**THE GAZETTE OF THE DEMOCRATIC SOCIALIST REPUBLIC OF**   
**SRI LANKA**

**Part II of September 08, 2023**

**SUPPLEMENT**

*(Issued on 12.09.2023)*



**CIVIL PROCEDURE CODE (AMENDMENT)**

**A**

**BILL**

**to amend the Civil Procedure Code ( Chapter 101)**

*Ordered to be published by the Minister of Justice, Prison Affairs and*

*Constitutional Reforms*

PRINTEDATTHEDEPARTMENTOFGOVERNMENTPRINTING, SRILANKA

TOBEPURCHASEDATTHEGOVERNMENTPUBLICATIONSBUREAU, COLOMBO5

**Price : Rs. 54.00**  **Postage : Rs. 150.00**

*This Gazette Supplement can be downloaded from* www.documents.gov.lk 

*STATEMENT OF LEGAL EFFECT*

*Clause 2 :* This clause amends section 5 of the Civil Procedure Code (Chapter 101) (hereinafter referred to as the “principal enactment”) and the legal effect of this section as amended is to insert new definitions for the expressions “document” and “document in electronic form”.

*Clause 3 :* This clause amends section 18 of the principal enactment and the legal effect of this section as amended is to provide for the striking out of the names of improperly joined parties before the day first fixed for pre-trial conference.

*Clause 4 :* This clause amends section 22 of the principal enactment and the legal effect of the section as amended is to provide for the objections for non- joinder or misjoinder of parties to be taken before the day first fixed for pre-trial conference.

*Clause 5 :* This clause repeals Chapter XA of the principal enactment and replaces with the new Chapter XA titled “FIXING DAY OF PRE-TRIAL CONFERENCE”.

*Clause 6 :* This clause inserts new Chapter XB titled “PRE- TRIAL STEPS TO BE TAKEN BEFORE THE PRE-TRIAL CONFERENCE”, immediately after Chapter XA of the principal enactment.

*Clause 7 :* This clause replaces section 80 of the principal enactment and replaces with the new section on “Fixing the case for trial”.

*Clause 8 :* This clause repeals section 80A of the principal enactment.

*Clause 9 :* This clause amends section 93 of the principal enactment and is consequential to the amendment made by clauses 5 and 19.

*Clause 10 :* This clause amends section 94 of the principal enactment and the legal effect of this section as amended is to provide for any party to deliver interrogatories fifteen days before the date first fixed for the pre-trial conference.

*Clause 11 :* This clause amends section 101 of the principal enactment and the legal effect of the section as amended is to provide for a party to require the other party to admit the genuineness of any document not less than fifteen days before the date first fixed for the pre-trial conference.

*Clause 12 :* This clause amends section 102 of the principal enactment and the legal effect of the section as amended is to provide for a specific time period for a party to apply for an order for the discovery of documents.

*Clause 13 :* This clause amends section 103 of the principal enactment and the legal effect of the section as amended is to provide for the procedure in relation to the orders for preservation, disclosure or production of documents in electronic form.

*Clause 14 :* This clause amends section 104 of the principal enactment and the legal effect of the section as amended is to provide for giving a specific time period for any party to obtain an order by court to produce documents for inspection.

*Clause 15 :* This clause inserts a new section 104A in the principal enactment and the legal effect of the new section is to make provisions in relation to protective orders.

*Clause 16 :* This clause amends section 109 of the principal enactment and is consequential to the amendment made by clause 13.

*Clause 17 :* This clause repeals section 117 of the principal enactment and replaces with the new section 117 on provisions as to documents apply to other material objects and documents in electronic form.

*Clause 18 :* This clause repeals subsection (2) of section 121 of the principal enactment and is consequential to the amendment made by clause 6.

*Clause 19 :* This clause repeals Chapter XVIIA of the principal enactment and replaces with the new Chapter XVIIA titled “PRE - TRIAL CONFERENCE AND PRE-TRIAL ORDERS”.

*Clause 20 :* This clause amends section 175 of the principal enactment and is consequential to the amendment made by clause 19.

*Clause 21 :* This clause provides transitional provisions and the legal effect of this section is to provide for all pending actions and matters filed in the District Court in respect of which the date for pre-trial hearing has already been fixed or any pre-trial step has already been taken, to be dealt under the repealed provisions.

|  |  |
| --- | --- |
| *Civil Procedure Code (Amendment)* | 1 |

L.D.-O 63/2021

AN ACTTOAMENDTHE CIVIL PROCEDURE CODE (CHAPTER 101)

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

|  |  |  |
| --- | --- | --- |
| 5 | **1.** This Act may be cited as the Civil Procedure Code (Amendment) Act, No. of 2023. | Short title |
| **2.** Section 5 of the Civil Procedure Code (Chapter 101) (hereinafter referred to as the “principal enactment”) is hereby | Amendment |
| of section 5 |
| of Chapter |
| amended by the insertion, immediately after the definition |
| 101 |
| of the expression “decree”, of the following new definitions:- |

“ “document” includes a document in electronic form;

|  |  |  |
| --- | --- | --- |
| 10  15  20  25 | “document in electronic form” includes - | |
| (*a*) | any information consisting of any |
| contemporaneous recording or reproduction thereof or any information contained in a statement produced by a computer within the meaning of the Evidence (Special Provisions) Act, No. 14 of 1995; | |
| (*b*) | any information contained in a data message, |
| electronic document, electronic record, electronic communication or other information or transaction in electronic form within the meaning of the Electronic Transactions Act, No.19 of 2006; | |
| (*c*) | such other document or information or record |
| or communication or transaction in electronic form that may be specified by any other written law; | |

|  |  |  |
| --- | --- | --- |
| 2 | *Civil Procedure Code (Amendment)* | |
| (*d*) | such other document or information or |
| record or communication that is stored on | |

devices, servers and back-up systems in any

|  |  |
| --- | --- |
| 5 | medium that encompasses computer technology or any such document or information or record or communication that |

has been deleted; or

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 10 | (*e*) | | any metadata and other embedded data | Amendment of section 18 of the  principal  enactment |
| which is not typically visible on a computer | | |
| screen or print out;”. | | |
| **3.** Section 18 of the principal enactment is hereby | | |
| amended in subsection (1) thereof, by the substitution for | | |
| the words “before the hearing,” of the words “before the day | | |
| first fixed for the pre-trial conference,”. | | |
| 15 | **4.** Section 22 of the principal enactment is hereby | | | Amendment |
| amended as follows:- | | | of section 22 |
| of the |
| (1) | by the substitution for the words “before the | | principal |
| enactment |

hearing.” of the words “before the day first fixed for   
pre-trial conference.”; and

|  |  |  |
| --- | --- | --- |
| 20 | (2) | by the repeal of the marginal note thereof and |
| substitution therefor of the following marginal |

note:-

“Objections for

non-joinder or   
25 mis joinder to be

taken before the

day first fixed

for pre-trial

conference.”.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 5 | *Civil Procedure Code (Amendment)* | | | 3 | Replacement |
| **5.** Chapter XA (section 79A) of the principal enactment is hereby repealed and the following Chapter is substituted | | | |
| of Chapter |
| XA in the |
| therefor: - | | | |
| principal |
| “CHAPTER XA | | | | enactment |
| **FIXINGDAYOF PRE-TRIAL CONFERENCE** | | | |
| 10 | Insertion of new Chapter XB in the  principal  enactment |
| Date for  pre-trial  conference order | **79A.** The court shall-  (*a*) upon the filing of the answer; or | | |
| (*b*) where a replication is permitted, on | | | |
| the last day of the period of time | | | |
| allowed for the filing of the | | | |
| replication, | | whether | such |
| replication is filed or not, | | | |
| 15 | appoint a date not exceeding five months and | | | |
| not less than three months from such date, for | | | |
| pre-trial conference to be commenced, either | | | |
| in the presence of all parties to the action or | | | |
| such parties as are present.”. | | | |
| **6.** The following new Chapter is hereby inserted immediately after Chapter XA of the principal enactment | | | |
| 20 | and shall have effect as Chapter XB of that enactment: - | | | |

“CHAPTER XB

**PRE-TRIALSTEPSTOBETAKENBEFORETHE**   
**PRE-TRIAL CONFERENCE**

|  |  |  |
| --- | --- | --- |
| 25 | Pre- trial  steps to be  taken before the date fixed for the  pre-trial  conference | **79B.** The parties shall, in addition to any other pre-trial step that may be taken by such parties before the case is fixed for pre-trial conference, tender - |
| (*a*) their proposed admissions and |
| issues of fact and law in writing; |

4 *Civil Procedure Code (Amendment)*

(*b*) (i) lists of witnesses to be called   
by such parties at the trial; and

|  |  |
| --- | --- |
| 5 | (ii) lists of documents relied upon by such parties and to be produced at the trial; |

(*c*) copies of documents listed in the   
lists of documents which are in the   
possession of or under the control   
of such parties,

|  |  |  |  |
| --- | --- | --- | --- |
| 10 | Tendering of | to the registry of the court, not less than thirty | |
| 15 | days before the date first fixed for the pre-trial | |
| conference and after giving notice to all other | |
| parties with proof of service thereof. | |
| **79C.** (1) Notwithstanding anything to the | |
| documents in | contrary contained in the Evidence (Special | |
| electronic |
| 20 | Provisions) Act, No. 14 of 1995, Electronic | |
| form |
| Transactions Act, No. 19 of 2006 or any other | |
| written law, where any party proposes to tender | |
| any document in electronic form, the | |
| provisions of this section shall apply in relation | |
| 25 | to the tendering of such documents. | |
| (2) Any party proposing to tender documents | |
| in electronic form shall, not less than thirty | |
| days before the date first fixed for pre-trial | |
| conference, file in court, after giving notice to | |
| the opposing party or parties – | |
| (*a*) | the list of such documents in |
| electronic form together with an index | |
| thereof; and | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 5  10  15  20  25  30 | *Civil Procedure Code (Amendment)* | | | 5 |
| (*b*) | | a copy or copies of such documents | |
| as is sufficient to enable the party to understand the nature of such evidence.  (3) Any party to whom a notice has been given under subsection (2) may, within fifteen days of the receipt of such notice apply for permission from the party giving such notice, to access and inspect - | | | |
| (*a*) | the documents in electronic form, | | |
| sought to be tendered in court under subsection (2); | | | |
| (*b*) | the machine, device, computer or | | |
| information system, as the case may be, used to produce, reproduce, generate, create, send, receive, store, display, communicate or process the documents in electronic form referred to in paragraph (*a*); and | | | |
| (*c*) | any records relating to the production, | | |
| reproduction, generation, creation, sending, receipt, storage, display, communication or processing of the documents referred to in paragraph (*a*).  (4) Upon receipt of an application for permission to access and inspection under subsection (3), the party proposing to tender such documents in electronic form shall, within reasonable time, but not later than fifteen days after the receipt ofsuch application, provide a | | | |

|  |  |  |
| --- | --- | --- |
| 5 | 6 | *Civil Procedure Code (Amendment)* |
| reasonable opportunity to the party applying |
| or his agents or nominees, to have access to, |
| and inspect such documents in electronic form, |
| machine, device, computer, information system |
| or records referred to in the application. |

(5) Where –

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 10  15  20  25 | (*a*) | the party proposing to tender | | | | |
| documents in electronic form is unable to give permission or does not give permission for access and inspection as applied for under subsection (3); or | | | | | |
| (*b*) | the parties are unable to agree on any | | | | |
| matter relating to - | | | | | |
| (i) | | the | notice | given | under |
| subsection (2); or | | | | | |
| (ii) | | an application for access and | | | |
| inspection | | | | made | under |
| subsection (3) or the manner and  extent of such access and  inspection,  the court may on application made by either party, make such order or give such direction, as the interest of the justice may require. | | | | | |

(6) The time period referred to in subsection   
(3) or (4) may be extended at the discretion of   
the court, based on the special circumstances   
of each case.

*Civil Procedure Code (Amendment)*  7

(7) Where any party proposing to tender   
any document in electronic form under this   
section –

|  |  |  |
| --- | --- | --- |
| 5  10  15 | (*a*) | fails to give notice under subsection |
| (3); | |
| (*b*) | upon application being made for |
| access and inspection under subsection (3), fails to provide a reasonable opportunity therefor; or | |
| (*c*) | fails to comply with any order or |
| direction given by court under subsection (5),  such party shall not be permitted to tender such documents in electronic form, in respect of which the failure was occasioned: | |

Provided however, the steps or applications   
referred to in this Chapter shall be followed   
prior to the conclusion of the pre- trial   
conference.

|  |  |
| --- | --- |
| 20  25 | (8) Where any party objects to the admissibility of any document in electronic form tendered under this section, such party shall file in court, objections with reasons therefor in writing with copies to all other parties, either before the pre trial conference or at the pre trial conference, as the case may be. |

(9) Where any party files objections under   
subsection (8), the court shall hear the parties   
to ascertain whether the parties can admit such

8 *Civil Procedure Code (Amendment)*

documents in electronic form, and where no   
such admission is recorded, the court shall   
make an appropriate pre-trial order under

|  |  |
| --- | --- |
| 5 | section 142B with regard to the admissibility of such documents at the pre-trial |

conference.”.

|  |  |  |  |
| --- | --- | --- | --- |
| 10 | **7.** Section 80 of the principal enactment is hereby repealed | | Replacement |
| of section 80 |
| and the following section is substituted therefor: - | |
| of the |
| ”Fixing the  case for trial | **80.** (1) After the issues are settled and the Judge conducting the pre-trial conference is | principal |
| enactment |

satisfied that the case is ready for trial, the   
Judge shall forthwith appoint a date not later   
than fourteen days from the date of the   
conclusion of the pre-trial conference for the

|  |  |
| --- | --- |
| 15 | case to be called in order to fix a date for the trial,in the trialcourt. |

(2) The trial shall be conducted by a Judge appointed for such purpose, other than the Judge who conducted the pre-trial 20 conference:

Provided that, where a Judge has not been separately appointed to conduct the pre-trial conference, the Judge who has been appointed for such court shall conduct both pre-trial 25 conference and the trial of such action.

(3) The Judge who is fixing the case for trial   
may, in any appropriate case, fix several dates   
for trial.”.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 5 | *Civil Procedure Code (Amendment)* | | 9 | Repeal of  section 80A  of the  principal  enactment |
| **8.** Section 80A of the principal enactment is hereby | | |
| repealed. | | |
| **9.** Section 93 of the principal enactment is hereby | | | Amendment of section 93 of the  principal  enactment |
| amended, as follows:- | | |
| (1) | by the substitution, in subsection (1) thereof, for | |

the words “first fixed for Pre-Trial of the action” of   
the words “first fixed for pre-trial conference of the   
action”; and

|  |  |  |
| --- | --- | --- |
| 10 | (2) | by the substitution, in subsection (2) thereof, for |
| the words “first fixed for Pre-Trial of the action” of |

the words “first fixed for pre-trial conference of the   
action”.

|  |  |  |
| --- | --- | --- |
| 15 | **10.** Section94 of the principal enactment is hereby | Amendment |
| of section 94 |
| amended, by the substitution, in subsection (1) thereof, for |
| of the |
| the words “Any party may at any time before hearing,” of |
| principal |
| the words “Any party may, fifteen days before the date first | enactment |

fixed for the pre-trial conference,”.

|  |  |  |
| --- | --- | --- |
| 20 | **11.** Section 101 of the principal enactment is hereby | Amendment |
| of section |
| amended, by the substitution, in subsection (1) thereof, for |
| 101 of the |
| the words “on motion *ex-parte* within a reasonable time not |
| principal |
| less than ten days before the hearing,” of the words “on | enactment |

motion *ex-parte* not less than fifteen days before the date first fixed for the pre-trial conference,”.

|  |  |  |
| --- | --- | --- |
| 25 | **12.** Section 102 of the principal enactment is hereby | Amendment of section  102 of the  principal  enactment |
| amended, by the substitution, in subsection (1) thereof, for |
| the words “party to the action may, at any time before the |
| hearing,” of the words “parties to the action may, fifteen |
| days before the date first fixed for the pre-trial conference”. |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 5 | 10 | *Civil Procedure Code (Amendment)* | | Amendment of section  103 of the  principal  enactment |
| **13.** Section 103 of the principal enactment is hereby amended as follows:- | | |
| (1) | by the re-numbering of that section as subsection | |
| (1) thereof; | | |
| (2) | by the substitution, in the re-numbered subsection | |
| 10 | (1) thereof, for the words “order the production by | | |
| any party” and “when produced in such manner”, | | |
| of the words “order the production or preservation | | |
| by any party” and “when produced or preserved in | | |
| such manner”, respectively; | | |
| 15 | (3) | by the insertion, immediately after the re-numbered | |
| subsection (1) thereof, of the following new | | |
| subsections:- | | |
| “(2)A party intending to institute any proceeding | | |
| before court may, prior to the institution of such | | |
| 20 | proceedings, make an application *ex parte*, by way | | |
| of petition supported by an affidavit, for an order to | | |
| be made requiring a person or entity having | | |
| possession of any document in electronic form, who | | |
| shall be made the respondent in such application, | | |
| 25 | to preserve, disclose or produce such document, as | | |
| may be specified in such order. | | |
| (3) The court may, upon the receipt of an | | |
| application under subsection (2), make an order as | | |
| prayed for in such application, if – | | |
| 30 | (*a*) | | the person or entity against whom an order |
| is sought is likely to be a party to the | | |
| proceeding to be instituted subsequently; | | |
| (*b*) | | the applicant is also likely to be a party to |
| such proceeding to be instituted | | |
| subsequently; | | |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 5  10  15  20  25 | *Civil Procedure Code (Amendment)* | | | | | 11 |
| (*c*) | the document in electronic form sought to | | | | |
| be preserved, disclosed or produced is relevant to the matter in dispute in respect of which the proceedings are intended to beinstituted and is in the possession or control of such respondent; | | | | | |
| (*d*) | the duty to preserve, disclose or produce | | | | |
| any electronic document upon the receipt of such order extends to the document in electronic form of which the applicant seeks preservation, disclosure or | | | | | |
| production, | | | if | proceedings | had |
| commenced against such person or entity; | | | | | |
| (*e*) | preservation, disclosure or production of | | | | |
| such document in electronic form is desirable in order to – | | | | | |
| (i) | | dispose the intended proceedings in | | | |
| a fair manner; | | | | | |
| (ii) | | assist the dispute to be resolved | | | |
| without proceedings; or | | | | | |
| (iii) | | save costs. | | | |
| (4) Any person who or entity which receives an order made under subsection (3) shall have a duty to comply therewith and in the event of non-compliance, such person or entity shall be guilty of the offence of contempt of court. | | | | | |

(5) Any party to any proceeding pending before   
a court may, not less than forty-five days before the   
date first fixed for the pre-trial conference, make an

12 *Civil Procedure Code (Amendment)*

application for an order to be made requiring any

other party to such action to preserve, disclose or

produce any relevant document in electronic form,

as may be specified in such order.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 5  10  15  20  25  30 | (6) Any party making an application under subsection (5) of this section shall – | | | |
| (*a*) | | describe with reasonable particularity each | |
| item or category of items to be preserved or disclosed or produced; and | | | |
| (*b*) | | specify the manner of preservation, | |
| disclosure or production and by whom such preservation, disclosure or production is to be performed.  (7) A party who receives an order made under subsection (5) shall have a duty to comply therewith and in the event of non-compliance, the court may– | | | |
| (*a*) | where the restoration of such document in | | |
| electronic form is possible, order for the restoration of the same and award costs; | | | |
| (*b*) | where the restoration of the document in | | |
| electronic form is not possible and where the court is of the opinion that prejudice has been caused to the party making the application, due to the loss of such document and that non-complying party has acted with the intention of depriving the use of such document by the other party- | | | |
| (i) | | | impose costs in a sum as may be |
| deemed reasonable by the court; or | | | |

*Civil Procedure Code (Amendment)*  13

(ii) where the prejudice cause cannot be   
 cured by way of costs, in case of a   
 plaintiff, order to have his action   
 dismissed for want of prosecution,

|  |  |
| --- | --- |
| 5 | and in case of a defendant, to have his defence, if any, struck out, and |

to be placed in the same position as   
if he had not appeared and   
answered.

10 (8) A party or person failing to comply with an order made under subsection (5) of this section shall not be entitled to produce any such document in electronic form in evidence on his behalf in such

|  |  |
| --- | --- |
| 15 | action, unless he satisfies the court that such electronic document relates only to his own title, |

or that he had some other sufficient cause for not   
complying with such order.

(9) A party to any proceeding may make an

|  |  |
| --- | --- |
| 20 | application *ex-parte* by way of a petition supported by an affidavit, not less than forty-five days before |

the date fixed for pre-trial conference, for an order to be made requiring any person or entity who is not a party to such proceeding, to preserve, disclose, or produce any document in electronic form in the 25 possession or control of such person or entity. The person or entity against whom such order is sought shall only be made the respondent in such application.

(10) Upon receipt of an application under

|  |  |
| --- | --- |
| 30 | subsection (9), the court may make an order as prayed for in such application, if – |

|  |  |  |  |
| --- | --- | --- | --- |
| 5 | 14 | *Civil Procedure Code (Amendment)* | |
| (*a*) | the document in electronic form of which |
| the preservation, disclosure or production | |
| is sought is likely to support the case of | |
| the applicant or adversely affect the case | |
| of any party to such proceeding; | |
| (*b*) | preservation, disclosure or production is |
| necessary in order to disprove the claim in | |
| a fair manner or to save costs. | |

(11) An order made under subsection (10) may-

|  |  |  |
| --- | --- | --- |
| 10  15  20  25 | (*a*) | specify the documents in electronic form |
| which the respondent is required to preserve, disclose or produce; | |
| (*b*) | if relevant, specify the time and place of |
| preservation, disclosure or production to take place; | |
| (*c*) | specify the format or formats in which |
| document in electronic form is to be produced; and | |
| (*d*) | require the respondent, when making |
| preservation or disclosure, to specify the documents, if any, which are or not in his control or possession with reasons therefor.  (12) Any person or entity who fails to comply with an order made under subsection (10), shall be guilty of the offence of contempt of court. | |

(13) Where a person, entity or party from whom   
preservation, disclosure or production of a   
document is sought under subsection (2), (5) or (9)

|  |  |  |  |
| --- | --- | --- | --- |
| 5  10  15  20  25  30 | *Civil Procedure Code (Amendment)* | | 15 |
| objects to such preservation, disclosure or production from the source of such document for not being reasonably accessible due to the burden of cost, the court may limit the extent of such preservation, disclosure or production otherwise allowed under the said subsections where – | | |
| (*a*) | the preservation, discovery or production | |
| sought is unreasonably cumulative, duplicative, disproportionate or excessive to the material facts of the case; | | |
| (*b*) | the requested document in electronic form | |
| can be obtained from any other source which is more convenient, less burdensome or less expensive; | | |
| (*c*) | the party seeking preservation, disclosure | |
| or production has had ample opportunity to obtain such document by discovery in the action; or | | |
| (*d*) | the requested document in electronic form | |
| is irrelevant or not proportionate to the issues in dispute or the party’s resources or the burden of expense of the proposed discovery outweighs the possible benefits and importance in resolving the issues:  Provided however, the court may order preservation, disclosure or production from the sources of such document in electronic form, if the party making the application for preservation, disclosure or production is able to show good cause, subject to such limitations as may be imposed by the court. | | |

16 *Civil Procedure Code (Amendment)*

(14) Unless otherwise agreed or ordered,   
electronic copies of the disclosed documents in   
electronic form shall be produced –

|  |  |  |
| --- | --- | --- |
| 5 | (*a*) | in their native format; |
| (*b*) | in a manner which preserves metadata |

relating to the date of creation of each   
such document; and

|  |  |  |
| --- | --- | --- |
| 10 | (*c*) | organised and labeled in a manner that |
| corresponds with the categories of such |
| documents as requested.”; and |

(4) by the repeal of the marginal note thereof and the   
substitution therefor of the following marginal   
note:-

|  |  |  |
| --- | --- | --- |
| 15 | “Orders for | Amendment of section  104 of the  principal  enactment |
| preservation, |
| disclosure or |
| 20 | production of |
| documents or |
| documents in |
| electronic |
| form.”. |
| 25 | **14.** Section 104 of the principal enactment is hereby |
| amended, by the substitution in subsection (1) thereof, for |
| the words “party to an action may, at any time before or at |
| the hearing thereof,” of the words “party to an action may, |
| fifteen days before the date first fixed for the pre-trial |

conference thereof,”.

|  |  |  |
| --- | --- | --- |
| 30 | **15.** The following new section is hereby inserted | Insertion of |
| immediately after section 104 of the principal enactment | new section |
| 104A in the |
| and shall have effect as section 104A of that enactment: - |
| principal |
| enactment |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 5 | ”Protective | *Civil Procedure Code (Amendment)* | | | | 17 |
| **104A.** A party, person or an entity against | | | | |
| orders |
| whom the discovery, production or preservation | | | | |
| of a document or document in electronic form | | | | |
| is sought, may apply for a protective order to | | | | |
| the court within which such action is pending. | | | | |
| The court may, for good cause, make one or | | | | |
| more of the following orders to protect any | | | | |
| such document or the interests of a person, | | | | |
| 10 |
| entity or party: - | | | | |
| (*a*) | prohibiting the disclosure or | | | |
| 15 | discovery; | | | | |
| (*b*) | specifying terms, including the time, | | | |
| place, forms and manner of the | | | | |
| disclosure or discovery; | | | | |
| (*c*) | prescribing a discovery method | | | |
| 20 | other than the one selected by the | | | | |
| party seeking discovery; | | | | |
| (*d*) | prohibiting inquiry into certain | | | |
| matters or limiting the scope of | | | | |
| disclosures or discovery to other | | | | |
| 25 | matters; | | | | |
| (*e*) | designating persons or experts who | | | |
| may be present while the discovery | | | | |
| is conducted; | | | | |
| (*f*) | appointing persons or experts who | | | |
| 30 | shall conduct the disclosure, | | | | |
| discovery, | | preservation, | | |
| inspections, | | keep | custody, | |
| examination, analysis, reporting | | | | |
| and presenting them in court; | | | | |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 5 | 18 | *Civil Procedure Code (Amendment)* | | | Amendment of section  109 of the  principal  enactment |
| (*g*) | | | directing that a confidential |
| research, development or trade | | | |
| secret or undisclosed or confidential | | | |
| information of commercial nature | | | |
| not to be disclosed or disclosed | | | |
| only in a specified manner; or | | | |
| (*h*) | | | directing that a document in |
| 10 |
| relation to undisclosed confidential | | | |
| research, development or trade | | | |
| secret or undisclosed or confidential | | | |
| 15 | information of commercial nature | | | |
| not to be disclosed or disclosed | | | |
| only in a specified manner.”. | | | |
| **16.** Section 109 of the principal enactment is hereby | | | |
| amended, by the substitution, in subsection (1) thereof, for | | | |
| the words “interrogatories, or for discovery, production, or | | | |
| inspection, which” of the words “interrogatories, or for | | | |
| 20 | discovery, production, inspection, preservation or protection, | | | | Replacement |
| which”. | | | |
| **17.** Section 117 of the principal enactment is hereby | | | |
| of section |
| repealed and the following section is substituted therefor:- | | | |
| 117 of the |
| 25 | “Provisions as to documents apply to other material  objects and  document in  electronic  form | | **117.** The provisions of this Chapter as to documents shall, *mutatis mutandis,* apply to all other material objects producible as evidence and to all documents in electronic form, to the extent not inconsistent with the provisions of this Chapter.”. | | principal |
| enactment |
| **18.** Section 121 of the principal enactment is hereby | | | | Amendment of section  121 of the  principal  enactment |
| amended, by the repeal of subsection (2) thereof. | | | |

|  |  |  |  |
| --- | --- | --- | --- |
| 5 | *Civil Procedure Code (Amendment)* | 19 | Replacement |
| **19.** Chapter XVIIA (sections 142A, 142B, 142C, 142D, 142E, | |
| of Chapter |
| 142F, 142G, 142H and 142I) of the principal enactment is | |
| XVIIAof the |
| hereby repealed and the following Chapter is substituted | |
| principal |
| therefor: - | | enactment |
| “CHAPTER XVIIA | |

PRE -TRIALCONFERENCEANDPRE-TRIALORDERS

|  |  |  |  |
| --- | --- | --- | --- |
| 10 | Pre-trial | **142A.** (1) The court shall conduct a pre-trial | |
| conference | conference with the Attorneys-at-law | |
| representing the parties and the parties not so | |
| represented, for the following purposes :- | |
| (*a*) | to facilitate a settlement between the |
| parties as specified in subsection (2), | |
| 15 | ensuring that the matters not so | |
| settled shall only be fixed for trial; | |
| (*b*) | to expedite the disposition of the |
| action through judicial case | |
| 20 | management; | |
| (*c*) | improving the quality of the trial |
| through prior preparation and case | |
| management orders so that the action | |
| 25 | will not be protracted due to lack of | |
| trial management; | |
| (*d*) | to identify the key issues at an early |
| stage, in order to discourage | |
| unnecessary pre-trial applications; | |
| (*e*) | to facilitate the discovery of |
| evidence; | |

|  |  |  |  |
| --- | --- | --- | --- |
| 5 | 20 | *Civil Procedure Code (Amendment)* | |
| (*f*) | to identify the witnesses and |
| documents and avoid unnecessary | |
| production of evidence at the trial; | |
| and | |
| (*g*) | to fix strict time limits for pre-trial |
| 10 | orders and enforcement thereof. | |
| (2) (*a*) The Judge shall, at the pre-trial | |
| conference, make every effort to persuade the | |
| parties to arrive at a settlement of the dispute | |
| and where the parties agree for a settlement, | |
| 15 | such settlement shall be recorded and signed | |
| by the parties and an order shall be made in | |
| accordance with the terms of such settlement. | |
| (*b*) The Judge in an appropriate case, may | |
| direct the parties to appear either in person or | |
| 20 | in the case of a party being a legal person, an | |
| authorized representative thereof to be present | |
| at the pre-trial conference in order to facilitate | |
| a settlement, adjustment, compromise or other | |
| agreements. | |

(3) The judge at the pre-trial conference may   
determine unresolved jurisdictional and legal   
issues.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| 25 | Pre-trial | **142B.** Subject to the provisions of section | | | |
| orders | 104A, the Judge shall, at the pre-trial | | | |
| 30 | conference, discuss with the parties, and make | | | |
| appropriate pre-trial orders on the following | | | |
| matters: - | | | |
| (*a*) | identifying | and | obtaining |
| admissions of facts or documents; | | | |

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| 5  10  15  20  25  30 | *Civil Procedure Code (Amendment)* | | | | | | 21 |
| (*b*) | identifying the number of witnesses | | | | | |
| to be called at the trial based on the relevancy and admissibility to the case and dispensing with calling of unnecessary witnesses; | | | | | | |
| (*c*) | identifying the documents to be | | | | | |
| produced at the trial based on the relevancy, admissibility, to the case and authenticity of documents and in appropriate instances dispense with proof of such documents; | | | | | | |
| (*d*) | with regard to the discovery, | | | | | |
| inspection, protection, preservation and production of documents and | | | | | | |
| tangible | | | things | | including | |
| specification of terms, time, place, manner and form in which such documents and tangible things to be discovered, protected, preserved and | | | | | | |
| produced | | | in | court | | and |
| authentication of documents and signatures; | | | | | | |
| (*e*) | the protection of trade secrets, other | | | | | |
| confidential research information and undisclosed commercial information subject to privileges and limitations; | | | | | | |
| (*f*) | issuing of certified copies of | | | | | |
| documents in the custody of any public office, public corporation, provincial council, local authority, | | | | | | |
| bank, | | body | | incorporate | | or |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 5 | 22 | *Civil Procedure Code (Amendment)* | | | | |
| unincorporate, partnership, hospital, | | | | |
| medical | | institute, | | court, |
| tribunal or any such similar | | | | |
| institution: | | | | |
| Provided that, the provisions of | | | | |
| this paragraph shall not prejudice the | | | | |
| right of the State to withhold any | | | | |
| 10 | document on the ground that in the | | | | |
| opinion of the Minister assigned in | | | | |
| terms of Article 44 or 45 of the | | | | |
| 15 | Constitution the subject to which | | | | |
| the document relates, the public | | | | |
| interest would suffer by such | | | | |
| disclosure; | | | | |
| (*g*) | upon the agreement of the parties, | | | |
| issuing of commissions to a single, | | | | |
| 20 | joint or court appointed independent | | | | |
| experts to inquire and report on any | | | | |
| question of fact and express an | | | | |
| opinion thereof: | | | | |
| 25 |
| Provided that, any application | | | | |
| for the issue of a commission for | | | | |
| local investigation as referred to in | | | | |
| Chapter XXIX shall be made prior | | | | |
| to the day first fixed for the pre-trial | | | | |
| conference: | | | | |
| 30 | Provided further, that the court | | | | |
| may, in its discretion, issue a | | | | |
| commission | | for | such | local |
| investigation after the day first fixed | | | | |
| for pre-trial conference if it is | | | | |
| satisfied, for reasons to be recorded | | | | |
| and subject to terms as to costs or | | | | |
| otherwise, that a commission is | | | | |

*Civil Procedure Code (Amendment)*  23

necessary for the determination of   
the matters in dispute or settlement   
of the dispute between the parties;

|  |  |  |
| --- | --- | --- |
| 5 | (*h*) | recording of any agreement of |
| parties with regard to any matter, |
| including any issues of facts or law, |
| mode of proof of any fact or |

document or the number of witnesses

|  |  |
| --- | --- |
| 10 | to be called or number of documents to be produced at the trial, and |

entering of orders or judgment in   
accordance with such agreement of   
parties:

|  |  |
| --- | --- |
| 15 | Provided that, the court shall read out and explain the effect of such agreement to the parties |

concerned and record the fact that   
the parties understand the contents   
of such agreement and the effect

|  |  |
| --- | --- |
| 20 | thereof and the parties shall sign the agreement or the case record where |

such agreement is recorded orally in   
open court;

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 25 | (*i*) | consolidating two or more actions, | | | | |
| subject to the provisions of section | | | | |
| (*j*) | 149A; | | | | |
| withdrawal of actions; | | | | |
| 30 |
| (*k*) | the | use | of | technology | or |
| employing a special interpreter at | | | | |
| the trial; | | | | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 5  10  15  20  25  30 | 24 | *Civil Procedure Code (Amendment)* | | |
| (*l*) | | | identifying the number of trial dates |
| or period within which a trial may  be concluded and how the time  available for the trial will be used;  or | | | |
| (*m*) | | | any other step as may be necessary |
| or desirable for the just and  expeditious disposal of the action. | | | |
| Parties to be ready with  original  documents | **142C.** The parties or their registered attorneys shall, at the pre-trial conference, bring with them and have in readiness at the pre-trial conference, original or certified copies | | |
| of all documents specified in the list of documents and tendered to the registry of the court under section 79B. | | | |
| Permission of court to call  additional  witnesses and additional  documents  identified or discovered at pre-trial  conference | | **142D.** (1) The court shall, at the pre-trial conference, on application of any party, grant permission to such party, to call any witness or produce any document at the trial, if such witness or document is identified at such conference to be relevant to the matters in dispute, notwithstanding such witness or document not being included in the list of | |
| witnesses or documents filed under paragraph (*b*) of section 79B:  Provided that, the pre-trial Judge may award costs against the party seeking to tender documents or summon witnesses which had not been included in the list filed under paragraph (*b*) of section 79B unless such party can adduce sufficient reasons for the failure to include such documents or witnesses in the said list. | | | |

*Civil Procedure Code (Amendment)*  25

(2) The court may, at its discretion, grant   
permission at the pre- trial conference, to any   
party to produce any document at the trial and

|  |  |
| --- | --- |
| 5 | call any witness in proof thereof, if such document is discovered under Chapter XVI of the principal enactment and relevant to the |

matters in dispute.

(3) Where the court grants permission to call

|  |  |
| --- | --- |
| 10 | any additional witness or document under subsection (1) or (2), the court shall, at the pre- |

trial conference, record the fact that such party   
is entitled to call such witness or produce such   
document at the trial and no further list of   
witnesses or documents is required to be filed

|  |  |  |
| --- | --- | --- |
| 15 | Pre-trial steps | thereafter. |
| **142E.** Subject to the provisions of this Act, |
| not to be |
| any application for pre-trial steps shall notbe |
| allowed after |
| allowed after the conclusion of the pre-trial |
| fixing the |
| 20 | date of trial | conference of an action unless the court is |
| satisfied for reasons to be recorded and subject |
| to costs that a grave and irremediable injustice |

would be caused if such steps are not permitted   
and the party applying for such steps is not   
guilty of laches.

|  |  |  |
| --- | --- | --- |
| 25 | Determination | **142F.** (1) Where the judge is satisfied that |
| of issues | all the pre-trial steps have been taken, the Judge |

shall determine the issues, taking into

|  |  |
| --- | --- |
| 30 | consideration the pleadings, proposed admissions and issues of the parties, interrogatories, documents, agreement of the |

parties and reports if any, submitted to court   
during the pre-trial conference.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 5  10  15  20  25  30 | 26 | *Civil Procedure Code (Amendment)* | | |
| (2) Where issues both of law and facts arise in the same action, and the court is of the opinion that the case may be disposed of on the issues of law only, the court shall try such issues first and for that purpose the court may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. | | | |
| Advancement or  postponement of pre-trial | | **142G.** The Judge conducting the pre-trial conference may, either on his own motion or on the application of any party and for sufficient cause shown, advance or postpone | |
| the date fixed for the pre-trial conference:  Provided that, the Judge conducting the pre- trial conference shall conclude the hearing within four months from the commencement of such conference, unless the Judge is prevented from acting accordingly for reasons which shall be recorded, including delays in adducing evidence or discoveries. | | | |
| Default of parties | **142H.** Where any party- | | |
| (*a*) | | | fails to diligently take steps |
| according to the provisions of  Chapters XB and this Chapter or  diligently prosecute or defend the  case during the pre- trial conference  or fails to comply with any pre-trial  order without any reasonable  ground; or | | | |
| (*b*) | | | fails to appear without sufficient |
| cause on the day fixed for the pre- trial conference or on any other day  to which it is adjourned, | | | |

*Civil Procedure Code (Amendment)*  27

the Judge conducting the pre-trial conference   
may, taking into consideration all appropriate   
circumstances -

|  |  |  |
| --- | --- | --- |
| 5 | (i) | subject to the payment of costs or |
| pre-payment of costs, make such |
| appropriate order as he may think |

fit, including, directing such party   
to comply with the requirement   
which was not complied with, unless

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 10 | (ii) | such | non-compliance | was |
| substantially justified; | | |
| continue further proceedings | | |

notwithstanding such default was   
made by any party who has obtained

|  |  |
| --- | --- |
| 15 | any pre- trial order, disregarding any such pre- trial order and upon such |

terms as to costs being awarded   
against such defaulting party; or

|  |  |  |
| --- | --- | --- |
| 20 | (iii) | proceed to dispose of the action in |
| one of the methods specified in |
| Chapter XII: |

Provided that, the Judge shall make every   
endeavor to make orders in terms of paragraph   
(i) or (ii), prior to an order being made under

|  |  |  |
| --- | --- | --- |
| 25 | paragraph (iii), unless a party is absent and | Amendment |
| unrepresented at the pre-trial conference.”. |
| **20.** Section 175 of the principal enactment is hereby |
| amended as follows :- | of section |
| 175 of the |
| principal |
| enactment |

|  |  |  |  |
| --- | --- | --- | --- |
| 5 | 28 | *Civil Procedure Code (Amendment)* | Transitional |
| (1) | by the substitution in subsection (1) thereof, for the |
| words “as provided by section 121:” of the words“as provided by subparagraph (i) of paragraph (*b*) of section 79B or permitted by court under section 142D:” | |
| (2) | by the substitution, in subsection (2) thereof, for the words “as provided by section 121 and which is not so included” of the words “as provided by subparagraph (ii) of paragraph (*b*) of section 79B and which is not so included or not permitted by court under section 142D”; and |
| 10 |
| 15 | (3) | by the insertion, immediately after subsection (2) thereof, of the following subsection: - |
| “(3) Where an order is made under this section, the court shall take into consideration any order made under section 142B.”. | |
| 20 | **21.** Notwithstanding the repeal of Chapter XA (section 79A), Chapter XVIIA (sections 142A, 142B, 142C, 142D, 142E, 142F, 142G, 142H, and 142I) and section 80A of the principal enactment (in this section referred to as the “repealed provisions”), all actions and matters filed in the District court and pending on the day immediately preceding the date of commencement of this Act, in respect of which – | |
| provisions |
| 25 | (*a*) | a date for pre-trial hearing has already been fixed; or |
| (*b*) | any pre-trial step has already been taken under the repealed Chapter XVIIA, |

shall be dealt with under the repealed provisions.

|  |  |  |
| --- | --- | --- |
| 30 | **22.** In the event of any inconsistency between the Sinhala | Sinhala text  to prevail in case of  inconsistency |
| and Tamil texts of this Act, the Sinhala text shall prevail. |

|  |  |
| --- | --- |
| *Civil Procedure Code (Amendment)* | 29 |

DEPARTMENTOFGOVERNMENTPRINTING