including its audited accounts, to Parliament, and shall also cause such reports to be made public within a period of one month of such reports being submitted to Parliament.

PART V

GENERAL

Offences.

20. (1) If any person –

(*a*) wrongfully resists or obstructs any person authorized under this Act in the exercise of the powers conferred on him; or

(*b*) wrongfully hinders or obstructs the Office for Reparations in the exercise and the performance of its powers and functions; or

(*c*) willfully provides false information to the Office for Reparations; or

(*d*) discloses any confidential information in contravention of the provisions of this Act,

such person shall be guilty of the offence of contempt against the authority of the Office for Reparations.

(2) Where the Office for Reparations has reasonable grounds to believe that a person has committed the offence of contempt against the authority of the Office for Reparations, the Office for Reparations shall report such matter to the Court of Appeal. Every offence of contempt committed against the authority of the Office for Reparations shall be punishable by the Court of Appeal as if it was an offence of contempt committed against the Court of Appeal.

Protection from Action.

21. (1) Except as provided in section 25 of this Act, no criminal proceedings shall be instituted or maintained against any member, officer or servant appointed to the Office for Reparations in respect of any act done in good faith or purported to be done or committed to be done in good faith by such person under this Act.

(2) Any order, decision, act or omission of the Office for Reparations or any member, officer or servant appointed to the Office for Reparations thereof may be questioned in proceedings under Article 126 or 140 of the Constitution.

(3) Subject to the provisions of subsection (2), no civil proceedings shall be instituted or maintained against any member, officer or servant appointed to the Office for Reparations in respect of any act done in good faith or purported to be done or omitted to be done in good faith by such person under this Act.

(4) Any expenses incurred by such member, officer or servant appointed to Office for Reparations as referred to in subsections (1), (2) or (3) in any civil or criminal proceeding instituted against such person in any court in respect of any act done or purported to be done or omitted to be done by him under this Act, shall, if the court holds that such act was done or omitted to be done in good faith, be paid out of the fund, unless such expense is recovered by such person in such proceedings.

Rules.

22. (1) The Office for Reparations may make rules for matters which rules are required to be made.

(2) Every rule made under this Act shall be placed before Parliament and published in the *Gazette* within a reasonable period not exceeding three months.

(3) The Policies on Reparations and guidelines approved by the Cabinet of Ministers shall be placed before Parliament and published in the *Gazette* within a reasonable period not exceeding three months.

(4) Notwithstanding the provisions of this Act, Policies on Reparations and guidelines authorizing disbursement of funds shall be placed before Parliament for approval and published in the *Gazette* within a reasonable period not exceeding three months, and any disbursement in terms of such Policies on Reparations and guidelines shall only be effected after such approval.

Members &c. deemed to be public servants.

23. (1) The members of the Office for Reparations (for the limited purpose of their functions under this Act) and the officers and servants shall be deemed to be public servants for the purposes of the Penal Code (Chapter 19), the Bribery Act (Chapter 26) and the Evidence Ordinance (Chapter 14).

(2) The Office for Reparations shall be deemed to be a scheduled institution within the meaning of the Bribery Act (Chapter 26), and the provisions of that Act shall be construed accordingly.

Delegation of Powers.

24. (1) The Office for Reparations may delegate to the Chief Executive Officer, or any other member or officer thereof, any of its powers and functions.

(2) The Chief Executive Officer, member or officer to whom any of the powers or functions of the Office for Reparations has been delegated shall exercise and perform such powers and functions subject to the general or specific directions of the Office for Reparations.

No civil or criminal liability of any other person.

25. The entertaining of any application from, or the grant of reparations to, any aggrieved persons or representatives of such aggrieved persons shall not result in the civil or criminal liability of any other person.

Repeals, savings and transitional Provisions.

26. (1) The Rehabilitation of Persons, Properties and Industries Authority Act, No. 29 of 1987 is hereby repealed (in this Act referred to as the "repealed Act").

(2) Notwithstanding the repeal of the aforesaid Act –

(*a*) all movable and immovable properties including files, records, documentation, computers, data storage devices of the Rehabilitation of Persons, Properties and Industries Authority established under section 2 of the repealed Act, subsisting on the date of commencement of this Act, shall, with effect from the date of commencement of this Act vest in the Office for Reparations established under section 3 of this Act;

(*b*) all contracts and agreements entered into by or with the Rehabilitation of Persons, Properties and Industries Authority established under section 2 of the repealed Act, subsisting on the date of commencement of this Act, shall, with effect from the date of commencement of this Act, be deemed to be contracts and agreements entered into by or with the Office for Reparations established under section 3 of this Act;

(*c*) (i) all officers or servants of the Rehabilitation of Persons, Properties and Industries Authority established under section 2 of the repealed Act who are offered employment in the Office for Reparations established under section 3 of this Act and who express a desire to accept such employment, shall become members of the staff of the Office

for Reparations and shall be employed on terms not less favourable than their terms of employment in the Rehabilitation of Persons, Properties and Industries Authority;

(ii) where any officer or servant of the Rehabilitation of Persons, Properties and Industries Authority established under section 2 of the repealed Act, expresses a desire –

(*aa*) not to accept employment in the Office for Reparations; or

(*bb*) to accept employment in the Office for Reparations, but in view of the nature of the services performed by him in his employment in the Rehabilitation of Persons, Properties and Industries Authority, he cannot be accommodated in the staff of the Office for Reparations,

be paid compensation in terms of a voluntary retirement scheme approved by the Cabinet of Ministers;

(iii) until such time as an appropriate decision is made by the relevant authority with regard to the cadres and salaries of the Office for Reparations, the approvals made and prevailing in respect of the cadres and salaries of the Rehabilitation of Persons, Properties and Industries Authority on the day immediately preceding the date of commencement of this Act shall be deemed to be an approval of the cadres and salaries of the Office for Reparations;

(*d*) all actions and proceedings instituted by or against the Rehabilitation of Persons, Properties and Industries Authority established under section 2 of the repealed Act, and pending on the date of commencement of this Act, shall, with effect from the date of commencement of this Act, be deemed to be actions and proceedings as the case may be, instituted by or against the Office for Reparations established under section 3 of this Act and may accordingly be continued and completed;

(*e*) all judgments and orders made in favour or against the Rehabilitation of Persons, Properties and Industries Authority established under section 2 of the repealed Act, and remaining unsatisfied on the day immediately preceding the date of commencement of this Act, shall, with effect from the date of commencement of this Act, be deemed to be judgements and orders made in favour or against the Office for Reparations established under section 3 of this Act and be enforced accordingly;

(f) all the claims made to and all the programmes commenced by the Rehabilitation of Persons, Properties and Industries Authority established under section 2 of the repealed Act, on the day immediately preceding the date of commencement of this Act, shall, be deemed on and after the date of commencement of this Act to be the claims made to and all the programmes commenced by the Office of Reparations established under section 3 of this Act; and

(*g*) all interests, rights, assets, obligations, debts and liabilities of the Rehabilitation of Persons, Properties and Industries Authority established under section 2 of the repealed Act, on the day immediately preceding the date of commencement

of this Act, shall be on and after the date of commencement of this Act to be interests, rights, assets, obligations, debts and liabilities of the Office for Reparations established under section 3 of this Act.

Interpretation.

27. Unless the context otherwise requires, in this Act –

"aggrieved persons" mean –

(*a*) persons who have suffered damage as a result of loss of life or damage to their person or property, –

(i) in the course of, consequent to, or in connection with the armed conflict which took place in the Northern and Eastern Provinces or its aftermath; or

(ii) due to political unrest or civil disturbances; or

(iii) such damage being in the nature of prolong and grave damage suffered by individuals, groups or communities of people of Sri Lanka; or

(iv) due to an enforced disappearance as defined in the International Convention for the Protection of all Persons from Enforced Disappearance Act, No. 5 of 2018;

(*b*) relatives of a deceased person or, a person missing in the circumstances referred to in paragraph (*a*);

"collective reparations" mean, such measures as are intended to recognize the right to an effective remedy and benefits to the communities or groups of aggrieved persons and shall include –

(*a*) means of remembrance of deceased persons, including memorials;

(*b*) development of infrastructure;

(*c*) educational programmes, training, and skills development programmes;

(*d*) community development programmes or services; and

(*e*) other appropriate programmes as identified by the Office of Reparations in consultation with affected communities;

"individual reparations" mean, such measures as are intended to recognize the right to an effective remedy and benefits for an individual aggrieved person and shall include -

(*a*) any monetary payment or material benefit provided to an aggrieved person;

(*b*) micro-finance and concessionary loans;

(*c*) educational programmes, training, and skills development programmes;

(*d*) administrative assistance, and welfare services including psycho-social support provided to an aggrieved person;

(*e*) measures of restitution, including the provision of land and housing; and

(*f*) other appropriate measures identified by the Office for Reparations;

"relatives", in relation to a deceased person or a missing person include the following persons:–

(i) spouse;

(ii) children;

(iii) parents ;

(iv) brothers or sisters;

(v) parents-in-law, brothers/sisters-in-law, sons/daughters-in-law;

(vi) grandchildren and grandparents;

"reparations" include, individual and collective reparations.

Sinhala text to prevail in case of inconsistency.

28. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.

PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

FINANCE ACT, No. 35 OF 2018

[Certified on 01st of November, 2018]

Printed on the Order of Government

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Finance Act, No. 35 of 2018

[Certified on 01st of November, 2018]

L.D.—O. 22/2017

AN ACT TO AMEND THE FINANCE ACT, NO. 25 OF 2003, THE FINANCE ACT, NO. 5 OF 2005, THE FINANCE ACT, NO. 12 OF 2012, THE FINANCE ACT, NO. 16 OF 1995, AND THE FINANCE ACT, NO. 10 OF 2015; AND TO PROVIDE FOR THE IMPOSITION OF LUXURY TAX ON MOTOR VEHICLES, VEHICLE ENTITLEMENT LEVY, ANNUAL COMPANY REGISTRATION LEVY, DEBT REPAYMENT LEVY, CARBON TAX, CELLULAR TOWER LEVY AND MOBILE SHORT MESSAGE SERVICE LEVY; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH AND INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:–

Short title.

1. This Act may be cited as the Finance Act, No. 35 of 2018.

PART I

AMENDMENT OF PART II OF THE FINANCE ACT, NO. 25 OF 2003

Amendment of section 11 of Act, No. 25 of 2003.

2. Part II (Imposition of Tourism Development Levy) of the Finance Act, No. 25 of 2003 (hereinafter in this Part referred to as the "principal enactment") is hereby amended in section 11—

(1) by the renumbering of section 11 as subsection (1) thereof;

(2) in the second proviso of renumbered subsection (1) by the substitution for the words "rupees three million" of the words "rupees three million, for the period ending on December 31, 2018.";

(3) by the insertion immediately after the second proviso to that subsection of the following new proviso:—

"Provided further, from and after January 1, 2019, such levy shall be charged from any institution having an annual turnover of not exceeding rupees twelve million or a quarterly turnover not exceeding rupees three million at the rate of 0.5 *per centum* on such turnover of such institution.";

(4) by the insertion immediately after renumbered subsection (1), of the following new subsection:—

"(2) From and after January 1, 2019, there shall be levied from every institution licensed under the Tourism Act, No. 38 of 2005 a levy of one *per centum* on the turnover of such institutions in any year, to be called the Tourism Development Levy:

Provided however, such levy shall not be charged on the commission carried on the sale of airline tickets from Travel Agents including General Sales Agents licensed under the Tourism Act, No. 38 of 2005:

Provided further, such levy shall be charged from any institution having an annual turnover of not exceeding rupees twelve million or a quarterly turnover not exceeding three million, at the rate of 0.5 *per centum* on such turnover of such institution."; and

(5) by the repeal of the marginal note of that section and the substitution therefor of the following:—

"Imposition of Levy on institutions, licensed under Tourism Development Act and Tourism Act".

Amendment of section 12 of the principal enactment.

3. Section 12 of the principal enactment is hereby amended by the repeal of subsection (2) thereof and the substitution therefor, of the following subsections:—

"(2) The Director General of the Ceylon Tourist Board shall—

(*a*) retain the levy so collected under subsection (1), other than the levy collected from the online travel agents licensed under the Tourism Act, No. 38 of 2005 and the levy collected at the rate of 0.5 *per centum* under section11; and

(*b*) remit the levy collected from the online travel agents licensed under the Tourism Act, No. 38 of 2005 and the levy collected at the rate of 0.5 *per centum* ander section11, to the Cosolidated Fund.

(3) The Director General of the Ceylon Tourist Board shall furnish such returns in such manner as may be prescribed in that behalf to the Deputy Secretary to the Treasury, within thirty days of the date on which such amount is collected.".

PART II

AMENDMENT OF PART II OF THE FINANCE ACT, NO. 5 OF 2005

Amendment of section 7 of Act, No. 5 of 2005.

4. Part II (Imposition of Share Transaction Levy) of the Finance Act, No. 5 of 2005, is hereby amended in section 7 thereof, by the repeal of paragraph (*b*) thereof and the substitution therefor of the following paragraphs:—

"(*b*) for any period commencing on or after January 1, 2011, but prior to January 1, 2016, at the rate of 0.3 *per centum*; and

(*c*) for any period commencing on or after April 1, 2016, at the rate of 0.3 *per centum*,".

PART III

AMENDMENT OF PART III OF THE FINANCE ACT, NO. 5 OF 2005

Amendment of section 13 of Act, No. 5 of 2005.

5. Part III (Imposition of Construction Industry Guarantee Fund Levy) of the Finance Act, No. 5 of 2005 (hereinafter in this Part referred to as the "principal enactment") is hereby amended in subsection (1) of section 13, by the substitution for the words "for every year thereafter," of the words and figures "for every year thereafter until December 31, 2015,".

Amendment of section 13A of the principal enactment.

6. Section 13A of the principal enactment is hereby amended in subsection (1), by the substitution for the words and figures "any payment on or after April 1, 2009 to any construction contractor or sub-contractor," of the words and figures "any payment on or after April 1, 2009 but prior to January 1, 2016 to any construction contractor or sub-contractor,".

Retrospective effect.

7. The amendments made to the principal enactment by this Part of this Act, shall be deemed for all purposes to have come into force on January 1, 2016.

PART IV

AMENDMENT OF PART IV OF THE FINANCE ACT, NO. 12 OF 2012

Amendment of section 18A of Act, No. 12 of 2012.

8. Part IV (Exemption from Application of the provisions of Customs Ordinance (Chapter 235), Exchange Control Act (Chapter 423) and the Imports and Exports (Control) Act, No. 1 of 1969) of the Finance Act, No. 12 of 2012, (hereinafter in this Part referred to as the "principal enactment") is hereby amended in subsection (1) of section 18A thereof, by the substitution for the words "any enterprise engaged in" of the words "enterprises or certain enterprises as specified in that Schedule engaged in".

9. The Schedule to the principal enactment is hereby amended, by the substitution for item 1 thereof, of the following item:— Amendment of the Schedule to the principal enactment.

"1. Value Added Tax Act, No. 14 of 2002 (other than an enterprise which carries out activities which are treated as zero rated activities within the meaning of the provisions of Value Added Tax Act and for which the provisions of paragraph (*e*) of subsection (2) of section 2 of the said Act are applicable on local purchase of goods or services under Simplified Value Added Tax Scheme referred to in that paragraph);".

10. The amendments made to the principal enactment by this Part of this Act shall come into operation on the date of commencement of this Act. Application of the provisions of this part.

PART V

AMENDMENT OF PART II OF THE FINANCE ACT, NO. 16 OF 1995

11. The Finance Act, No. 16 of 1995 (hereinafter in this Part, referred to as the "principal enactment") is hereby amended in subsection (1) of section 3 thereof, by the substitution for the words "every luxury motor vehicle (other than a semi- luxury dual purpose motor vehicle or a wagon)-" of the words and figures "every luxury motor vehicle (other than a semi-luxury dual purpose motor vehicle or a wagon) of which the first year of registration falls prior to January 1, 2019-". Amendment of section 3 of Act, No. 16 of 1995.

12. Section 4 of the principal enactment is hereby amended in subsection (1) thereof, by the substitution for the words "every semi-luxury motor vehicle (other than a semi-luxury dual purpose motor vehicle or a wagon)-" of the words and figures "every semi-luxury motor vehicle (other than a semi-luxury dual purpose motor vehicle or a wagon) of which the first year of registration falls prior to January 1, 2019-". Amendment of section 4 of the principal enactment.

Amendment of section 5 of the principal enactment.

13. Section 5 of the principal enactment is hereby amended in subsection (1) thereof, by the substitution for the words "every semi-luxury dual purpose motor vehicle (other than a wagon)-" of the words and figures "every semi-luxury dual purpose motor vehicle (other than a wagon) of which the first year of registration falls prior to January 1, 2019.".

Amendment of section 8 of the principal enactment.

14. Section 8 of the principal enactment is hereby amended in subsection (1) thereof, by the substitution for the words "any specified motor vehicle" of the words and figures "any specified motor vehicle, of which the payment due date of the levy falls prior to January 1, 2019,".

Amendment of section 8A of the principal enactment.

15. Section 8A of the principal enactment is hereby amended by the substitution for the words "any specified motor vehicle" of the words and figures "any specified motor vehicle, of which the payment due date of the levy falls prior to January 1, 2019,".

Insertion of new section 8B in the principal enactment.

16. The following new section is hereby inserted immediately after section 8A and shall have effect as section 8B of the principal enactment:—

"Levy to be collected at the time of renewal of registration.

8B. (1) Every Divisional Secretary who renews an annual revenue licence in respect of any specified motor vehicle of which the payment due date of the levy falls on or after January 1, 2019, shall, at the time of renewing the annual revenue licence, collect from the registered owner of such motor vehicle an amount equal to such levy and remit the amount so collected to the Commissioner-General who shall credit the same to the Consolidated Fund.

(2) Every Divisional Secretary who collects the levy under subsection (1) shall send a monthly report to the Commissioner-General in such form and containing such particulars as may be specified by the Commissioner-General in respect of the levy so collected and remitted to the Consolidated Fund.

(3) Every Divisional Secretary who collects the levy in accordance with the provisions of subsection (1), shall duly acknowledge the receipt of the levy so collected, in such manner as may be specified by the Commissioner-General.

(4) Any levy so collected by any Divisional Secretary in accordance with the provisions of subsection (1), shall be deemed to have been paid by such registered owner to the Commissioner-General on the date on which such Divisional Secretary collected such levy.".

PART VI

AMENDMENT OF THE FINANCE ACT, NO. 10 OF 2015

Repeal of Part VII of Act, No. 10 of 2015.

17. Part VII (Mansion Tax) of the Finance Act, No. 10 of 2015 (hereinafter in this Part referred to as the "principal enactment") is hereby repealed.

Repeal of Part IX of the principal enactment.

18. Part IX (Motor Vehicle Importers Licence Fee) of the principal enactment is hereby repealed, with effect from January 1, 2016.

PART VII

IMPOSITION OF LUXURY TAX ON MOTOR VEHICLES

Imposition of Luxury Tax on motor vehicles.

19. There shall be charged, a tax to be called the "Luxury Tax" (hereinafter in this Part referred to as "the tax") on every specified motor vehicle of which the first year of registration falls on or after the date, and at the rates, as may be prescribed by regulations made under this Act.

Collection of tax at the time of importation.

20. (1) The tax payable under section 19 on any specified motor vehicle imported into Sri Lanka on or after the date prescribed under section19, shall be paid to the Director-General of Customs, by the person importing such vehicle, at the time of removing the vehicle from Sri Lanka customs, together with the import duties payable in respect of such vehicle in terms of any written law.

(2) The provisions of the Customs Ordinance (Chapter 235) applicable for the collection and recovery of any Customs Duty, shall, *mutatis mutandis*, apply for the collection and recovery of the tax under this section.

Collection of tax at the time of registration.

21. (1) The tax payable under section 19 on any specified motor vehicle imported into Sri Lanka prior to the date prescribed under section 19, or assembled in Sri Lanka shall be paid by the registered owner of such vehicle to the Commissioner-General at the time of issuing the first Certificate of Registration in respect of such vehicle.

(2) The Commissioner-General shall remit the tax collected under subsection (1) to the Consolidated fund.

Certain vehicles to be exempted from the payment of the tax.

22. Nothing in this Part shall apply to any specified motor vehicle providing services to a Diplomatic Mission of any State within the meaning of the Diplomatic Privileges Act, No. 9 of 1996 or to an International, Multilateral or Bilateral Organization recognized in terms of that Act.

23. In this Part of this Act, unless the context otherwise requires– Interpretation.

"Commissioner General" means the Commissioner General of Motor Trafic appointed under the Motor Traffic Act (Chapter 203);

"Director- General of Customs" means the Director-General of Customs appointed under section 2 of the Customs Ordinance (Chapter 235);

"specified motor vehicle" means any assembled or unassembled diesel motor vehicle of which the cylinder capacity exceeds 2,300 CC or a petrol motor vehicle of which the cylinder capacity exceeds 1,800 CC or an electric vehicle of which motor power of the engine exceeds 200 Kw, but shall not include a dual purpose petrol motor vehicle the cylinder capacity of which does not exceed 2,200 CC, dual purpose electric motor vehicle, a van, a single cab or a wagon.

PART VIII

IMPOSITION OF VEHICLE ENTITLEMENT LEVY

24. There shall be charged with effect from January 1, 2016, a levy to be called the "Vehicle Entitlement Levy" (hereinafter in this Part referred to as "the levy") from every importer of motor vehicles, who imports a motor vehicle specified in the First Schedule hereto, at the respective rates set out in that Schedule for each category of vehicle identified under the harmonized commodity description and coding system numbers: Imposition of Vehicle Entitlement Levy.

Provided however, an importer of vehicle who imports such vehicle in unassembled form shall not be liable to pay the levy.

Collecting the levy for the period commencing from January 1, 2016 to January 1, 2019.

25. (1) The Levy payable for any period commencing on January 1, 2016 but ending prior to January 1, 2019 shall have been collected by the bank at which the Letter of Credit in respect of the vehicle imported is opened, at the time of opening such Letter of Credit and shall be remitted in the manner specified in subsection (2) by such bank to the Commissioner-General.

(2) The levy collected by the bank within the period Commencing–

(*a*) on the 1st day of any month to the 15th day of that month shall have been remitted on or before the end of that month; and

(*b*) on the 16th day of any month to the end of that month shall have been remitted on or before the 15th day of the succeeding month,

to the Commissioner-General.

(3) Every bank which remit the levy in terms of the preceding provisions of this section shall, submit a statement setting out the following, to the Commissioner-General:—

(*a*) the name and address of each importer relating to each remittance;

(*b*) category of the vehicle;

(*c*) value of the Letter of Credit;

(*d*) amount collected; and

(*e*) any other details as may be required by the Commissioner-General, from time to time.

(4) Any bank which collects the levy from any importer shall issue a copy of the Letter of Credit to such importer certifying that the levy has been paid. Any vehicle imported on a Letter of Credit opened on or after January 1, 2016 shall not be allowed to be removed from the Sri Lanka Customs, unless the importer submits the copy of the Letter of Credit which is endorsed by the bank.

(5) In any event where the Letter of Credit is cancelled and a refund being requested by the importer who has paid the levy on such Letter of Credit, prior to the remittance of such levy to the Commissioner-General, the bank may refund the levy so paid.

Collecting the levy for any period commencing on or after January1, 2019.

26. (1) The levy payable under section 24 for any period commencing on or after January 1, 2019, on any vehicle in respect of which the Letter of Criedit has been opened on or after January 1, 2019 and imported into Sri Lanka, shall be paid by the importer of the vehicle to the Director-General of Customs, at the time of removing the vehicle from Sri Lanka Customs together with the import duties payable in respect of such vehicle in terms of any written law.

(2) Upon payment of the levy, the Director-General of Customs shall issue a certificate called "Vehicle Entitlement Certificate" in the form as may be prescribed, by regulations made under this Act.

(3) The provisions of the Customs Ordinance (Chapter 235) which apply for the collection and recovery of any customs duty, shall, *mutatis mutandis*, apply for the collection and recovery of the levy under this Part.

Certain vehicles to be exempted from the payment of the levy.

27. Nothing in this Part shall apply to any vehicle imported to Sri Lanka for providing services to a Diplomatic Mission of any State within the meaning of the Diplomatic Privileges Act, No. 9 of 1996 or to an International, Multilateral or Bilateral Organization recognized in terms of that Act.

Validation.

28. Where a levy of such amount under section 24 has been collected by a bank on behalf of the Commissioner General, in terms of this Part of this Act, during the period commencing on January 1, 2016, and ending on the date of the commencement of this Act, from any person who imports a motor vehicle, such collection shall be deemed for all purposes to have been, validly made, and the bank and the Commissioner General are hereby indemnified against all action civil or criminal, in respect of such collection.

Amendment of the rates of the levy by resolution of Parliament.

29. The Parliament may by resolution amend the rates of the levy payable under section 24 and set out in the First Schedule hereto.

Interpretation.

30. In this Part of this Act, unless the context otherwise requires–

"bank" means a licensed commercial bank within the meaning of the Banking Act, No. 30 of 1988;

"Commissioner-General"means the Commissioner General of Inland Revenue appointed or deemed to be appointed under the Inland Revenue Act, No. 24 of 2017;

"Director General of Customs" means the Director General of Customs appointed under section 2 of the Customs Ordinance (Chapter 235).

PART IX

ANNUAL COMPANY REGISTRATION LEVY

Imposition of Annual Company Registration Levy.

31. (1) There shall be charged and levied for the year commencing on January 1, 2016, and ending on December 31, 2016 from every company incorporated or registered under the Companies Act, No. 7 of 2007, a levy to be called "Annual Company Registration Levy" (hereinafter in this Part reffered to as "the levy") at the respective rates as specified for each category of Company in the Second Schedule:

Provided however, the provisions of this section shall not apply to-

(*a*) an off-shore company; and

(*b*) a company limited by guarantee.

(2) The levy shall be collected by the Registrar of Companies from every relevant company on or before December 31, 2019 and be remitted to the Consolidated Fund.

(3) The provisions which may be necessary for the implementation of the provisions of this Part shall be prescribed by regulations made under this Act.

Certain companies to be exempted from payment of the levy.

32. Notwithstanding anything to the contrary in the provisions of section 31, any company which is incorporated under the Companies Act, No. 7 of 2007, within the period commencing on January 1, 2016 and ending on December 31, 2016 shall not be liable to pay the levy.

Default in payment of the levy.

33. (1) Any company which fails to pay the levy as provided for in section 31, shall be deemed to be a defaulter under this Act.

(2) The provisions of section 34 shall apply to, and in ralation to, the prosecution against any such defaulter and for the recovery of such levy.

Recovery of the Levy in default.

34. (1) Where the amount of the levy or part thereof is in default, the Registrar of Companies shall issue a certificate containing particulars of the amount in default and the name and address of the company, to the Magistrate having jurisdiction over such place.

(2) The Magistrate shall thereupon summon the defaulter to show cause why proceedings for the recovery of the amount of the levy in default shall not be taken against him.

(3) If sufficient cause is not shown by the defaulter, the amount of the levy in default shall be recovered by Order of the Magistrate, as if it was a fine imposed by the Magistrate on such defaulter, and when recovered be remmitted to the Registrar of Companies to be credited to the Consolidated Fund.

Validation.

35. Where a levy of such amount under section 31 has been collected for the period specified in that section by the Registrar of Companies, in terms of this Part of this Act, during the period commencing on January 1, 2016, and ending on the date of the commencement of this Act, from any company incorporated or registered under the Companies Act, No. 7 of 2007, such collection shall be deemed for all purposes to have been, validly made, and the Registrar of Companies is hereby indemnified aganint all action civil or Criminal, in respect of such collection.

PART X

DEBT REPAYMENT LEVY

Imposition of Debt Repayment Levy.

36. (1) There shall be charged and levied for every month commencing on October 1, 2018 but ending on December 31, 2021, from every financial instiiution, a levy of 7 *per centum* to be called the "Debt Repayment Levy" (hereinafter in this Part referred to as "the levy") on the value addition attributable to the supply of financial services by each such institution.

(2) For the purposes of this section the value addition attributable to the supply of financial services sahll be calculated based on the provisions specified in section 25C of the Value Added Tax Act, No. 14 of 2002.

(3) The amount of the operating profit or loss of the financial institution considered for calculating the value addition attribuable to the supply of financial services under this section, shall be the amount of the profit or loss of such financial institution prior to deducting the tax payble under this section, the value Added tax payble under section 25A of the Value Added Tax Act, No. 14 of 2002 and the Nation Building Tax payable under paragraph (iii) of subsection (2) of the Nation Building Tax Act, No. 9 of 2009.

(4) The levy for every month shall be remitted to the Commissioner-General, along with a value addition statement in respect of such remittance on or before the twentieth day of the month succeeding the relevant month.

(5) A financial institution shall in respect of each financial year of such financial institution furnish a return in the form specified by the Commissioner-General within a period of six months from the end of that financial year.

exemption from the Default in payment of the levy.

37. The Minister may, having regard to the economic development of the country, by Order published in the *Gazette,* exempt any transaction of a financial institution

specified in such Order, from the payment of the levy payable under this Part, subject to such condition as may be specified in such Order.

Default in payment of the Levy.

38. (1) Where any financial institution, which is liable to pay the levy under this Part fails to pay the levy as provided for in section 36, such financial institution shall be deemed to be a defaulter under this Act.

(2) The provisions of Chapter IX, Chapter XI, Chapter XII, Chapter XIII, Chapter XIV, Chapter XV, Chapter XVI, Chapter XVII and Chapter XVIII of the Inland Revenue Act, No. 24 of 2017 shall, *mutatis mutandis*, apply to, and in relation to, any such defaulter.

Interpretation.

39. In this Part of this Act, unless the context otherwise requires—

"Commissioner-General" means the Commissioner-General of Inland Revenue appointed or deemed to be appointed under the Inland Revenue Act, No. 24 of 2017;

"financial institution"means—

(*a*) a licensed commercial bank or a licensed specialized bank within the meaning of the Banking Act, No. 30 of 1988;

(*b*) a finance company licensed under the Finance Business Act, No. 42 of 2011.

PART XI

CARBON TAX

Imposition of Carbon Tax.

40. (1) There shall be levied for every year commencing from January 1, 2019, from the registered owner of every motor vehicle specified in the Third Schedule hereto, a tax to be called the "Carbon Tax" (hereinafter in this Part referred to as "the tax") at such rates as may by specified in that Schedule.

(2) The tax imposed under subsection (1) shall not apply for any electric vehicle.

Registered owner to pay the tax.

41. (1) The registered owner of any relevant vehicle shall pay the tax for every year, other than for the first year of registration of such motor vehicle, to the Divisional Secretary, on or before the due date of renewal of annual registration.

(2) Every Divisional Secretary who collects any amount in accordance with the provisions of subsection (1) shall duly acknowledge the receipt of the tax so collected and remit such amount to the Commissioner-General, in such manner as may be prescribed.

(3) The provisions which may be necessary for the implementation of the provisions of this Part and collection of the tax shall be prescribed by regulations made under this Act.

Amendment of the rates of the tax by resolution of Parliament.

42. The Parliament may by resolution amend the rates of the tax payable under section 40 and set out in the Third Schedule hereto.

Interpretation.

43. In this Part of this Act, unless the context otherwise requires—

"Commissioner-General" means the Commissioner-General of Motor Traffic appointed under the Motor Traffic Act (Chapter 203).

PART XII

Cellular Tower Levy

Imposition of Cellular Tower Levy.

44. (1) There shall be levied for every year commencing from January 1, 2019, from every mobile telephone operator who owns a cellular tower, a levy to be called the "Cellular Tower Levy" (hereinafter in this Part referred to as "the levy") of rupees two hundred thousand *per annum* for each cellular tower.

(2) The levy shall be paid by such mobile telephone operator, to the Telecommunication Regulatory Commission (hereinafter in this Part referred to as "the Commission") in four equal instalments, respectively as follows:—

(*a*) first instalment on or before the fifteenth day of April of the relevant year;

(*b*) second instalment on or before the fifteenth day of July of the relevant year;

(*c*) third instalment on or before the fifteenth day of October of the relevant year;

(*d*) fourth instalment on or before the fifteenth day of January of the year succeeding the relevant year.

(3) (*a*) The levy payable under subsection (1) in respect of any cellular tower not owned by any mobile telephone operator, shall be paid by the mobile telephone operator who uses the cellular tower.

(*b*) Where the cellular tower is used by more than one mobile telephone operator, the levy shall be paid by such mobile telephone operators in equal shares.

(4) The Commission shall remit the amount of the levy so collected to the Consolidated Fund within fifteen days from the date of collection.

Default in payment of the levy.

45. (1) Any mobile telephone operator who fails to pay the levy as provided for in section 44, shall be deemed to be a defaulter under this Act.

(2) The Provisions of section 46 shall apply to, and in relation to the prosecution against any such defaulter and for the recovery of such levy in default.

Recovery of the levy in default.

46. (1) Where the amount of the levy or part thereof is in default, the Commission shall issue a certificate containing particulars of the amount in default, the name and the address of the last known place of residence or business of the defaulter, to the Magistrate having jurisdiction over such place.

(2) The Magistrate shall thereupon summon the defaulter to show cause why proceedings for the recovery of the amount of the levy in default shall not be taken against him**.**

(3) If sufficient cause is not shown by the defaulter, the amount of the levy in default shall by Order of the Magistrate be recovered as if it was a fine imposed by the Magistrate on such defaulter and shall when recovered, be remitted to the Commission to be credited to the Consolidated Fund.

Interpretation.

47. In this Part of this Act, unless the context otherwise requires—

"mobile telephone operator" means an operator licensed under section 17 of the Sri Lanka Telecommunications Act, No. 25 of 1991;

"cellular tower" means a cellular telephone site where antennae and electronic communication equipment are placed;

"Telecommunication Regulatory Commission" means the Telecommunication Regulatory Commission of Sri Lanka established under the Sri Lanka Telecommunications Act, No. 25 of 1991.

PART XIII

Imposition of Levy on Mobile Short Message Services

Imposition of levy on mobile short message services.

48. (1) There shall be charged with effect from January 1, 2019, a levy of 25 *cents* per each mobile short message, on bulk advertisements sent through mobile short message services.

(2) The levy imposed under subsection (1), shall be paid by the advertiser who intends to advertise through the mobile short message in respect of which the levy is charged.

(3) Regulations shall be made under this Act, specifying the manner of collection and recovery of the levy and for making provisions for the implementation of the provisions of this Part of this Act.

Interpretation.

49. In this Part of this Act, unless the context otherwise requires—

"mobile short message" means a text message which is sent through mobile phones;

"bulk advertisements" means messages being sent through mobile phones to group of recipients for commercial purposes.

PART XIV

General

Default by body of persons.

50. Where the default in payment of a levy or tax imposed under this Act is made by a body of persons, if that body of persons is—

(*a*) a body corporate, every director and officer responsible with the management and control of that body corporate; or

(*b*) a firm, every partner of that firm; or

(*c*) a body unincorporated other than a firm, every officer responsible with the management and control of that body,

shall be liable to be prosecuted for the recovery of such levy or tax as provided for in this Act.

Regulations.

51. (1) The Minister may make regulations in respect of all matters which are required to be prescribed or for which regulations are authorized to be made under this Act.

(2) Every regulation made by the Minister under subsection (1) shall be published in the *Gazette* and shall come into operation on the date of its publication or on such later date as may be specified therein.

(3) Every regulation made by the Minister shall as soon as convenient after its publication in the *Gazette*, be brought before Parliament for approval. Every regulation which is not so approved shall be deemed to be rescinded from the date of disapproval but without prejudice to anything duly done thereunder.

(4) Notification of the date on which any regulation is deemed to be rescinded shall be published in the *Gazette.*

Sinhala text to prevail in case of inconsistency.

52. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

[Section 24]

FIRST SCHEDULE

	Category of vehicles identified under the Harmonized Commodity Description and Coding System Numbers for custom purposes.		*Rate (Rs.per vehicle)*
1	Trishaws, Tractors and Motorcycles		2,000
2	(*a*)	Motor cars and other motor vehicles principally designed for the transport of persons other than the vehicles referred to in item 1	15,000
	(*b*)	Crew cabs, double cabs and cargo vans	
3	The following vehicles are not covered by the above items 1 and 2		10,000
	(*a*)	Special purpose vehicles other than those principally designed for the transport of persons or goods	
	(*b*)	Carriages for disabled persons, whether or not motorized or otherwise mechanically propelled	

[Section 31]

SECOND SCHEDULE

Category of Company	*Rate (Rs. Per annum)*
Private Company	30,000/-
Listed Public Company	1,500,000/-
Any other Company	250,000/-

[Section 40]

THIRD SCHEDULE

Category of the vehicle	*Rate (Rs.)*		
	Less than 05 Years	5 to 10 Years	Over 10 Years
Hybrid (Petrol/Diesel)	0.25 per cm^3	0.50 per cm^3	1.00 per cm^3
Fuel (Petrol/Diesel)	0.50 per cm^3	1.00 per cm^3	1.50 per cm^3
Passenger bus	Rs. 1,000/-	Rs. 2,000/-	Rs. 3,000/-

English Acts of the Parliament can be purchased at the "Prakashana Piyasa", Department of Government Printing, No. 118, Dr. Danister De Silva Mawatha, Colombo 8.