

PART IV

MAJOR LEGISLATIVE ENACTMENTS OF 1991 RELATING TO THE FUNCTIONS AND OPERATIONS OF THE CENTRAL BANK AND BANKING INSTITUTIONS IN SRI LANKA

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AGRARIAN SERVICES (AMENDMENT) ACT, NO. 4 OF 1991

[Certified on 23rd February, 1991]

AN ACT TO AMEND THE AGRARIAN SERVICES ACT, NO. 58 OF 1979

1. This Act may be cited as the Agrarian Services (Amendment) Act, No. 4 of 1991.
2. Section 2 of the Agrarian Services Act, No. 58 of 1979, (herein after referred to as "the principal enactment") is hereby amended by the insertion, immediately after subsection (2) of that section, of the following subsection :–

"(3) Any person who cultivates an extent of paddy land let to him by any other person who holds that extent under a permit issued under the Land Development Ordinance subject to the condition that the permit holder himself should cultivate that extent, shall be deemed not to be a tenant cultivator within the meaning of this Act.".
3. Section 4 of the principal enactment is hereby amended in subsection (1) of that section by the addition, at the end of that subsection, of the following words :–

"For the purpose of this section any paddy land cultivated by a spouse or a minor child below eighteen years of age, of a tenant cultivator shall be deemed to be paddy land cultivated by that tenant cultivator.".
4. Section 5 of the principal enactment is hereby amended as follows :–
 - (a) by the repeal of subsection (3) of that section and the substitution therefore, of the following subsection :–

"(3) Where a tenant cultivator of an extent of paddy land notifies the Commissioner, in writing, that he has been evicted from such extent, the Commissioner shall cause an inquiry to be held by an Inquiry Officer for the purpose of deciding the question whether such person had been evicted.";
 - (b) by the substitution in subsection (5) of that section for the word "Commissioner" of the words "Inquiry Officer.";
 - (c) by the repeal of subsection (6) of that section, and the substitution therefore, of the following subsection :–

"(6) The landlord of the extent of the paddy land and the person evicted shall be given an opportunity of being heard in person or through a representative at an inquiry. The decision of the Inquiry Officer after such inquiry shall be communicated in writing to the Commissioner, the landlord and the person evicted. If the landlord or person evicted is aggrieved by such decision, he may within thirty days of the communication of the decision to him, by petition in writing in which the other person shall be mentioned as respondent, appeal to the Board of Review appointed under Part IV A for the Province in which such extent of paddy land is situated, against that decision on a question of law. A copy of such petition shall be sent by registered post to the Commissioner at the time of making the appeal. Where no appeal is made from such decision within the time

allowed therefor such decision shall be final and conclusive and shall not be called in question in any court or tribunal.”;

- (d) by the appeal of subsection (7) of that section and the substitution therefore, of the following subsection :—

“(7) Where at any inquiry referred to in subsection (3) the Inquiry Officer holds—

- (a) that eviction has been established and no appeal is made from such decision within the time allowed therefor or the Board of Review has on any such appeal confirmed the decision of the Inquiry Officer that eviction has been established; or
- (b) that eviction has not been established and the Board of Review has on appeal varied the decision of the Inquiry Officer and held that eviction has been established—
 - (i) the person evicted shall be entitled to have the use and occupation of the extent of paddy land restored to him.
 - (ii) the Commissioner shall on receipt of the decision of the Inquiry Officer or the Board of Review, as the case may be, order in writing that every person in occupation of such extent of paddy land shall vacate it on or before such date as shall be specified in that order and if such person fails to comply with such order he shall be evicted from such extent in accordance with the provisions of section 6 ; and
 - (iii) the landlord of the extent of paddy land shall for each day during the period commencing on the date of eviction of the person mentioned in sub-paragraph (i) and ending on the date on which he is restored to possession, pay to such person damages at such rate as may be prescribed unless the Inquiry Officer or the Board of Review has held that such person was evicted without the knowledge, consent or connivance of such landlord:

Provided that no damages shall be payable for any part of the period referred to in this sub-paragraph during which the extent of land may have been cultivated under section 38A.”;

- (e) by the repeal of the second proviso to subsection (9) of that section and the substitution of the following therefor :—

“Provided further, that where any extent of paddy land is let by a lessee to a sub-tenant without obtaining the consent in writing of the owner of such extent —

- (a) the sub-tenant shall not be entitled to any right of a tenant cultivator in respect of such extent;
- (b) the Commissioner shall in writing order the sub-tenant to vacate such extent on or before the date specified in the order and if the sub-tenant fails to comply with such order he shall be evicted from such extent in accordance with the provisions of section 6;

- (c) the owner shall be entitled to cultivate such extent in accordance with the provisions of subsection (5) of section 4;"
- (f) by the addition immediately after sub-section (11) of that section of the following new subsection which shall have effect as subsection (11A) of that section :–
- " (11A) Nothing in Chapter LXVI of the Civil Procedure Code inserted in that Code by the Civil Procedure Code (Amendment) Act, No. 79 of 1988, shall be read or construed as empowering a Judge of the Small Claims Court to hold any inquiry or make any Order under the aforesaid Chapter in respect of a dispute affecting paddy land within the meaning of this Act."

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

"Exemption
of land
owned by
temples, &c.

5A. (1) Any Viharadhipathi or high priest of a temple, kovil or church or any trustee of a mosque may, within twelve months of the enactment of this section make application to the Commissioner to have an extent of land not exceeding two acres owned by such temple, kovil, church or mosque exempted from the application of section 2 of this Act.

(2) The commissioner shall hold an inquiry into such application at which the tenant cultivators, if any, of such extent of land shall be afforded an opportunity of making representations. The Commissioner shall thereafter make the decision exempting such extent of land as may be reasonably necessary for the maintenance of the temple, kovil, church or mosque, being an extent not exceeding two acres, from the application of the provisions of section 2. The Commissioner shall also decide the amount of compensation payable to each tenant cultivator by the applicant and the date before which such compensation shall be paid.

(3) Any person aggrieved by the decision of the Commissioner may appeal to the Board of Review against the decision and the Board of Review may affirm or vary the Commissioner's decision. The decision of the Board of Review on such appeal shall be final and conclusive.

(4) Where no appeal is made to the Board of Review, or an appeal having been made the Board affirm the decision of the Commissioner, the Commissioner shall order the tenant cultivator to vacate the land on or before the date specified in the order.

(5) Where the tenant cultivator fails to vacate the extent of land in compliance with such order, he may be evicted under the provisions of section 6, provided that the Commissioner shall take action to evict such tenant cultivator only after any compensation due to him under this section has been paid in full by the applicant.

5B (1) An owner of paddy land whose only source of income is the rent paid by his tenant cultivator may within twelve months of the enactment of this section make application to the Commissioner for an exemption from the application of section 2 of this Act. For the purpose of this section any

paddy land owned by a spouse or a minor child below eighteen years of age of an owner of paddy land shall be deemed to be paddy land owned by such owner.

(2) The Commissioner shall hold an inquiry into such application at which the tenant cultivators of such paddy land shall be afforded an opportunity of making representations. The Commissioner shall, if the requirements of subsection (1) are satisfied, make the decision exempting an extent not exceeding one acre of such land from the application of the provisions of section 2. The Commissioner shall also decide the amount of compensation payable to each tenant cultivator by the applicant and the date before which such compensation shall be paid.

(3) Any person aggrieved by the decision of the Commissioner may appeal to the Board of Review against the decision and the Board of Review may affirm or vary the Commissioner's decision. The decision of the Board of Review on such appeal shall be final and conclusive.

(4) Where no appeal is made to the Board of Review or an appeal having been made, the Board of Review affirms the decision of the Commissioner, the Commissioner shall order the tenant cultivator or tenant cultivators to vacate the land on or before the date specified in the order.

(5) Where any tenant cultivator fails to vacate the extent of land in compliance with such order he may be evicted under the provisions of section 6, provided that the Commissioner shall take action to evict such tenant cultivator only after any compensation due to him under this section has been paid in full by the applicant.”.

6. Section 7 of the principal enactment is hereby repealed.

7. Section 8 of the principal enactment is hereby amended by the repeal of subsection (1) of that section and the substitution therefor of the following subsection :-

(1) Where a tenant cultivator of any extent of paddy land, other than a tenant cultivator who cultivates such extent either jointly or in rotation with any other tenant cultivator, dies, his rights under this Act in respect of such extent shall devolve on the surviving spouse of such tenant cultivator and failing such spouse on only one of the children of such tenant cultivator, the eldest being preferred to the others where there are more children than one, provided that the successor to the deceased tenant cultivator's rights is a person who is not permanently employed and whose main occupation is cultivation of paddy.”.

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

(a) by the repeal of subsection (2) of that section and the substitution thereafter of the following sub-section :-

“(2) A tenant cultivator of any extent of paddy land may, with the written sanction of the Commissioner given after such inquiry and on such terms as he may deem necessary, transfer his rights in respect of such extent to his landlord if such landlord is also the owner of such extent. Such transfer shall be in accordance with the succeeding provisions of this subsection –

(a) where the tenant cultivator of an extent of paddy land intends to transfer his interest in such extent, he shall communicate in writing

his intention and the price at which he intends to transfer his interest in such extent to the owner of such extent. A copy of such communication shall be sent by the tenant cultivator by registered post to the Agrarian Services Committee within whose area of authority such extent of paddy land is situate.

- (b) If the owner is willing to purchase the interest of the tenant cultivator in such extent of paddy land at the price nominated by the tenant cultivator, the owner shall indicate his willingness to the Agrarian Services Committee which shall fix a period within which the transfer is to be completed.
 - (c) If the owner is willing to purchase the interest of the tenant cultivator in such extent of paddy land but states that the price nominated by the tenant cultivator is excessive, the Agrarian Services Committee may, in consultation with the tenant cultivator, determine a price, which in its opinion is reasonable and fix a period within which the transfer is to be completed.
 - (d) Where the owner is not willing to purchase the interest of the tenant cultivator in such extent of paddy land or is not willing to purchase it at the price determined by the Agrarian Services Committee, or where such owner having agreed to purchase such interest at the price nominated by the tenant cultivator determined by the Agrarian Services Committee, as the case may be, does not complete the transfer within the period fixed therefor, the Agrarian Services Committee shall issue a certificate to that effect.”;
- (b) in subsection (3) of that section by the substitution for the words “Any transfer or cession by”, of the words “Any transfer by”;
 - (c) by the repeal of subsection (4) of that section; and
 - (d) in the marginal note of that section, by the substitution for the words “Transfer and cession”, of the word “Transfer”.

9. The following new section is hereby inserted immediately after section 12 and shall have effect as section 12A of the principal enactment :—

“Sale of
paddy lands
and tenancy
rights.

12A. (1) Where the landlord of an extent of paddy land in respect of which there is a tenant cultivator intends to sell such extent, he shall, in the first instance, communicate in writing his intention and the price at which he intends to sell such extent, to the tenant cultivator. A copy of such communication shall be sent by the landlord by registered post to the Agrarian Services Committee within whose area of authority which extent of paddy land is situate.

(2) If the tenant cultivator is willing to purchase such extent of paddy land at the price nominated by the landlord, he shall indicate his willingness to the Agrarian Services Committee which shall fix a period within which the transfer is to be completed.

(3) If the tenant cultivator is willing to purchase such extent of paddy land but states that the price nominated by the landlord is excessive, the Agrarian Services Committee may, in consultation with the landlord, determine a price which in its opinion is reasonable and fix a period within which the transfer is to be completed.

(4) Where the tenant cultivator is not willing to purchase such extent of paddy land or is not willing to purchase it at the price determined by the Agrarian Services Committee, or where such tenant cultivator having agreed to purchase such extent at the price nominated by the landlord or determined by the Agrarian Services committee, as the case may be, does not complete the transfer within the period fixed therefor, the Agrarian Services Committee shall issue a certificate to that effect and thereupon the landlord may proceed to sell such extent to any other person.

(5) Any transfer by the owner of an extent of paddy land in contravention of the provisions of this section shall be null and void and shall render the person in occupation of such extent liable to be evicted in accordance with the provisions of section 6 and on such eviction the provisions of subsection (3) of section 4 shall apply.”.

10. Section 13 of the principal enactment is hereby amended by the omission of the words “nominated successor or” therein.

11. Section 16 of the principal enactment is hereby amended by the substitution for the words “that he is unable”, of the words “that he is, for reasons specified therein, unable”.

12. The following new section is hereby inserted immediately after section 16 and shall have effect as section 16A of the principal enactment :-

“Wilful neglect of cultivation by tenant cultivator

16A. (1) Where the landlord of any extent of paddy land informs the Commissioner in writing with a copy thereof to the tenant cultivator of that extent that the tenant cultivator of that extent has wilfully neglected to cultivate such extent with any crop during any paddy cultivation season in which cultivation was possible, the Commissioner may cause an inquiry to be held by an Inquiry Officer and if after such inquiry the Inquiry Officer holds that the tenant cultivator has wilfully neglected to cultivate such extent with any crop, such tenant cultivator shall be liable to pay the landlord rent for such extent for such season as provided for in subsection (6) of section 17.

(2) Where a landlord of an extent of paddy land informs the Commissioner in writing with a copy thereof to the tenant cultivator that such tenant cultivator has wilfully neglected to cultivate that extent during two or more consecutive seasons when it was possible to cultivate such land, the Commissioner shall cause an inquiry to be held by an Inquiry Officer and if after such inquiry the Inquiry Officer holds that the tenant cultivator has so neglected to cultivate that extent for two or more consecutive seasons, the Commissioner shall order such tenant cultivator to vacate such extent and if the tenant cultivator fails to comply with that order he shall be evicted from

such extent in accordance with section 6. The provisions of subsection (5) of section 4 shall apply after such vacation or eviction.

(3) Where a landlord of an extent of paddy land informs the Commissioner in writing with a copy thereof to the tenant cultivator that such tenant cultivator has so neglected the cultivation of that extent during two or more cultivation seasons that its yield had fallen below the average for comparable extents in the district, the Commissioner shall cause an inquiry to be held by an Inquiry Officer and if, after such inquiry the Inquiry Officer holds that the tenant cultivator has so neglected the cultivation of that extent, the Commissioner shall order such tenant cultivator to vacate such extent and if the tenant cultivator fails to comply with the order he shall be evicted from that extent in accordance with section 6. The provisions of subsection (5) of section 4 shall apply after such vacation or eviction.

(4) Where the Viharadhipathi or high priest of a temple, kovil or church or the Diyawadana Nilame of the Dalada Maligawa, Basnayaka Nilames and Trustees of Devalayas and Temples or the trustee of a mosque informs the Commissioner in writing with a copy thereof to the tenant cultivator that such tenant cultivator of an extent of paddy land belonging to such temple, kovil, church, Dalada Maligawa, Devalayas and Temples or mosque has failed to perform such service as he is required to perform for the benefit of the temple, kovil, church, Dalada Maligawa, Devalayas and Temples, or mosque, or to pay in lieu of such services to such temple, kovil, church, Dalada Maligawa, Devalayas and Temples, or mosque such reasonable amount as shall be determined by the Commissioner, in exchange for the use of such paddy land, the Commissioner shall cause and inquiry to be held by an Inquiry Officer and if after such inquiry the Inquiry Officer holds that the tenant cultivator has failed to perform such services or to pay the amount in lieu of services the Commissioner shall, notwithstanding anything in any other law, order such tenant cultivator to vacate such extent and if the tenant cultivator fails to comply with that order, he shall be evicted from that extent in accordance with section 6 notwithstanding anything in any other law. The provisions of subsection (5) of section 4 shall apply after such vacation or eviction.”.

13. Section 17 of the principal enactment is hereby amended by the repeal of subsection (2) of that section and the substitution therefor, of the following subsection :–

“(2) A determination under subsection (1) shall specify, in respect of any extent of paddy land in any region to which such determination applies, a portion not exceeding one-quarter of the total of the yield of the paddy from that extent reduced by the amount of any charge which may be imposed under this Act, as rent payable for that extent for each paddy cultivation season.”.

14. Section 18 of the principal enactment is hereby amended by the repeal of subsection (1) of that section and the substitution therefor of the following subsection :–

“(1) Where the landlord informs the Commissioner that the tenant cultivator is in arrears of rent in respect of an extent of paddy land, the Commis-

sioner shall cause and inquiry to be held by an Inquiry Officer and where the Inquiry Officer holds that the rent is in arrears and communicates his decision to the Commissioner, the Commissioner shall give notice in writing to the tenant cultivator that his tenancy in respect of such extent would be terminated if he fails to pay such arrears within the time specified in such notice.”.

15. Section 20 of the principal enactment is hereby amended by the substitution, for the word “thirtieth” wherever it appears in that section, of the word “fifteenth”.

16. Section 26 of the principal enactment is hereby amended as follows :-

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

“(1) Where any sum is due from the tenant cultivator of any extent of paddy land to his landlord as rent in arrears or interest on such rent or both, the landlord may make a written application for an order under this section, and the Commissioner shall cause an inquiry into such application to be held by an Inquiry Officer and if the Inquiry officer holds that any such sum is due from the tenant cultivator to the landlord, the Commissioner shall make order for the payment of such sum in paddy or cash or both paddy and cash in such manner and within such period as may be specified in the order.”; and

(b) by the substitution for the words “If such tenant cultivator fails to pay such sum within the time allowed by the order under” in subsection (2) of that section of the words “If such tenant cultivator fails to comply with the order referred to in.”.

17. Section 36 of the principal enactment is hereby amended as follows :-

(a) in subsection (1) thereof, by the substitution for the words “dispossessing the owner of” of the words “dispossessing the owner or occupier of”; and

(b) by the addition immediately after subsection (2) thereof, of the following new subsection:-

“(3) Any person aggrieved by an order of dispossession as aforesaid may appeal to the Secretary to the Ministry of the Minister against such order within thirty days of the date of the order appealed against. The Secretary may, upon such appeal, confirm or set aside such order and shall communicate his decision to the Commissioner and to the appellant.

The decision of the Secretary shall be final and conclusive and shall not be questioned in any court or tribunal.”.

18. Section 37 of the principal enactment is hereby amended by the repeal of subsection (1) of that section and the substitution therefor of the following subsection :-

“(1) Where no appeal is made against the order of dispossession, upon the expiry of thirty days from the date of that order or where an appeal is made against an order of dispossession, upon the confirmation of such order, the person on whom the order is served shall, within the period specified in the order, vacate the land

referred to in the order and deliver possession of such land to the Agrarian Services Committee within whose area of authority such land is situate.”.

19. Section 38 of the principal enactment is hereby amended by he substitution for the words “Where any person” in that section of the words “Where any person, referred to in subsection (1) of section 37”.

20. The following new section is inserted immediately after section 38 and shall have effect as section 38A of the principal enactment :-

“Cultivation of lands in dispute. 38A. (1) Where the Commissioner is satisfied that any agricultural land is not being cultivated due to the existence of any dispute relating to such land he may, after giving the owner cultivator or occupier of such agricultural land an opportunity of making representations to him, by order, require the person on whom the order is served to vacate the land referred to in the order and to deliver possession of such land to the Commissioner or his authorised representative within the period specified in the order.

(2) The provisions of subsection (2) of section 35 shall apply to the service of the order under this section.

(3) Where any person on whom an order under this section is served fails to vacate the land within the period specified in the order, the Commissioner shall evict such person under the provisions of section 6.

(4) The Commissioner shall cause such land to be cultivated by the appropriate Agrarian Services Committee or any other person in accordance with any direction that may be given by him until the dispute relating to such land is settled or determined.

(5) The income from such land during the period it is cultivated under the provisions of this section shall be appropriated in such manner as may be directed by the Commissioner having regard to the need to increase agricultural production.”.

21. Section 39 of the principal enactment is hereby amended as follows :-

(a) in subsection (2) of that section by the substitution for the words “Assistant Commissioners of Agrarian Services and”, of the words “Assistant Commissioners of Agrarian Services, Divisional Officers of Agrarian Services and”; and

(b) in subsection (5) of that section, by the substitution for the words “Every Deputy Commissioner and every Assistant Commissioner”, of the words “Every Deputy Commissioner, every Assistant Commissioner and every Divisional Officer of Agrarian Services”.

22. The following new section is hereby inserted immediately after section 41 of the principal enactment and shall have effect as section 41A of the principal enactment :-

“Commission to call for information” 41A. The Commissioner may, by notice in writing, require any owner cultivator or occupier of , or other person having any interest in, any agricultural land to furnish on or before any date specified in such notice, such particulars as to the extent of agricultural land he possesses, the nature of

cultivation carried on by him on such agricultural land and other matters required for the proper implementation of this Act as may be mentioned in such notice.”.

23. Section 42 of the principal enactment is hereby amended as follows :-

- (a) in subsection (1) of that section –
 - (i) by the substitution for paragraph (a) of that subsection of the following paragraph :–

“(a) the encouragement, extension, regulation or management of paddy cultivation or any other form of cultivation;”;
 - (ii) by the substitution for paragraph (f) of that sub-section of the following paragraph :–

“(f) any other collective responsibilities imposed on owner cultivators and occupiers of agricultural land for the efficient use of such land, the improvement of productivity and the protection of minor irrigation works and conservation of water supplied therefrom.”;
- (b) by the repeal of subsection (5) of that section and the substitution therefor, of the following subsection :–

“(5) A meeting convened under the provisions of this section shall not be deemed to be validly constituted unless there are present owner cultivators or occupiers representing, one fourth or twenty-five of the total number of owner cultivators and occupiers of agricultural land referred to in subsection (1). If such quorum be not present at two consecutive meetings, the presiding officer shall adjourn the second meeting and fix a date for the third meeting. Such third meeting shall for all purposes, be deemed to be a validly constituted meeting notwithstanding the absence of a quorum.”;
- (c) by the repeal of subsection (10) of that section and the substitution therefor of the following subsection :–
 - (a) At a meeting convened under the provisions of this section the owner cultivators or occupiers of agricultural land may elect from among themselves in such manner as may be prescribed a person (hereinafter referred to as the “Yaya Representative”) to perform such duties as may be prescribed and to assist the Cultivation Officer in matters relating to the protection of minor irrigation works and for the conservation of water supplied therefrom and any other matters relating to cultivation as may arise from time to time.
 - (b) A Yaya Representative may serve in that capacity for a period of three years from the date of his election unless he –
 - (i) earlier resigns by letter addressed to the Commissioner; or
 - (ii) is earlier removed by the Commissioner.

The Commissioner shall have the power to remove any Yaya Representative for negligence of duties or misconduct or failure to perform any duty

imposed on him by this section after due inquiry held by the Commissioner or by any officer authorized by him in that behalf.

(c) Every owner cultivator and occupier of agricultural land shall pay the Yaya Representative such amount as may be prescribed as his remuneration and any person who fails to pay such amount shall be guilty of an offence under this Act.

(d) The provisions of sub section (2) of section 47 shall, *mutatis mutandis*, apply to the recovery of the Yaya Representative's remuneration under this section"; and

(d) by the repeal of subsection (11) of that section and the substitution therefor of the following subsection :-

"(11) The Yaya Representative shall, subject to the control and direction of the Commissioner have the power to direct any owner or occupier of agricultural land to take such steps as the Yaya Representative may deem necessary for the discharge of the collective responsibilities of such owner cultivators or occupiers in regard to irrigation and cultivation practices and in respect of the protection of minor irrigation works and the conservation of water supplied therefrom.”.

24. The following new Part is inserted immediately after Part IV of the principal enactment and shall have effect as Part IVA of the principal enactment :-

“PART IVA

APPOINTMENT AND POWERS AND DUTIES OF INQUIRY OFFICERS AND BOARD OF REVIEW

Inquiry Officers & c. 42A. (1) There may be appointed such number of Inquiry Officers as may be necessary for the purposes of this Act.

(2) Where the Commissioner is required by any provision of this Act to cause an inquiry to be held by an Inquiry Officer, the Commissioner shall refer such matter to an Inquiry Officer. The reference shall be accompanied by a statement prepared by the Commissioner setting out the question which, to his knowledge has to be decided.

(3) The Inquiry Officer shall make all such inquiries and have all such evidence as he may consider necessary to decide such matter. He shall communicate his decision in writing to the Commissioner and the parties concerned.

(4) Regulations may be made regarding the procedure to be observed in the conduct of an inquiry and subject to any such regulations an Inquiry Officer may regulate the procedure to be observed in the conduct of the inquiry.

(5) An Inquiry Officer shall have all the powers of the Commissioner referred to in section 65.

(6) If any person upon whom a summons has been issued by an Inquiry Officer –

- (a) fails without reasonable cause to appear before such Inquiry Officer at the time and place mentioned in the summons ; or
- (b) refuses without reasonable cause to be sworn or having being duly sworn, refuses or fails without reasonable cause to answer any question put to him by such Inquiry Officer or wilfully gives a false answer to any such question; or
- (c) refuses or fails without reasonable cause to produce before such officer any documents which are in his possession and which he has been required to produce,

such person shall be guilty of an offence under this Act.

Board of
Review

42B. (1) There shall be appointed for the purposes of this Act, in respect of each Province a Panel of not more than twelve persons from which Boards of Review shall be constituted for the purpose of exercising, within such Province, the powers conferred on a Board of Review by this Act.

(2) Where a member of a Panel vacates office by reason of death, resignation, removal from office, absence abroad or illness, another person shall be appointed in his place.

(3) Every person appointed to a Panel shall, unless he earlier vacates his office, hold office for three years:

Provided that –

- (a) a person appointed in place of a person who has died, resigned or been removed from office shall hold office for the unexpired portion of the term of office of the last mentioned person; and
- (b) a person appointed to act for a person who is absent abroad or is ill, shall hold office for the period of absence or illness of the last mentioned person.

(4) A person vacating office by effluxion of time shall be eligible for reappointment.

(5) One of the members of a Panel shall be appointed as the Chairman of the Panel.

(6) For the purpose of constituting a Board of Review, the Chairman of a Panel shall select from the Panel three or more persons. The Chairman may select himself as a member constituting the Board of Review.

(7) Where the Chairman of a Panel is a member of a Board of Review constituted under this section then he, or where he is not a member of the Board, then such member of the Board as may be nominated by such Chairman, shall be the President of the Board.

(8) There shall be appointed to each Board of Review a Secretary.

(9) The Secretary of the Board of Review shall in respect of every appeal heard by the Board, keep a record of all such proceedings before the Board as relate to that appeal.

(10) A Board of Review may examine any witness on oath if it thinks fit so to do, and may summon any person to appear before it or to produce any documents which may be relevant in the opinion of the Board.

(11) The documents, notices or summons issued under the hand of the Chairman of a Board of Review or the Secretary of a Board of Review shall be deemed to have been issued by that Board of Review.

(12) If any person upon whom a summons issued or deemed to have been issued by a Board of Review, has been served—

- (a) fails without reasonable cause to appear before the Board of Review at the time and place mentioned in the summons; or
- (b) refuses without reasonable cause to be sworn, or having been duly sworn, refuses or fails without reasonable cause to answer any question put to him by a member of the Board of Review touching the matters to be heard and determined by such Board, or wilfully gives a false answer to any such question; or
- (c) refuses or fails without reasonable cause to produce before the Board of Review any document which is in his possession or power and which he has been required to produce,

he shall be guilty of an offence and shall on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

(13) Regulations may be made in regard to the procedure to be followed at meetings of a Board of Review.

(14) A Board of Review may, on any appeal made under this Act to such Board confirm or vary the determination or decision from which such appeal is made and the decision of such Board shall be final and conclusive and shall not be called in question in any Court.”.

25. Section 43 of the principal enactment is hereby amended as follows:-

(a) by the repeal of subsection (3) of that section and the substitution therefor of the following subsection :-

“(3) (a) An Agrarian Services Committee shall consist of fifteen members appointed by the Commissioner as follows :-

- (i) ten persons who are elected by owner cultivators and occupiers of agricultural land within the area of authority of such Committee so, however, that at least three such persons shall be occupiers of paddy land and there such other persons shall be tenant cultivators of paddy land;

- (ii) five persons who are public officers or employees of public corporations or statutory bodies.
- (b) The Committee may, where it deems it necessary, co-opt any public officer or officer of a public corporation or any other institution to the Committee or invite any person to be present at any of its meetings. Any person co-opted or invited under this paragraph shall not be eligible to vote at any meeting of the Committee.”; and
- (b) by the repeal of subsection (7) of that section and the substitution therefor of the following subsection :—
- “(7) If the Commissioner is satisfied that any member of an Agrarian Services Committee –
- (a) is incapacitated by infirmity of mind or body from discharging the duties of his office is otherwise unsuited to continue to discharge such duties; or
- (b) has failed to attend three consecutive meetings of the Committee without reasonable cause,

the Commissioner may terminate his appointment and appoint another member to such Committee :

Provided however, that a member appointed in place of a member who is removed from, or otherwise vacates office, shall hold office for the unexpired period of the term of office of the member whom he succeeds unless the member so appointed is earlier removed from, or otherwise vacates, office.”.

26. Section 45 of the principal enactment is hereby amended as follows:-

- (a) by the insertion immediately after subsection (2) of that section, of the following subsection :—
- “(2A) (a) The register of agricultural land shall be –
- (i) amended as and when it becomes necessary so to do;
- (ii) revised once in every three years commencing from 1991;
- (iii) kept open for public inspection in the months of January and July every year.
- (b) Any application to the Committee for the amendment of the register of agricultural lands by the inclusion of the name of a new tenant cultivator in respect of any extent of paddy land shall be in writing and shall be accompanied by a letter from the landlord consenting to the registration of the applicant as the tenant cultivator of such extent.”;
- (b) by the repeal of subsection (4) of that section and the substitution therefor of the following subsection :—
- “(4) Regulations may be made in respect of the procedure to be followed in the preparation and revision of the register referred to in subsection (1).”.

27. The following new sections are hereby inserted at the end of the section 45 and shall have effect as sections 45A and 45B respectively of the principal enactment :

"Survey of agricultural land.

45A. (1) Every Agrarian Services Committee shall, in accordance with the directions of the Commissioner, cause a survey to be made of the agricultural land in its area of authority and maintain the records pertaining to such land.

(2) Agrarian Services Committee may recover from the landlords or occupiers of agricultural land the proportionate cost of surveying such land and maintaining the record.

Register of tenant cultivators

45B. Every Agrarian Services Committee shall in the prescribed manner prepare, revise and maintain a register of tenant cultivators within the area of authority of such Committee.”.

28. Section 46 of the principal enactment is hereby amended as follows :-

(a) in subsection (2) of that section –

(i) by the repeal of paragraph (b), and the substitution therefor of the following paragraph :–

“(b) subject to the provisions of subsection (2A) to impose on and recover from an owner cultivator or occupier of agricultural land an annual acreage levy not exceeding six rupees per acre of such land and any other charge levied for services rendered under this Act;”;

(ii) by the repeal of paragraph (d) and the substitution therefor of the following paragraphs :–

“(d) to maintain and operate an account in such bank as may be determined by the Commissioner;

(e) to grant loans out of its moneys to owner cultivators and occupiers for agricultural activities and to recover such loans;

(f) to utilise its moneys for the repair, maintenance and development of minor irrigation works where it becomes necessary so to do;

(g) to provide financial assistance at the request of the Commissioner, for the training of officers and farmers with a view to developing agriculture and improving the management of the Committee;” and

(b) by the insertion, immediately after subsection (2) of that section, of the following subsections :–

“(2A) The following shall be exempt from the payment of the acreage levy imposed under paragraph (b) of subsection (2) :–

(i) the Janatha Estate Development Board and the State Plantations Corporation ;

(ii) the owner cultivator or occupier of a home garden.

For the purpose of this section 'home garden' means an extent of land not exceeding half acre which is wholly or mainly cultivated with, or used by the owner or occupier for the production of, vegetables, fruit or livestock, solely for domestic consumption.

(2B) where any land or any interest in any land is required by any Agrarian Services Committee for a common threshing floor or an agricultural road, the land or interest in land may be acquired under the Land Acquisition Act by the Government for such Committee and the provisions of that Act shall apply for the purpose of the acquisition of that land or interest in land.”;

(c) by the insertion immediately after subsection (3) of that section, of the following new subsection :—

“(3A) An Agrarian Services Committee may, by notice in writing, require any owner cultivator or occupier of, or other person having any interest in, any agricultural land within its area of authority to furnish on or before any date specified in the notice such particulars as to the extent of land he possesses, the nature of cultivation carried on by him and such other matters as maybe mentioned in such notice and which are required for the implementation of this Act.”; and

(d) in subsection (4), by the substitution for the words “the Commissioner may”, of the words “the Commissioner may, with the concurrence of the Secretary to the Ministry of the Minister in charge of the subject of Finance”.

29. The following section is hereby inserted immediately after section 46 and shall have effect as section 46A of the principal enactment :—

**“Audit of
Accounts of
Agrarian
Services
Committees.**

46A. (1) Article 154 of the Constitution shall apply to the audit of the accounts of every Agrarian Services Committee as if such Committee were a Public Corporation within the meaning of the Constitution.

(2) The Auditor-General shall disallow every item of the accounts which, in his opinion is irregular or unlawful and recommend that the Commissioner surcharge the same on the officer or employee of such Committee making or effecting such payment, and that the Commissioner charge against any officer or employee any sum which ought to have been, but is not, brought into account by such officer or employee. The commissioner shall thereupon certify the amount due from such person.

(3) Before certifying any such surcharge or disallowance the Commissioner shall notify such person of the proposed surcharge or disallowance and afford such person an opportunity to make representations or to be heard against such surcharge or disallowance. The Commissioner shall thereupon inform such person of his decision together with his reasons.

(4) Where a surcharge or disallowance against any person has been certified by the Commissioner such certificate shall be conclusive proof of the matters stated therein.

(5) Any person aggrieved by any surcharge or disallowance may, within thirty days of the date on which the decision of the Commissioner is communicated to him, appeal against the decision to the Secretary to the Ministry of the Minister with a copy of the appeal to the Commissioner, and it shall be lawful for such Secretary upon any such appeal to decide the question at issue according to the merits of the case.

(6) The Secretary to the Ministry of the Minister may, by order, direct the recovery from the person making such appeal the whole or any portion of the amount surcharged or disallowed if he thinks that there are grounds therefor, and if he finds that the surcharge or disallowance has been lawfully made but in the particular circumstance of the case it is fair and equitable that the surcharge or disallowance be remitted, he may, by order, direct that the same shall be remitted but that the amount of costs and expenses which may have been incurred by the Commissioner on the enforcing of such surcharge or disallowance or such portion of it as may be determined by the Secretary shall be recovered from such person.

(7) Upon receipt of a certificate of surcharge or disallowance or the order of the Secretary on any appeal, the Commissioner shall, by notice sent by registered post, require such person to pay the sum set out in the certificate on or before the date specified in such notice, being a date not less than three months from the date of the decision of the Commissioner.

(8) Where any person fails to comply with the requirements of a notice under subsection (7) the Commissioner shall issue a certificate containing particulars of the amount due and the name and the last known place of residence of such person to the Magistrate's Court having jurisdiction over such place of residence and such Court shall recover such amount in like manner as a fine imposed by such Court.

(9) Every sum paid or recovered under this section, other than a sum paid or recovered as costs and expenses incurred in the enforcement of any disallowance or surcharge shall be credited to the Agrarian Services Fund.'

30. Section 47 of the principal enactment is hereby amended as follows :-

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

"(1) An Agrarian Services Committee may by notice in writing direct every owner or occupier of agricultural land liable to pay acreage levy to such Committee or any person who has failed to repay any loan granted by such Committee to pay such levy or repay such loan, as the case may be, within such period as shall be specified in such notice.";

- (b) by the repeal of subsection (2) of that section and the substitution therefor of the following subsection :-

"(2) Where an Agrarian Services Committee is satisfied after due inquiry that a person to whom a written notice has been given under subsection (1) has failed to pay the amount specified in such notice

within the time allowed therefor, such amount shall, on application by an officer authorized in that behalf by such Committee being made to the Magistrate's Court having jurisdiction over the place where the extent of agricultural land in respect of which the levy is payable or which is owned or occupied by the person in default is situated, be recovered in like manner as a fine imposed by such Court.”; and

(c) in the marginal note of that section by the substitution for the words “acreage levy”, of the words by such Court.”; and

31. Section 55 of the principal enactment is hereby amended as follows :–

- (a) in subsection (1) of that section, by the substitution for the words “There may be appointed such number” of the words “There may be appointed by name or by office, such number;” and
- (b) in subsection (2) of that section, by the insertion immediately after paragraph (c) of that section of the following new paragraph :–

“(d) as directed by the Commissioner, prosecute any person who commits any offence referred to in section 56.”.

32. Section 56 of the principal enactment is hereby amended as follows :–

- (a) in subsection (1) by the insertion, immediately after paragraph (d) of that subsection the following paragraph :–

“(e) without the prior permission in writing of the Commissioner, cultivates the catchment area, channel, reservation or tank bed of a minor irrigation tank.”; and
- (b) by the insertion immediately after subsection (2) of that section of the following subsection :–

“(3) Every person who fails, without lawful excuse, to comply with any direction or order given or made under this Act by the Commissioner or an Agrarian Services Committee, or who furnishes or produces for the purpose of this Act, any information or document which, to his knowledge, is false or incorrect in whole or in part shall be guilty of an offence.”.

33. The following new sections are hereby inserted immediately after section 56 of the principal enactment and shall have effect as section 56A and section 56B respectively of the principal enactment :–

“Farmers’ Organizations. 56A. (1) There may be established one or more Farmers’ Organizations of owner cultivators and occupiers of agricultural land in each area determined by the Commissioner for that purpose.

(2) Each Farmers’ Organization shall consist of at least twenty five owner cultivators or occupiers or one fourth of the total number of owner cultivators and occupiers of agricultural land in such area.

(3) The Commissioner may register any Farmers’ Organization if an application in that behalf is made to him by the Organization:

Provided that the Commissioner may register a Farmers' Organization in any area under a major irrigation scheme with the concurrence of the Secretary to the Ministry of the Minister in charge of the subject of Irrigation.

(4) The purposes of any Farmers' Organization registered under this section shall include—

- (a) the formulation and implementation of the agricultural programme for the area;
- (b) carrying out village level construction work and effecting repairs to irrigation works;
- (c) marketing of produce and distribution of seed, fertilizer and agrochemicals;
- (d) promoting of cooperation between, and the co-ordination of agricultural activities of government organizations and the farmers of the area; and
- (e) engaging in any other activity approved by the Commissioner as being beneficial to the farming community.

(5) Regulations may be made in respect of the election of office bearers of Farmers' Organizations registered under this section, the procedure for the transaction of business by such organizations, powers of such organizations, accounts to be maintained by such organizations and the audit of such accounts by the Commissioner or an officer authorized by him in that behalf.

56B. (1) Notwithstanding anything in section 56A, the Commissioner may, upon application made in that behalf by any Farmers' Organization in any area, on being satisfied that such Farmers' Organization has –

- (a) actively promoted agricultural activities in its area, or has the ability to promote such activities in such area;
- (b) enjoys the trust and confidence of the farming community of such area; and
- (c) the financial viability and the resources to undertake repairs of irrigation works,

register such Organization under this section :

Provided that the Commissioner may register a Farmers' Organization in any area under a major irrigation scheme with the concurrence of the Secretary to the Ministry of the Minister in charge of the subject of Irrigation.

(2) From and after the date of registration of a Farmers' Organization under subsection (1), such Organization shall be a body corporate with perpetual succession and a common seal and may sue and be sued by the name by which it is registered.

(3) The Commissioner shall publish a notification in the *Gazette* of every registration of a Farmers' Organization made under this section.

(4) The purposes of every Farmers' Organization registered under this section shall be the purposes specified in subsection (4) of section 56A.

(5) Regulations may be made in respect of the election of office bearers of Farmers' Organizations registered under this section, procedure for transaction of business by such organizations, powers of such organizations, accounts to be maintained by such organizations and the audit of such accounts by the Commissioner or and officer authorized by him in that behalf.

(6) The Commissioner may, by notification published in the *Gazette*, cancel the registration of any Farmers' Organization registered under this section if he is satisfied that the Farmers' Organization has been inactive for a period of two years or has so conducted itself that it is in the public interest to cancel its registration under this section.

(7) The Commissioner shall, where he cancels the registration of a Farmers' Organization under this section appoint a person to be the liquidator of the Corporation who shall have the power to –

- (a) take possession of the books, documents and assets of the corporation;
- (b) sell the property of the corporation;
- (c) decide any question of priority among the creditors of the corporation;
- (d) compromise any claim by or against the corporation with the prior approval of the Commissioner; and
- (e) arrange for the distribution of the assets of the corporation in the prescribed manner.

(8) In the liquidation of the corporation its funds shall be applied first to the cost of liquidation and then to the discharge of its liabilities. Any surplus remaining after the closure of the liquidation shall be credited to the Agrarian Services Fund established under section 60.”.

34. Section 57 of the principal enactment is hereby amended in subsection (1) of that section by the addition of the following words at the end of that subsection :–

“For the purpose of this section the expression ‘cultivation rights’ includes the right of threshing paddy, access to the paddy field and the right of disposed of agricultural produce.”.

35. Section 60 of the principal enactment is hereby amended as follows :–

- (a) in subsection (2) thereof, by the repeal of paragraph (f) and the substitution therefor of the following :-

(f) such percentage of moneys recovered as acreage levy under the provisions of paragraph (b) of subsection (2) of section 46, as may be prescribed;”; and

(b) by the repeal of subsection (3) and the substitution therefor of the following subsection :–

“(3) The moneys of such Fund may be utilized to give financial assistance to Agrarian Services Committee for the maintenance and repair of their buildings, vehicles and equipment, purchase of furniture, training, publicity, research, surveys, loan schemes, provision of transport facilities for officers and generally, for the administration and development of Agrarian Services Committees and for the improvement and development of agricultural productivity in Sri Lanka. The Commissioner shall be responsible for the administration of the Fund.”.

36. Section 61 of the principal enactment is hereby amended by the repeal of all the words beginning with “acquired under that Act; upto the end of that section, and substitution therefor of the words “acquired under that Act.”.

37. Section 62 of the principal enactment is hereby amended as follows :–

(a) by the insertion at the end of subsection (1) of the following words :–

“ The Commissioner may at any time withdraw such permission by notice served on such person having regard to the need to increase agricultural production;”

(b) by the repeal of sub-paragraph (c) of subsection (2) of that section and the substitution therefor of the following sub-paragraph :–

“(c) with any other agricultural crop.”;

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

(4) If any extent of paddy land –

(a) is used by any person in contravention of the provision of subsection (1), or

(b) is cultivated by the cultivator thereof otherwise than in accordance with the provision of subsection (2),

that person or that cultivator, as the case may be, shall be guilty of an offence, and shall on conviction after trial before a Magistrate be liable to a fine not exceeding twenty-five thousand rupees and in default of payment of the fine, to imprisonment of either description for a term not exceeding three months, and where such offence is continued after conviction that person or that cultivator, as the case may be, shall be liable to a fine of one hundred rupees for each day in respect of which such offence is continued after conviction.”; and

(d) by the insertion immediately after subsection (5) of that section, of the following new subsection :–

"(6) (a) Where any person is convicted for an offence under subsection (4) of this section the Court may make order that any implements, instruments, machinery or vehicles used in, or in connection with, the commission of the offence shall be forfeited. Any implement, instrument, machine or vehicle forfeited under this section shall, upon such forfeiture, vest absolutely in the State. Such vesting shall take effect –

- (i) after the expiration of the period within which an appeal may be preferred to the Court of Appeal or to a High Court established by Article 154P of the Constitution against the order of forfeiture; or
 - (ii) Where an appeal has been preferred to the Court of Appeal or to a High Court established by Article 154P of the Constitution against the order of forfeiture, upon the determination of such appeal confirming or upholding the order of forfeiture.
- (b) The Commissioner shall take possession of any implement, instrument, machine or vehicle vested in the State under this section and may sell or otherwise dispose of the same as he may think fit. The proceeds of such sale shall be credited to the Consolidated Fund.”.

38. The following new section is hereby inserted immediately after section 62 of the principal enactment and shall have effect as section 62A of the principal enactment :–

Unauthor-
ized filling
of paddy
lands.

62A. (1) No person shall fill any extent of paddy land except with the written permission of the Commissioner. Any person who acts in contravention of the foregoing provision commits an offence.

(2) Where the Commissioner is informed that any person is acting in contravention of subsection (1) the Commissioner may make an application in writing in the form set out in the Schedule to this Act to the Magistrate's Court within whose local jurisdiction such extent or any part thereof is situated –

- (a) that he is the Commissioner of Agrarian Services;
- (b) that the land described in the schedule to the application is paddy land;
- (c) that the person named in the application is acting in contravention of subsection (1) of section 62A of Agrarian Services Act, No. 58 of 1979,

and praying for the issue of an order restraining him or his agents or servants from acting in contravention of the provisions of subsection (1) aforesaid.

(3) Every application under this section shall be supported by an affidavit verifying to the matters set forth in the application.

(4) Upon receipt of the application the Magistrate shall forthwith issue summons on the person named in the application to appear and show cause on the date specified in such summons (being a date not later than two weeks from the date of issue of such summons) why he or his servants or agents should not be restrained as prayed for in the application.

(5) If on the date specified in the summons the person to whom such summons has been issued fails to appear or informs the Court that he has no cause to show against the issuing of such order the Court shall forthwith issue an order as prayed for in the application.

(6) If the person on whom summons has been issued duly appears in Court and states that he has cause to show against issuing such order the Magistrate's Court may proceed forthwith or may set the case for inquiry on a later date.

(7) The Magistrate's Court shall not be competent to call for any evidence from the Commissioner to support the application.

(8) If after the inquiry the Magistrate is not satisfied that the person showing cause has lawful authority to fill the extent of paddy land he shall make order restraining such person or his servants and agents from doing any act in contravention of this section.

(9) Where any person is convicted for an offence under subsection (1) of this section the Court may make order that any implements, instruments, machinery or vehicles used in or in connection with the commission of the offence shall be forfeited to the State. The provisions of subsection (6) of section 62 shall, *mutatis mutandis*, apply to such forfeiture.

39. Section 67 of the principal enactment is hereby amended in subsection (2) of that section by the repeal of paragraph (g) of that subsection and the substitution therefor of the following paragraph :–

“(g) all proceedings which have been commenced and concluded –

- (i) before the Commissioner of Agrarian Services or the Board of Review under the provisions of the Paddy Lands Act, No. 1 of 1958;
- (ii) before the Agricultural Tribunal under the provisions of the Agricultural Lands Law, No. 42 of 1973; or
- (iii) under the provisions of section 63 of this Act, and in respect of which no appeals have been made to the Court of Appeal or the Supreme Court under the provisions of the aforesaid enactments, or where appeals have been made and have been dismissed and where no steps for the enforcement of orders made in such proceedings have been taken in the Magistrate's Court under the provisions of such enactments, the orders made in such proceedings shall be deemed to be orders made in proceedings under the provisions of this Act, and shall be enforced in accordance with the corresponding provisions of this Act;”.

40. Section 68 of the principal enactment is amended as follows :–

(a) by the addition at the end of the definition of “agriculture”, of the following :–

“(iv) bee-keeping and inland fisheries.”; and

- (b) by the repeal of the definition "agricultural activity" and the substitution therefor, of the following definition :—

"agricultural activity" means any activity involving agricultural and includes the supply of agricultural inputs, the use of machinery and equipment used in such activity and any activity involving minor irrigation ;".

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

**"SCHEDULE
FORM**

(Section 62A)

Application for Restraining Order

To : The Magistrate's Court of
(State name of such Court)

I, (state name) the Commissioner of Agrarian Services, do by virtue of the powers vested in me by section 62A of the Agrarian Services Act, No. 58 of 1979, do by this application –

- (a) set forth the following matters, namely :–
- (i) that I am the Commissioner of Agrarian Services above named;
 - (ii) that the land described in the Schedule to this application is paddy land;
 - (iii) that of is acting in contravention of subsection (1) of section 62A of the Agrarian Services Act, No. 58 of 1979;
- (b) pray for the issue of an order restraining the said or his agents or servants from acting in contravention of the said provisions of subsection (1) of section 62A of the Agrarian Services Act.

.....
**Signature of the Commissioner of
Agrarian Services**

Schedule above referred to.

(Here describe land stating situation including district.)

.....
**Signature of the Commissioner of
Agrarian Services.".**

Date :

NATIONAL DEFENCE FUND (AMENDMENT) ACT, NO. 10 OF 1991

[Certified on 8th March, 1991]

AN ACT TO AMEND THE NATIONAL DEFENCE FUND ACT, NO. 9 OF 1985

1. This Act may be cited as the National Defence Fund (Amendment) Act, No. 10 of 1991.

2. Section 3 of the National Defence Fund Act, No. 9 of 1985, (hereinafter referred to as the "principal enactment") is hereby amended in subsection (2) of that section, by the substitution, for paragraph (b) of that subsection of the following paragraph :–

"(b) the Minister in charge of the subject of Finance, and".

3. Section 13 of the principal enactment is hereby amended by the substitution, for the words "national security," of the word "Finance,".

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

"Application of Inland Revenue Act, No. 28 of 1979 to the Fund.
14A. The Fund shall be deemed, for the purposes of paragraph (b) of subsection (2) of section 31 of the Inland Revenue Act, No. 28 of 1979, to be a fund established by the Government of Sri Lanka."

5. The amendment made to the principal enactment by section 4 of this Act, shall be deemed for all purposes to have come into force on March 21, 1985.

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

TURNOVER TAX (AMENDMENT) ACT, NO. 13 OF 1991.

[Certified on 15th March, 1991]

AN ACT TO AMEND THE TURNOVER TAX ACT, NO. 69 OF 1981.

1. This Act may be cited as the Turnover Tax (Amendment) Act, No. 13 of 1991.
2. Section 50A of the Turnover Tax Act, No. 69 of 1981 (hereinafter referred to as the "principal enactment") is hereby amended in subsection (1) of that section, by the substitution, for the words and figures, "on or after April 1, 1989.", of the words and figures, "on or after April 1, 1989, but prior to January 1, 1991."
3. Section 59 of the principal enactment is hereby amended by the repeal of paragraph (2) of the definition of "authorised representative", and the substitution therefor, of the following paragraph :-

"(2) who is authorized in writing from time to time by a person, to act on behalf of such person for the purposes of this Act, in respect of matters relating to such year of assessment as is specified in the authorisation and who—
 - (i) being an individual registered as an auditor under the Companies (Auditors) Regulations, is approved by the Commissioner-General; or
 - (ii) is an individual approved by the Commissioner General for the purposes of the Inland Revenue Act, No. 28 of 1979, under regulations made under that Act, in that behalf;".
4. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

SURCHARGE ON INCOME TAX (AMENDMENT) ACT, NO. 17 OF 1991

[Certified on 27th March, 1991]

AN ACT TO AMEND THE SURCHARGE ON INCOME TAX ACT, NO. 7 OF 1989

1. This Act may be cited as the Surcharge on Income Tax (Amendment) Act, No. 17 of 1991.

2. The long title to the Surcharge on Income Tax Act, No. 7 of 1989 (hereinafter referred to as the "principal enactment") is hereby amended by the substitution for the words and figures "YEARS OF ASSESSMENT COMMENCING RESPECTIVELY ON APRIL 1, 1989, AND ON APRIL 1, 1990.", of the words and figures "YEARS OF ASSESSMENT COMMENCING RESPECTIVELY ON APRIL 1, 1989, ON APRIL 1, 1990 AND ON APRIL 1, 1991.".

3. Section 2 of the principal enactment is hereby amended by the substitution, for the words and figures "but ending not later than March 31, 1991.", of the words and figures "but ending not later than March 31, 1992".

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

(1) in paragraph (i) of that section, by substitution, for the words and figures "relevant year commencing on April 1, 1989, and", of the words and figures "relevant year commencing on April 1, 1989,";

(2) in paragraph (ii) of that section, by the substitution for the words and figures "relevant year commencing on April 1, 1990.", of the words and figures "relevant year commencing on April 1, 1990, and "; and

(3) by the addition, immediately after paragraph (ii) of that section, of the following paragraph :–

"(iii) (a) not less than fifty *per centum*, on or before August 15, 1991; and

(b) the balance, on or before November 15, 1991,

of the amount of the surcharge payable by him for the relevant year commencing on April 1, 1991.".

5. Section 4 of the principal enactment is hereby amended as follows :–

(1) in paragraph (a) of that section, by the substitution for the words "from the remuneration of that employee for that year; and", of the words "from the remuneration of that employee for that year,";

(2) in paragraph (b) of that section, by the substitution for the words "for that year from the remuneration of that employee,", of the words "from the remuneration of that employee for that year; and "; and

(3) by the insertion, immediately after paragraph (b) of that section, of the following paragraph :–

"(c) for the relevant year commencing on April 1, 1991–

(i) from the remuneration payable to such employee for the month of July, 1991, 71/2 *per centum*; and

(ii) from the remuneration payable to such employee for the month of October 1991, *7 1/2 per centum*,

of the total income tax deductible from the remuneration of that employee for that year.”.

6. Section 5 of the principal enactment is hereby amended in subsection (2) of that section, by the substitution for paragraph (ii) of the proviso to that subsection, of the following paragraph :–

“(ii) where any person who is liable to pay the surcharge under this Act for a relevant year pays as such surcharge –

(a) for the relevant year commencing on April 1, 1989 –

(i) not less than *7 1/2 per centum* on or before August 15, 1989, and

(ii) not less than *7 1/2 per centum* on or before November 15, 1989,

of the income tax payable by him under the Inland Revenue Act, for the year of assessment commencing on April 1, 1988;

(b) for the relevant year commencing on April 1, 1990 –

(i) not less than *7 1/2 per centum* on or before August 15, 1990, and

(ii) not less than *7 1/2 per centum* on or before November 15, 1990,

of the income tax payable by him under the Inland Revenue Act for the year of assessment commencing on April 1, 1989; and

(c) for the relevant year commencing on April 1, 1991 –

(i) not less than *7 1/2 per centum* on or before August 15, 1991, and

(ii) not less than *7 1/2 per centum* on or before November 15, 1991,

of the income tax payable by him under the Inland Revenue Act for the year of assessment commencing on April 1, 1990,

such person shall not be liable to any penalty under this section, in respect of the payments he is required to make under section 3 if he pays the excess of the surcharge payable by him for that relevant year over the amount paid by him, on or before –

November 30, 1990, in the case of the relevant year commencing on April 1, 1989,

November 30, 1991, in the case of the relevant year commencing on April 1, 1990, and

November 30, 1992, in the case of the relevant year commencing on April 1, 1991;”.

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

FINANCE COMPANIES (AMENDMENT) ACT, NO. 23 OF 1991

[Certified on 20th June, 1991]

AN ACT TO AMEND THE FINANCE COMPANIES ACT, NO. 78 OF 1988

1. This Act may be cited as the Finance Companies (Amendment) Act, No. 23 of 1991.

2. The following new section is hereby inserted immediately after section 5 of the Finance Companies Act, No. 78 of 1988 (hereinafter referred to as the "principal enactment") and shall have effect as section 5A of that enactment:—

"Failure to pay deposit to be an offence.

5A. (1) Where any finance company fails to pay a deposit and the interest thereon on demand by a depositor, on or after the date of maturity of such deposit, every director, manager or secretary of such company shall be guilty of an offence under this Act:

Provided however that, no such director, manager or secretary shall be guilty of an offence if he proves that such offence was committed without his knowledge, and that he exercised all due diligence to prevent the commission of that offence.

(2) Any depositor whose deposit and interest has not been paid on maturity in terms of subsection (1), may institute proceedings in the Magistrate's Court in terms of section 136 of the Code of Criminal Procedure Act, No. 15 of 1979."

3. Section 9 of the principal enactment is hereby amended in subsection (1) thereof, by the addition immediately after paragraph (r) of the following new paragraph :—

"(rr) the remuneration and other payment to directors or employees of finance companies by way of salary, allowance, perquisites and reimbursement of expenses.”

4. The following new section is hereby inserted immediately after section 12A of the principal enactment and shall have effect as section 12B of that enactment :—

"Appointment of officer of Central Bank as its representative in finance company.

12B. (1) The Monetary Board of the Central bank of Sri Lanka may appoint an officer of the Central Bank of Sri Lanka as its representative in every finance company registered under this Act, for the purpose of monitoring the affairs of such company.

(2) It shall be lawful for a representative appointed under subsection (1) to exercise all the powers conferred on the Director by section 12; and –

(a) to participate in the meetings of the Board of Directors of such company and to require such Board of Directors to defer reaching a decision on any matter which, in his view, would be detrimental to the interests of the depositors and creditors of that company or to the national economy, for a period not exceeding forty eight hours and it shall be the duty of such Board of Directors to comply with such requirement. The Board of Directors may, thereafter, take a decision on such matter only with the written concurrence of the Chairman of the Monetary Board;

(b) to convene meetings of the Board of Directors of such company when he considers it necessary;

(c) to employ professional or expert staff to assist him in the monitoring and the supervision of the affairs of such company.

(3) It shall be the duty of every director, manager, secretary, employee or auditor of any finance company to comply with any requirement imposed upon him under this section and to afford to the representative, or to any auditor authorised by him, or to any person employed under paragraph (c) of subsection (2) access to all books and records of that finance company including its cash balances, assets and liabilities whenever requested to do so by the Director.

(4) The costs of employing such representative and his supporting staff shall be recovered from the finance company.

(5) The terms and conditions of employment of the representative and his staff shall be determined by the Board.

(6) The representative shall exercise his powers under this section under the direction and supervision of the Director.”.

5. Section 25 of the principal enactment is hereby amended as follows :-

(1) by the repeal of subsection (1) thereof, and the substitution therefor, of the following subsection :-

“(1) If the Board upon review of the facts and circumstances set out in a report of the Director, is of the opinion that any past or present Director, chief executive, manager, employee or an agent of a finance company has fraudulently, wrongfully and unlawfully enriched himself or any other person or persons by misapplication or any other improper utilisation of any money or property belonging to the company or as by an act of omission, enabled any other person to fraudulently, wrongfully, or unlawfully enrich himself by misapplication or other improper utilisation of money or property belonging to the company the Board may notwithstanding that action has also been taken under section 18 or 20 require such Director, chief executive, manager, employee, agent or any other person to repay or restore to the finance company the money or property attributable to, or which may reasonably be suspected of belonging, to, the finance company or which may reasonably be suspected of having belonged to the Finance Company and to have been utilised or expended to acquire any asset, construct any building or discharge any debt or liability with interest on such money or property at such rate as the Board may think fit and within such period of time as may be specified by the Board”;

(2) in subsection (2) of that section –

(a) in paragraph (g) thereof –

(i) by the substitution for the words “assets purchased with monies attributable to the funds of a finance company” and “assets specified to in that notice”, of the words “assets purchased or acquired by any other means by the improper utilization or misapplication

of monies attributable to the funds of the finance company" and "asset specified in that notice" respectively; and

- (ii) by the substitution for all the words from "Every notice issued" to the end of that paragraph, of the following :–

"Every notice issued under this paragraph shall be in force for a period of ninety days and during the period of notice issued under paragraph (g) is in force any transfer of ownership, possession or other interest in any property or assets specified in such notice shall be void and of no effect;" ;

- (b) in paragraph (i) thereof the substitution for the words "the custody of such authority;" of the words "the custody of such authority and during the period, that a notice is in force, the Registrar of Lands, the Commissioner of Motor Traffic and the Registrar of Companies and any other relevant authority on whom a copy of such notice has been served under paragraph (h) shall not register any deed or instrument of transfer or other document of title relating to the property or assets specified in that notice;" ; and
- (c) in paragraph (k) thereof –

- (i) by the repeal of sub-paragraph (ii) thereof, and the substitution therefor of the following sub-paragraphs :–

"(ii) The District Court upon application made to it under sub-paragraph (i) and being satisfied that such past or present Director, chief executive, manager, employee or agent of a finance company referred to in subsection (1) has fraudulently, wrongfully, unlawfully, enriched himself, or any other person or persons by misapplication or any other improper utilisation of any money or property belonging to the company or has by an act of omission, enabled any person to fraudulently, unlawfully and wrongfully enrich himself by misapplication or other improper utilisation of money or property to the company shall direct a writ of execution to issue to the Fiscal authorising and requiring him to seize and sell –

- (a) any property or assets owned by such Director, chief executive, manager, employee or agents of the finance company or any other person or persons so enriched; or
- (b) any property or assets held in trust by a relative or any other person for such Director, chief executive, manager, employee or agent of the finance company; or
- (c) any property or assets acquired or purchased with monies attributable to the assets of the finance company.

- (iii) where any property or assets are sold in pursuance of a writ issued under sub paragraph (ii) of paragraph (k) the excess, if any of the proceeds of sale over the monies held by court to be attributable to the finance company, shall be repaid to the owner of such assets or property;" ; and

(ii) by the renumbering of sub-paragraphs (iii) and (iv) as sub-paragraphs (iv) and (v) thereof.

6. Section 33 of the principal enactment is hereby amended in subsection (2) thereof by the repeal of paragraph (c) thereof and the substitution therefor of the following paragraph :-

“(c) The regulation on the prohibition of the issue by any finance company of any prospectus or advertisement relating to any aspect of finance business, and the conditions subject of which, any such prospectus or advertisement may be issued.”

7. Section 38 of the principal enactment is hereby repealed and the following section substituted therefor :-

“**Penalties.** 38. (1) Every person who is guilty of an offence under this Act, shall be liable on conviction after trial before a Magistrate’s Court, to imprisonment of either description for a term not exceeding three years or to a fine not less than fifty thousand rupees and not exceeding one million rupees.

(2) A Director, Manager or Secretary of a body corporate or a member of and unincorporate body held guilty of an offence under this Act and ordered to pay a fine shall be guilty of an offence under this Act, if he applies any funds of such body corporate or unincorporate body as the case may be for the payment of such fine or part thereof.

(3) All fines received under this Act shall be credited to the Depositors’ Relief Fund maintained by the Central Bank of Sri Lanka.”.

8. Section 46 of the principal enactment is hereby amended by the substitution for the definition of the expression “Finance Company”, of the following definition :-

“**finance company**” means a company as defined in the Companies Act, No. 17 of 1982, registered under this Act, for carrying on finance business and shall be deemed to include for the purpose of any action that may be taken by the Board or the Directors under this Act, any Institution within the meaning of the Control of Finance Companies Act, No. 27 of 1979, notwithstanding that such “Institution” has ceased to carry on finance business on the day preceding the date of commencement of this Act.”.

9. Any action taken, order made or direction given under the Finance Companies Act, No. 78 of 1988 read with the Emergency (Finance Companies) Regulations, made under the Public Security Ordinance, during the period commencing on November 20th, 1990, and ending on the date of commencement of this Act, shall be valid and effective as if the Public Security Ordinance, had authorised the making of those regulations.”.

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

CUSTOMS (AMENDMENT) ACT, NO. 24 OF 1991

[Certified on 20th June, 1991]

AN ACT TO AMEND THE CUSTOMS ORDINANCE

1. This Act may be cited as the Customs (Amendment) Act, No. 24 of 1991.
2. Section 17 of the Customs Ordinance (hereinafter referred to as the "principal enactment") is hereby amended by the repeal of subsection (2) of that section and the substitution therefor of the following new subsection :—

"Conversion of foreign currency values of the Republic. (2) For the purpose of subsection (1) conversion of foreign currency values to the currency values of the Republic of Sri Lanka shall be made in accordance with such rates of exchange determined by the Director General and published in the *Gazette*, as were prevailing on the date of presentation of the bill entry relating to the goods on which the duty is payable.".
3. Section 22 of the principal enactment is hereby amended as follows :—
 - (a) by the renumbering of subsection (2) of that section as subsection (3) thereof; and
 - (b) by the insertion immediately after subsection (1) of that section, of the following new subsection :—

"(2) Save as hereinafter provided, this section shall not apply to goods which have been used after importation.".
4. Section 52 of the principal enactment is hereby amended by the substitution, for the words "two thousand rupees", of the words "one hundred thousand rupees".
5. Section 109 of the principal enactment is hereby amended by the substitution, for the words "sold by auction to", of the words "sold either by auction or tender to".
6. The following new section is hereby inserted immediately after section 127B, and shall have effect as section 127C of the principal enactment :—

"Power to release on bail to be vested in High Court. 127C. No person suspected or accused of an offence under this Ordinance in respect of any goods the value of which exceeds one million rupees, shall be released on bail except by the High Court, in exceptional circumstances. The power conferred on the High Court by this section shall be exercised by the Judge of the High Court holden in the Zone within which the accused resides or the Judge of the High Court holden in the Zone within which the offence is alleged to have been committed.".
7. Section 145 of the principal enactment is hereby repealed and the following new section substituted therefor:—

"Recovery of penalties. 145. (1) Every penalty and forfeiture in a sum of money incurred under this Ordinance shall carry such rate of interest as may be prescribed by regulations made under this Act from the date on which such penalty or forfeiture is incurred to the date of payment.

(2) All penalties and forefeitures incurred under this Ordinance and any interest thereon may be sued for and recovered by an action instituted in the

name of the Attorney-General in the District Court within the local limits of whose jurisdiction the party liable to such penalty or forfeiture resides. Sections 3, 4, 5, 6, 7, 8, 12, 13, 14, 15 and 23 of the Debt Recovery (Special Provisions) Act, No 2 of 1990 shall, *'mutatis mutandis*, apply to the institution and hearing of every such action.

(3) Where an action is instituted in a District Court under subsection (2) the Court shall give priority to hearing and disposal of such action, except where circumstances render it necessary for such other business to be disposed of earlier.”.

8. Section 154 of the principal enactment is hereby amended by the insertion, immediately after subsection (2) of that section, of the following new subsection :—

“(3) After institution of proceedings in the proper court in respect of any ships, boats, goods or other things the court, may, on the application of the Director-General of Customs and if the claimants do not object thereto, authorise such Director-General to dispose of such ships, boats, goods or other things and deposit the proceeds of sale in court. Where the claimants object to the disposal of such ships, boats, goods or other things the court may require the claimants to deposit cash security, equal to the market value (as assessed by such Director-General) of such ships, boats, goods or other things, in court.”..

9. Section 160 of the principal enactment is hereby repealed.

10. Section 166 of the principal enactment is hereby amended in subsection (1) of that section, by the substitution for the words “one hundred rupees”, of the words “ten thousand rupees”.

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

SECURITIES COUNCIL (AMENDMENT) ACT, NO. 26 OF 1991

[Certified on 5th July, 1991]

AN ACT TO AMEND THE SECURITIES COUNCIL ACT, NO. 36 OF 1987

1. This Act may be cited as the Securities Council (Amendment) Act, No. 26 of 1991.

2. The long title of the Securities Council Act, No. 36 of 1987 (hereinafter referred to as the "principal enactment") is hereby amended by the substitution for the words "ESTABLISHMENT OF THE SECURITIES COUNCIL FOR THE PURPOSE OF REGULATING THE SECURITIES MARKET OF SRI LANKA, TO GRANT LICENCES TO STOCK EXCHANGE, STOCK BROKERS", of the words "ESTABLISHMENT OF THE SECURITIES AND EXCHANGE COMMISSION OF SRI LANKA FOR THE PURPOSE OF REGULATING THE SECURITIES MARKET OF SRI LANKA, TO GRANT LICENCES TO STOCK EXCHANGES, UNIT TRUST, STOCK BROKERS".

3. (1) In the principal enactment, and in any other written law, there shall be substituted –

- (a) for the words "Securities Council Act", the words "Securities and Exchange Commission of Sri Lanka Act";
- (b) for the words "Securities Council" and "Council" denoting the Securities Council, the words "Securities and Exchange Commission of Sri Lanka" and "Commission", respectively.

(2) Every reference to the "Securities Council Act" and the "Securities Council", in any notice, notification, contract, communication or other document shall be read and construed as a reference to the "Securities and Exchange Commission of Sri Lanka Act" and the "Securities and Exchange Commission of Sri Lanka", respectively.

4. Section 5 of the principal enactment is hereby amended as follows :–

(1) in subsection (3) of that section by the substitution for the words "resignation or removal", of the words "resignation, removal or the operation of the provisions of subsection (5)";

(2) by the addition at the end of that section, of the following new subsection :–

"(5) An appointed member of the Commission who without leave of the Commission first being obtained, absents himself from three consecutive meetings of the Commission, shall be deemed to have vacated his office".

5. Section 7 of the principal enactment is hereby amended in subsection (1) thereof, by the substitution for the words "members to preside to such meeting.", of the words "members to preside at such meeting."

6. Section 11 of the principal enactment is hereby amended by the repeal of subsection (3) of that section and the substitution therefor of the following subsection :–

"(3) The seal of the Commission shall not be affixed to any instrument or document except in the presence of one member of the Commission and the Director-General of the Commission or in the absence of the Director-General, in the presence of any two members of the Commission, who shall sign the instrument in token of their presence."

7. Section 12 of the principal enactment is hereby amended by the repeal of paragraph (b) of that section and the substitution therefor, of the following paragraph :–

“(b) the protection of the interests of investors;”.

8. Section 13 of the principal enactment is hereby amended as follows :–

(1) by the insertion, immediately after paragraph (b) of that section, of the following new paragraph :–

“(bb) to grant a licence to a managing company to operate a unit trust and to ensure the proper conduct of the business of such unit trust;”;

(2) by the repeal of paragraph (c) of that section and the substitution therefor, of the following paragraph :–

“(c) to give directions to a licensed stock exchange or the managing company or trustee of a licensed unit trust or a licensed stock broker or a stock dealer, from time to time;”;

(3) by the repeal of paragraph (g) of that section;

(4) by the repeal of paragraph (h) of that section and the substitution therefor of the following paragraph :–

“(h) to cancel or suspend the listing of any securities or the trading of any given listed securities or to suspend the trading of all listed securities for not more than three days at a time, for the protection of investors;”;

(5) by the substitution, in paragraph (i) of that section, for the words “stock dealer and public companies”, of the words “stock dealer, unit trust and public companies”;

(6) by the substitution in paragraph (j) of that section, for the words “stock dealer or any public company”, of the words “stock dealer, the trustee or managing company of a licensed unit trust or any public company”;

(7) by the repeal of paragraph (m) of that section, and the substitution therefor of the following paragraphs :–

“(m) to request the Registrar of Companies, in the exercise of the powers conferred on it by section 227 of the Companies Act, No. 17 of 1982, to call upon a private limited liability company to become a public limited company; and

(n) to do all such other acts as may be incidental or conducive to, the attainment of the objects of the Commission or the exercise of its powers under this Act.”.

9. Section 14 of the principal enactment is hereby amended as follows :–

(1) by the repeal of paragraph (a) of that section and the substitution therefor of the following paragraph :–

“(a) carrying out inspections of the activities of licensed stock exchanges, stock brokers, stock dealers and unit trusts in order to determine whether they are operating in conformity with the provisions of this Act or any rules or regulations made thereunder, and to charge the costs incurred in carrying out

such inspections from the licensed stock exchange, stock broker, stock dealer or managing company of the unit trust whose activities are being inspected;”; and

(2) by the substitution in paragraph (b) of that section for the words “licensed stock brokers and stock dealers to”, of the words “licensed stock exchanges, stock brokers, stock dealers and the managing companies of licensed unit trust to”;

(3) by the addition at the end of that section of the following paragraph :—

“(c) require the managing company of a licensed unit trust to file with the Commission, in respect of every year, at least two reports of the activities of that unit trust for that year. Every such report shall contain the prescribed particulars. The first report shall be filed not later than the thirtieth of September of that year and the second report shall be filed not later than the thirty-first of March of the subsequent year.”

10. Section 18 of the principal enactment is hereby amended by the substitution for the words “set out in Part II of the Schedule”, of the words “set out in Part III of the Schedule”.

11. The following new section is hereby inserted immediately after section 18 and shall have effect as section 18A of the principal enactment :—

“Furnishing incorrect or false information. 18A. (1) Where a licence is granted to a stock broker or stock dealer on the basis of particulars furnished by such stock broker or stock dealer which are subsequently found to be inaccurate or false, the Commission shall suspend for a specified period the licence granted to such stock broker or stock dealer and request such stock broker or stock dealer to furnish the correct particulars on or before the expiry of the period of suspension. The Commission may on receipt of the particulars and after consideration thereof, revoke the order of suspension.

(2) Where the particulars are not furnished within the period specified under subsection (1) in compliance with a request made under that subsection or the Commission determines on a consideration of the particulars furnished that the order of suspension should not be revoked, it shall cancel the licence.”.

12. Section 20 of the principal enactment is hereby amended by the repeal of subsection (1) of that section and the substitution therefor of the following subsection :—

“(1) A licensed stock exchange may within six months prior to the expiry of the licence, make an application to the Commission in the prescribed form together with a prescribed fee for a renewal of the licence.”.

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

(1) in subsection (2) of that section by the substitution for the words “Before the cancellation of a licence”, and for the words “should not be cancelled” of the words “Before the cancellation or suspension of a licence”, and of the words “should not be cancelled or suspended”, respectively;

(2) by the addition at the end of that section of the following new subsections:-

"(4) where the Commission is satisfied that a licensed stock broker or stock dealer has contravened the provisions of paragraph (a) or (b) or (c) or (d) of subsection (1) and that such contravention is not of a serious nature, it may in lieu of acting under subsection (1), direct such licensed stock broker or stock dealer to take whatever action that the Commission may consider appropriate to-

- (a) rectify or set right the condition resulting from such contravention; or
- (b) comply with the provisions of this Act or any rule or regulation made under this Act or to desist from continuing such contravention.

(5) The giving of a direction by the Commission to a licensed stock broker or stock dealer under subsection (4) shall not affect or prejudice the institution or maintenance of a prosecution against such licensed stock broker or stock dealer for an offence under this Act.”.

14. Section 22 of the principal enactment is hereby amended in subsection (1) of that section by the substitution in paragraph (b) of that subsection for the words “under section 21,”, of the words “under section 18A and 21.”.

15. Section 23 of the principal enactment is hereby amended by the substitution for the words “take over the outstanding contracts”, of the words “take over the outstanding contracts relating to transactions in securities”.

16. The following section is hereby inserted immediately after section 23 and shall have effect as section 23A of the principal enactment :-

“Taking over administration and management of licensed stock exchange.

23A. (1) Where the Commission is of the opinion that the public interest requires that the administration and management of a licensed stock exchange should be taken over, it may by Notice published in the *Gazette*, take over the administration and management of such stock exchange for such period as may be specified in such Notice. The Commission may by a subsequent Notice published in the *Gazette*, extend the period specified in the first notice. The Commission shall cause a copy of every such notice to be sent to the Registrar of Companies who shall make a minute thereof in the records relating to the company licensed to carry on the business of operating such stock exchange.

(2) Where the Commission takes over the administration and management of a licensed stock exchange it may enter into an agreement with any person for the management of such stock exchange, subject to such conditions as may be agreed upon between the Commission and such person, having regard to the interests of investors in companies listed in such stock exchange.

(3) Where the Commission takes over the administration and management of a licensed stock exchange, the Commission, or in any case where the Commission has entered into an agreement with any person under subsection (2), that person, may –

- (a) exercise, perform and discharge with respect to such stock exchange, all the powers, duties and functions conferred or imposed on, or assigned to, a licensed stock exchange by or under any written law or the articles of association of the company licensed to carry on the business of operating such stock exchange; and every such exercise, performance and discharge by the Commission or such person shall be as valid and effectual as if it were an exercise, performance and discharge by such licensed stock exchange; and
- (b) take possession of, and use any such movable or immovable property as was used by such licensed stock exchange on the day preceding the date of publication of the Notice referred to in subsection (1), for the purpose of carrying on the business of operating such licensed stock exchange, for such purpose.

(4) During the period for which the administration and management of a licensed stock exchange has been taken over by the Commission, every director or officer of such licensed stock exchange shall, unless expressly authorised to do so by the Commission, cease to exercise, perform and discharge with respect to such licensed stock exchange, any power, duty or function conferred or imposed on or assigned to, such licensed stock exchange, by or under any written law or by the articles of association of the company licensed to carry on the business of operating such stock exchange.

(5) The Commission may at any time before the expiry of the period specified in the Notice published under subsection (1), call upon a licensed stock exchange to reconstitute its Board of Directors in accordance with the rules of such stock exchange, and after such reconstitution, and on expiry of such period shall hand over the property taken possession of, under subsection (3), to the reconstituted Board of Directors.”.

17. Section 24 of the principal enactment is hereby amended as follows :-

- (1) in subsection (2) of that section by the substitution for the words “alternation or addition”, of the words “alteration or addition,”;
- (2) by the addition at the end of that section of the following subsection :-

“(5) Notwithstanding the provisions contained in subsection (3) and (4) of this section, amendments to rules of a stock exchange of such categories as may be specified by the Commission by rules made in that behalf, shall take effect immediately upon the forwarding of the written notice referred to in subsection (2) subject to the condition that the Commission may within twenty one days of such amendment taking effect disallow such amendment without prejudice to anything previously done thereunder and require the stock exchange to comply with the provisions of subsection (4) of this section.”.

18. Section 25 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 addition immediately after the renumbered subsection (1) of the following new subsection :–

“(2) Notwithstanding the provisions contained in subsection (1) of this section, changes or alterations of such categories as may be specified by the Commission by rules made in that behalf, shall take effect immediately upon the Commission being informed of such change or alterations.”.

19. Section 26 of the principal enactment is hereby amended by the substitution for the words “liable on conviction to a fine”, of the words “liable on conviction after summary trial before a Magistrate to a fine”.

20. Section 28 of the principal enactment is hereby repealed and the following section substituted therefor :–

**“Purchase,
sale &c,
of listed
securities.** 28. (1) (a) No person holding shares in a public company listed in a licensed stock exchange shall without the prior approval of the Commission, buy, sell, gift or otherwise deal in such shares except in compliance with the trading procedure adopted by such licensed stock exchange:

Provided that a person may gift any such share to a relation otherwise than in compliance with such trading procedure if he gives prior notice to the Commission and the licensed stock exchange, of the particulars relating to the proposed gift;

- (b) No shares in a public company listed in a licensed stock exchange shall on the death of the holder of such share, be registered in the name of any other person except with the approval of the Commission.

In this subsection “relation” in relation to a person means a parent, spouse or child of that person or the spouse of a child of that person.

(2) No licensed stock exchange, stock broker or stock dealer shall either directly or indirectly, in connection with the purchase, sale or otherwise of any listed securities –

- (a) employ any device, or artifice with a view to defrauding any person;
(b) engage in any practice or course of business which would operate as a fraud or deceit upon any person; or
(c) make any false or misleading statement in relation to a material fact or omit to state a material fact necessary in order to make any statement made not false or misleading.”.

21. Section 29 of the principal enactment is hereby repealed and the following section is substituted therefor:–

**“Trading or otherwise dealing in
listed securities
by licensed stock
brokers and
licensed stock
dealers.** 29. No licensed stock broker or licensed stock dealer shall–
(a) trade in or otherwise deal in listed securities outside the licensed stock exchange of which he is a member without the prior approval of the Commission;

- (b) trade in listed securities in contravention of such rules as the Commission may formulate relating to the clearance, settlement, payment, transfer and delivery of listed securities;
- (c) effect any transaction in a margin account in a manner contrary to the requirements set out by stock exchange of which he is a member without the prior approval of the Commission;
- (d) effect any transaction by means of any manipulative, deceptive or other fraudulent device or contrivance in order to induce or attempt to induce the purchase or sale of any listed securities.”.

22. Section 30 of the principal enactment is hereby amended as follows:-

- (1) in subsection (1) of that section by the substitution for the words “licensed as a stock exchange”, of the words “licensed as a stock exchange”;
- (2) in subsection (3) of that section by the substitution for the words “on conviction be liable”, of the words “be liable on conviction after summary trial before a Magistrate”.

23. The following new part is hereby inserted immediately after Part III and shall have effect as Part IIIA of the principal enactment.

“PART IIIA

GRANT OF LICENCE TO UNIT TRUST

Grant of a licence to operate a unit trust.

31A. A managing company intending to operate a unit trust shall make an application in the prescribed form together with the prescribed fee to the Commission for the grant of a licence to operate such unit trust. Every such application shall be accompanied by the prescribed documents.

Terms and conditions to be complied with for the grant of a licence under this Part.

31B. No licence shall be granted under this Part for the operation of a unit trust unless such unit trust complies with the terms and conditions set out in Part IV of the Schedule hereto.

Grant of licence.

31C. On receipt of an application made under section 31A the Commission, having considered the particulars stated therein and the documents accompanying such application and, where it deems it necessary, having given the applicant an opportunity of being heard, in person or by a representative, shall, by written notice to the applicant, inform the applicant, whether he is being granted a licence or not.

Cancellation of a licence granted to a unit trust.

31D. (1) The Commission shall cancel or suspend the licence granted in respect of a unit trust where the Commission is satisfied that-

- (a) the trustee or managing company of that licensed unit trust has acted in breach of any provisions of this Act, or any rules or regulations made under this Act; or

- (b) the trustee or managing company of that licensed unit trust has ceased to be of good financial standing; or
- (c) the managing company has since the grant of the licence, been disqualified for the grant of such licence;
- (d) the trustee or managing company of that licensed unit trust is guilty of malpractice or irregularity in the management of his affairs; or
- (e) the managing company of that licensed unit trust has been dismissed by the trustee of that unit trust.

(2) Before the cancellation of a licence granted in respect of a unit trust in terms of the preceding subsection, the licensee shall be given an opportunity to show cause as to why such licence should not be cancelled.

(3) Where the licence granted in respect of a unit trust is cancelled, it shall be the duty of the licensee to forthwith surrender his licence to the Commission.

(4) Where the Commission is satisfied that the trustee or managing company of a unit trust has contravened the provisions of paragraph (a) or (b) or (c) or (d) of subsection (1) and that such contravention is not of a serious nature, it may in lieu of acting under subsection (1), direct such trustee, or managing company to take whatever action that the Commission may consider appropriate to –

- (a) rectify or set right the condition resulting from such contravention; or
- (b) to comply with the provisions of this Act or any rule or regulation made under this Act or to desist from continuing such contravention.

(5) The giving of a direction by the Commission to a trustee, or managing company, under subsection (4), shall not affect or prejudice the institution or maintenance of a prosecution against such trustee or managing company for an offence under this Act.

Appeal from
a refusal,
cancellation
or suspension.

31E. (1) Any person aggrieved by a decision of the Commission–

- (a) refusing to grant a licence under section 31A, or
- (b) cancelling or suspending a licence under section 31D,

may appeal to the Secretary to the Ministry of the Minister against such refusal, cancellation or suspension, as the case may be, within three months from the date on which the decision is communicated to such person.

(2) The Secretary to the Ministry of the Minister may require the Commission to show cause for its decision to his satisfaction and shall, within three months of the receipt of such appeal, communicate his decision to the person making the appeal.

(3) An applicant who is aggrieved by the decision of the Secretary to the Ministry of the Minister may appeal against such decision to the Court of Appeal, within fourteen days from the date on which the decision is communicated to the applicant.

(4) Until rules are made under Article 136 of the Constitution pertaining to appeals under this section, the rules made under that Article pertaining to applications by way of revision to the Court of Appeal shall, *mutatis mutandis*, apply to every appeal made under subsection (3) of this section.

(5) The Court of Appeal may, on an appeal made to it under this section confirm, revise, modify or set aside the decision of the Secretary to the Ministry of the Minister and may make any order as the interests of justice may require.

Amendment of trust deed relating to unit trust. 31F. (1) The trust deed of a licensed unit trust shall not be amended, without the prior approval in writing of the Commission .

(2) Where the trustee of a licensed unit trust proposes to amend the trust deed of such unit trust he shall forward the proposed amendments, to the Commission.

(3) The Commission shall, within twenty one days of receipt of the proposed amendments forward under subsection (2), give written notice to the managing company and trustee stating whether the proposed amendments to the trust deed are allowed or disallowed.

In case such amendments are disallowed the Commission shall give reasons for such disallowance.

(4) Upon receipt of a notice under subsection (3), trustee shall give immediate effect to such notice.

Alteration of any particulars furnished. 31G. Where a person licensed under section 31A proposes to alter any particulars in his application for a licence or undergoes or intends to undergo a change from the state specified in the application for a licence under section 31A, it shall be the duty of such person to inform the Commission and obtain its prior consent before such alteration or change is effected.

Restriction on use of words "unit trust" or "licensed unit trust". 31H. No person shall use the words unit trust or licensed unit trust, as the case may be, unless he has been authorised to operate a unit trust under section 31A.

Restriction on issue of advertisement inviting investment in unit trust. 31I. No person shall issue or publish a prospectus or an advertisement inviting the public to invest in units of a licensed unit trust (other than advertisements excluded by the Commission by rules) unless he has obtained the prior written approval of the Commission, for the content of such prospectus or the text of such advertisement, as the case may be, and for its issue or publication.

31J. (1) Notwithstanding anything in the Trust Ordinance or any other law, a trustee of a licensed unit trust shall not be liable for any breach of trust arising from any act of the managing company of such unit trust if –

- (a) such act was done without obtaining the concurrence of such trustee;
 - (b) such act was done after obtaining the concurrence of such trustee and such concurrence was given, in good faith, on the faith of any written statement or representation made to such trustee by such managing company as to any matter relating to trust property or on the faith of any professional advice obtained by such managing company independently of such trustee.
- (2) nothing contained in subsection (1) of this section shall be deemed to exempt a trustee from liability for a breach of trust which has been occasioned by fraud or negligence.”.

24. Section 32 of the principal enactment is hereby amended as follows :–

(1) in subsection (1) of that section :-

- (a) by the substitution for the words “subsection (8)”, and “knowingly connected”, of the words “subsections (8) and (9)”, and “connected” respectively;
- (b) by the substitution in paragraph (c) of that subsection for the words “he knows is unpublished”, of the words “he can reasonably be expected to know is unpublished”;

(2) in subsection (2) of that section –

- (a) by the substitution for the words “has been knowingly connected”, of the words “has been connected”;
- (b) by the substitution in paragraph (b) of that subsection for the words “to disclose”, of the words “not to disclose”;
- (c) by the substitution in paragraph (c) by the subsection for the words “he knows is unpublished”, of the words “he can reasonably be expected to know is unpublished”;

(3) in subsection (3) of that section –

- (a) by the substitution in paragraph (a) of that subsection for the words “has information which he knowingly obtained, whether directly or indirectly,”, of the words “has information which he obtained, or has reasonable cause to believe he obtained, whether directly or indirectly,”;
- (b) by the substitution in sub-paragraph (i) of paragraph (b) of that subsection for the words “if he knows that the information”, of the words “if he can reasonably be expected to know that the information”;
- (c) by the substitution in subparagraph (ii) of paragraph (b) of that subsection for the words “if he knows that the information”, and “company of

- involving”, of the words “if he can reasonably be expected to know that the information” and “company or involving”, respectively;
- (4) in subsection (4) of that section by the substitution for the words “ if he knows that the information”, of the words “if he can reasonably be expected to know that the information”;
 - (5) by the repeal of subsection (5) of that section and the substitution therefor of the following subsection—
- “(5) Subject to the provisions of subsections (8) and (9) where an individual has obtained, or has reasonable cause to believe he has obtained, from an individual to whom the provisions of subsection (4) apply, information that the offer referred to in subsection (4) is being contemplated or no longer contemplated the first mentioned individual shall not himself trade in listed securities of that company if he can reasonably be expected to know that the information is unpublished price sensitive information in relation to those securities.”;
- (6) in subsection (8) of that section, by the substitution in subparagraph (i) of paragraph (c) of that subsection for the words “obtain by him”, of the words “obtained by him”; and
 - (7) in subsection (9) of that section by the substitution for the words “facilitate the competition”, of the words “facilitate the completion”.

25. Section 33 of the principal enactment is hereby amended as follows :—

- (1) in subsection (1) of that section by the substitution in subparagraph (c) of that subsection, for the words “the individual holding it knows, is unpublished”, of the words “is unpublished”;
 - (2) in subsection (3) of that section, by the repeal of paragraph (c) of that subsection and the substitution therefor of the following paragraph :—
- “(c) shall not communicate to any person the information held or obtained by him as referred to in subsection (2) if he knows or has reasonable cause to believe that such person or any other person will make use of that information for the purpose of counselling or procuring any other person to trade in such relevant securities.”.

26. Section 35 of the principal enactment is hereby amended in subsection (2) of that section by the repeal of paragraph (b) of that subsection and the substitution therefor of the following paragraph:-

- “(b) all sums of money as may be charged as costs incurred in carrying out all inspections under paragraph (a) of section 14 or paid as fees under section 15, section 20 and section 31A;”.

27. Section 38 of the principal enactment is hereby amended by the repeal of subsection (2) of that section and the substitution therefor of the following subsection :—

- “(2) The Compensation Fund shall consist of –

(a) such sums of money as may be voted upon by Parliament for the purpose of the Fund;

(b) such sums of money as may be credited to the Fund under section 51A.”.

28. Section 39 of the principal enactment is hereby amended in subsection (2) of that section by the substitution for the words “shall for all purposes be final and conclusive.”, of the words “shall be final and conclusive for the purpose of this Act.”.

29. Section 42 of the principal enactment is hereby amended as follows :-

- (1) in subsection (1) of that section, by the substitution for the words “Minister shall, in consultation with Council,”, of the words “Minister shall, on the recommendation of the Commission,”;
- (2) in subsection (4) of that section by the substitution for the words “Minister may remove from the office”, of the words “Minister may on the recommendation of the Commission, remove from office”.

30. Section 46 of the principal enactment is hereby amended by the repeal of subsections (1), (2), and (3) of that section and the substitution therefor of the following subsections :-

- “(1) The Commission may establish a Committee consisting of three members of the Commission to hear and determine –
 - (a) complaints by shareholders of any listed public company or unit holders of licensed unit trust, relating to the professional conduct or activities of, a licensed stock exchange, any licensed stock broker or stock dealer of such stock exchange or of such listed company or the managing company of such licensed unit trust;
 - (b) complaints by any licensed stock broker or stock dealer, relating to the professional conduct or activities of the licensed stock exchange of which such stock broker or stock dealer is a member.
- (2) The Committee may on receipt of any written complaint made by any shareholder, or unit holder or a licensed stock broker or stock dealer, examine the documents and other evidence produced, if any, in support of such complaint and determine whether such licensed stock exchange, licensed stock broker or stock dealer or the listed company or the managing company of such licensed unit trust, as the case may be, has violated any provisions of this Act or any regulation or rule made under this Act or violated any rule of such licensed stock exchange. No such determination shall be made without affording such licensed stock exchange, licensed stock broker or stock dealer or the listed company or such managing company, as the case may be, an opportunity of being heard.
- (3) Where the Committee determines that a licensed stock exchange, licensed stock broker or a stock dealer or a listed company or managing company of such licensed unit trust, as the case may be, has violated any provisions of this Act or any regulation or rule made under this Act or violated any rule of such licensed stock exchange, the Committee shall recommend to the Com-

mission the nature of action to be taken against such licensed stock exchange, licensed stock broker or dealer of the listed company or managing company, as the case may be. The Commission shall have the discretion either to take appropriate action to give effect to those recommendations or to refer the matter for further investigation to the appropriate authority.”.

31. Section 51 of the principal enactment is hereby amended as follows :-

- (1) in subsection (1) of that section –
 - (a) by the substitution in paragraph (a) for the words “any regulation made thereunder;”, of the words “any regulation or rule made thereunder;”;
 - (b) by the substitution in paragraph (b) for the words “untrue or incorrect; or”, of the words “untrue, incorrect or misleading;
 - (c) by the substitution, in paragraph (c) of that section for the words “servant of the Council in”, of the words “servant of the Commission or any person with whom the Commission has entered into an agreement under subsection (2) of section 23A in”;
- (2) in subsection (2) of that section, by the substitution for the words “shall liable on conviction”, of the section 51A of the principal enactment:-

32. The following new section is hereby inserted immediately after section 51 and shall have effect as section 51A of the principal enactment–

“Compounding of offences.

51A. The Commission may having regard to the circumstances in which the offence under this Act was committed, compound such offence for a sum of money not exceeding one-third of the maximum fine imposable for such offence and all such sums of money received by the Commission in the compounding of an offence under this section, shall be credited to the Compensation Fund established under section 38.”.

33. Section 53 of the principal enactment is hereby amended as follows :-

- (1) by the renumbering of that section as subsection (1) of that section;
- (2) the renumbered subsection (1) of that section –
 - (a) by the substitution in paragraph (b) of that subsection for the words “by dealers about share transactions by”, of the words “by licensed stock brokers and stock dealers about share transactions and transactions relating to units in a licensed unit trust by”;
 - (b) by the repeal of paragraph (c) of that subsection and the substitution therefor of the following paragraph :–
 - (c) proper maintenance of books, records, accounts and audits by licensed stock exchange, licensed stock broker or dealer or the managing company of a licensed unit trust and regular reporting by such licensed stock exchange, licensed stock broker or dealer or managing company to the Commission of their affairs;”;

(c) by the insertion immediately after paragraph (c) of that subsection of the following new paragraphs :–

- “(d) the annual audit of the books, records, accounts and the preparation of financial statements by a licensed stock exchange, licensed stock broker and stock dealer and the managing company of a licensed unit trust;
- “(e) regulation of take-overs or mergers where such take-over or merger is between one or more listed companies or where at least one of the parties involved in such take-over or merger is a listed company;
- “(f) a code of conduct to be observed by the trustee and managing company of a licensed unit trust;
- “(g) matters in respect of which rules are required by this Act to be made.”;

(3) by the addition immediately after renumbered subsection (1), of the following new subsection :–

“(2) Every rule made 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.”.

34. Section 55 of the principal enactment is hereby amended as follows –

(1) by the insertion immediately before the definition of “investor” of the following definition :–

“connected person” in relation to the trustee or managing company of a unit trust means –

- “(a) person owning, directly or indirectly, a prescribed *per centum* or more of the ordinary share capital of the trust company, or managing company, or is able to exercise directly or indirectly a prescribed *per centum* or more of the total votes in the trust company, or managing company;
- “(b) a company, a prescribed *per centum* or more whose ordinary capital is owned, directly or indirectly, together by the trust company and managing company or prescribed *per centum* or more of the total votes are exercised directly or indirectly by trust company and managing company;
- “(c) a director or officer of the trust company, managing company or a company referred to in paragraph (b);’;

(2) by the insertion immediately after the definition of “listed securities”, of the following definition:

“managing company” in relation to a licensed unit trust means a company, incorporated under the law for the time being in force relating to the incorporation of companies or any body corporate established by or

under any written law, managing property held by the trustee of such unit trust for the benefit of unit holders of such unit trust;’;

- (3) by the repeal of the definition of “securities”, and the substitution, of the following definition therefor :–

“securities” means debentures, stocks, shares, funds, bonds or notes issued, or proposed to be issued, by any Government or of any body, whether corporate or unincorporate, including any rights, options or interests (whether described as units or otherwise).therein or in respect thereof or any other instruments commonly known as securities, but does not include bills of exchange or promissory notes or certificate of deposits issued by a bank;’;

- (4) by the addition, at the end of that section, of the following new definitions :–

“trustee” in relation to a licensed unit trust, means the person appointed as trustee in the instrument creating such unit trust;

“unit holder” in relation to a unit trust means a person for the time being registered by the trust as the holder of a unit certificate under such unit trust;

“unit trust” means any arrangement made for the purpose , or of having the effect, of providing for the participation by persons as beneficiaries under a trust, in profits or income and capital gains arising from the acquisition, holding , management or disposal of securities or any other property vested in the trustee of such trust.’.

35. The Schedule to the principal enactment is hereby amended in Part I of that Schedule, as follows :-

- (1) by the substitution for item (g) of that Part of the following item :–

“(g) that the Board of Directors of the applicant company consists of nine members approved by the Commission, out of whom not more than five members shall be from among individual stock brokers or stock dealers elected by the general membership, and not less than four members shall be appointed by the Minister from among persons recommended by the Commission;”;

- (2) by the substitution in item (i) for the words “is satisfactory; and”, of the words “is satisfactory;”;

- (3) by the substitution in item (j) (ii) for the words “of person who are”, of the words “of persons who are”;

- (4) by the substitution in item (j) (viii), for the words “informed investment”, of the words “informed investments”;

- (5) by the substitution in item (j) (ix), for the words “and form the abuse of”, of the words “and from abuse of”;

- (6) by the substitution in item (j) (xi), for the words “stock dealers for conducting”, of the words “stock dealers and for conducting”;

- (7) by the substitution for items (j) (xiii) and (xiv) of that Part, of the following items :-
- “(xiii) with respect to the conduct of securities trading of stock brokers and stock dealers and the manner in which information relating to such transaction shall be maintained;
- (xiv) for ensuring that the customers funds and securities are segregated from other business of brokers and dealers; and”;
- (8) by the addition immediately after item (j) (xiv) of that Part of the following new item :-
- “(xv) for the appointment of a disciplinary committee a majority of the members of which are not associated with any licensed stock broker or licensed stock dealer.”;
- (9) by the addition immediately after item (j) of that Part of the following new item :-
- “(k) that the articles of association of the applicant company provide procedure for removal of stock exchange management officials only by the vote of at least two-thirds of all the membroker or licensed stock dealer.”;
- (10) by the addition of the following Part at the end of that Schedule which shall have effect as Part IV of the Schedule :-

“PART IV

Terms and conditions to be complied with for the purposes of the grant of a licence to operate unit trust are :

- (a) that the trustees and managing company of the unit trust in respect of which the application is made, be separate persons;
- (b) that the trustee is not a connected person of the managing company;
- (c) that the trust deed creating such trust or the agreement between the trustee and the management company –
 - (i) sets out the restrictions on the investment of trust property;
 - (ii) provides that unit holders shall not be required to make any further payment or assume any further liability, except in the circumstances, if any, as are set out in such trust deed;
 - (iii) sets out the method of calculating the offer and redemption prices of units;
 - (iv) sets out the circumstances in which the redemption of units can be suspended;
 - (v) provides for the maintenance of a register of unit holders;
 - (vi) contains provisions requiring the trustee, the managing company and their connected persons to disclose their interest, whenever any business

in which they have a material interest is being discussed at any meeting of the trust;

- (vii) provides for the appointment as auditors of the unit trust of persons having the qualifications specified by rules of the Commission and empowers the Commission to require the retirement of such auditors when they cease to possess such qualifications;
- (viii) empowers the trustee to dismiss the managing company on the managing company going into liquidation (other than voluntary liquidation) or on the appointment of a receiver in respect of any assets of the managing company or on the trustee being satisfied that a change of managing company is desirable in the interest of unit-holders or on the holders of at least seventy-five *per centum* of the units issued request the dismissal of the managing company;
- (ix) provides for the appointment by the trustee of a successor, immediately on the dismissal of the managing company;
- (x) prohibits the trustee from retiring until a new trustee is appointed;
- (xi) prohibits the managing company from entering into any under-writing or subwriting contract on behalf of the trust, except with the approval of the trustee and the Commission;
- (xii) prohibits the making or granting of loans out of trust property, except with the consent of the trustee;
- (xiii) provides for the approval in writing of the trustee, for any transaction between the managing company or any connected person of the managing company and the trust;
- (xiv) does not exempt the managing company from any liability imposed on it by law nor indemnifies it against such liability at the expense of the unit holders;
- (xv) provides that the consideration paid duly created units (less any charges that the managing company is entitled to retain) shall become subject to the trust immediately on receipt of such consideration by the trustee;
- (xvi) provides that a certificate in respect of units shall be delivered to a third party only on the trustee being satisfied that the consideration paid for such units (less any charges that may be retained by the managing company) has been or will be, vested in the trustee;
- (xvii) provides that where any trust property is registered in the name of a lender as security for a loan obtained by the trust the trustee shall be liable for any act or omission of the lender or his agent with respect to such property;
- (xviii) prohibits the appointments of a new trustee except with the approval of the Commission;
- (xix) specifies the minimum initial investment in units permitted;

- (xx) specifies the maximum initial charge which can be levied on the purchase of units;
- (xxi) provides for deposit of security by trustee, guaranteeing against loss due to his misconduct or negligence, where required by the Commission.”.

36. For the avoidance of doubts, it is declared that –

- (a) members of the Securities Council holding office immediately prior to the date of commencement of this Act shall be deemed to be members of the Securities and Exchange Commission of Sri Lanka and of the appointed members of such Securities Council holding office on that day–
 - (i) two members selected by the Minister shall, notwithstanding anything in section 4, hold office for a period of four years from the date of their appointment as members of the Council; and
 - (ii) two members selected by the Minister shall, notwithstanding anything in section 4, hold office for a period of five years from the date of their appointment as members of the Council;
- (b) every licence issued to any stock broker or stock dealer by the Securities Council and which is in force immediately prior to the date of commencement of this Act, shall be deemed to be a licence issued by the Securities and Exchange Commission of Sri Lanka;
- (c) all rules and regulations made by the Securities Council and are in force on the day immediately prior to the date of commencement of this Act shall be deemed to be rules and regulations made by the Securities and Exchange Commission of Sri Lanka;
- (d) all contracts, agreements and other instruments of the Securities Council subsisting on the day immediately prior to the date of commencement of this Act, shall be deemed to be contracts, agreements or other instruments entered into by the Securities and Exchange Commission of Sri Lanka;
- (e) all suits, actions, and other legal proceedings instituted by or against the Securities Council and pending on the day, immediately prior to the date of commencement of this Act, shall be deemed to be suits, actions and other legal proceedings instituted by or against the Securities and Exchange Commission of Sri Lanka.

37. A licence issued to a stock exchange under the principal enactment and in force on the day immediately prior to the date of commencement of this Act shall notwithstanding anything to the contrary in the principal enactment be deemed to expire on the expiration of a period of ninety days from the date of commencement of this Act.

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

STAMP DUTY (AMENDMENT) ACT, NO. 27 OF 1991

[Certified on 5th July, 1991]

AN ACT TO AMEND THE STAMP DUTY ACT, NO. 43 OF 1982

1. This Act may be cited as the Stamp Duty (Amendment) Act, No. 27 of 1991.
2. Section 2 of the Stamp Duty Act, No. 43 of 1982 (hereinafter referred to as the "principal enactment"), as amended by Act, No. 71 of 1988, is hereby further amended, as follows :—
 - (1) by the substitution in paragraph (d) of that section for the words "to be done, in Sri Lanka,", of the words "to be done, in Sri Lanka;";
 - (2) by the insertion immediately after paragraph (d) of that section, of the following new paragraph :—

"(e) every document in relation to any transaction which a person enters into with any bank in Sri Lanka for the withdrawal or transfer of money,".
3. Section 5 of the principal enactment as amended by Act, No. 71 of 1988 is hereby further amended as follows :—
 - (1) by the insertion immediately after paragraph (8) of that section of the following new paragraph :—

"(8a) document in relation to a transaction entered into with any bank for the transfer of money from an account in the name of a person to another account in the name of the same person in such bank;";
 - (2) by the substitution in paragraph (9) of that section for the words "for or on behalf of the Government;", of the words "for or on behalf of the Government where no consideration was received;";
 - (3) by the insertion, immediately after paragraph (20) of that section, of the following new paragraphs :—

"(20a) share certificate issued in respect of any share in any quoted public company;

(20b) instrument executed for the transfer of any share in any quoted public company;".
4. Section 13 of the principal enactment as amended by Act, No. 71 of 1988, is hereby further amended by the repeal of subsection (1) of that section and the substitution therefor of the following subsection :—

"(1) The Commissioner-General may authorize —

 - (a) any person issuing insurance policies,
 - (b) any company issuing shares, whether such issue is original or increased or creating debenture stock,
 - (c) any bank doing business in Sri Lanka,
 - (d) any employer making payments to employees who are liable to give stamped receipts in respect of such payments,

- (e) an officer of the Supreme Court, Court of Appeal, the High Court, a District Court or any other court created or established by law,
- (f) any credit card company making payment on the presentation of a claim, demand or request,
- (g) any institution encashing travellers cheques,
- (h) any other person issuing instruments of a category having regard to the act that it is impracticable or inexpedient to stamp instruments of that category at the time, or in the manner, prescribed by this Act,

to compound for the payment of the stamp duty payable, as the case may be, on the insurance policies issued by such person or on the shares or debenture stock issued by such company or on cheque forms supplied by such bank or on documents in relation to any transaction which any person enters into with such bank for the withdrawal or transfer of money or on the receipt given by employees to such employer or on the documents presented or filed in any civil or admiralty proceedings instituted in such court or on any claim demand or request presented to such credit card company or on the travellers cheques encashed by such institution or on the instruments issued by such other person, on all or any of the following conditions :–

- (i) that such person, company, bank, employer, officer, credit card company, institution or other person, as the case may be, enters into a bond with the Commissioner-General substantially in the prescribed form;
- (ii) that such person, company, bank, employer, officer, credit card company, institution or other person, as the case may be, maintains a record of the insurance policies issued by such person or the shares or debenture stock issued by such company or the cheque forms supplied by such bank or document in relation to transaction which a person enters into with any bank in Sri Lanka for the withdrawal or transfer of money, or the receipts given by such employees or the documents presented or filed in civil or admiralty proceedings instituted in such court or the claims, demand or request presented to such credit card company or the travellers cheques encashed by such institutions or the instruments issued by such other persons;
- (iii) that such person, company, bank employer, officer, credit card company, institution, or other person, as the case may be, remits to the Commissioner-General, at the end of such periods as may be specified by the Commissioner-General, the aggregate stamp duty payable, as the case may be, on –
 - (a) the insurance policies issued by such person,
 - (b) the shares or debenture stock issued by such company,
 - (c) the cheque forms supplied by such bank or documents in relation to any transactions which any person entered into with such bank for the withdrawal or transfer of money.
 - (d) the receipts given by such employees,
 - (e) the documents presented or filed in civil or admiralty proceedings instituted in the court to which such officer is appointed,
 - (f) the claims, demands or request presented to such credit card company,

- (g) the traveller's cheques encashed by such institution, or
- (h) instrument issued by such other person, during that period.

For the purpose of this subsection "institution" means a person or a body of persons authorized to encash travellers cheques by the Central Bank of Sri Lanka established by the Monetary Law Act.".

5. Section 54 of the principal enactment is hereby amended in subsection (1) of that section, as follows :—

- (1) by the substitution in paragraph (d), for the words "in any manner whatsoever.", of the words "in any manner whatsoever";, and
- (2) by the addition immediately after paragraph (d) of that subsection, of the following new paragraph :—
 - "(e) where a letter of credit, issued in pursuance of a duly stamped application made for such letter of credit, has not been made use of in any manner whatsoever.".

6. Section 71 of the principal enactment as amended by Act, No. 71 of 1988, is hereby further amended as follows :—

- (1) in the definition of "authorized representative", by the substitution for paragraph (2) thereof, of the following paragraph :—
 - "(2) who is authorized by any person in writing from time to time to act on behalf of such person, for the purposes of this Act in respect of such matters as are specified in the authorization and who—
 - (i) being an individual registered as an auditor under the Companies (Auditors) Regulations is approved by the Commissioner General; or
- (4) by the insertion immediately after the definition of "public corporation", of the following new definition :—
 - "quoted public company" means any company which has its registered or principal office in Sri Lanka or the control and management of the business of which are exercised in Sri Lanka and the shares of which are quoted in any official list published by a stock exchange licensed under the Securities Councils Act, No. 36 of 1987;";

- (5) by the substitution in the definition of "write" for the words "figures can be expressed", of the words "figures, whether in codified or other form can be expressed".

7. (1) The amendment made to section 5 of the principal enactment by section 3 (3) of this Act, shall be deemed for all purposes to have come into force on November 15, 1990.

(2) The amendment made to section 5 of the principal enactment by section 5 of this Act, shall be deemed for all purposes to have come into force on November 12, 1986 and every person entitled to make an application for an allowance under section 54 shall be deemed to have complied with subsection (2) of that section if he makes such application within a period of three months from the date of commencement of this Act.

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

COMPANIES (AMENDMENT) ACT, NO. 33 OF 1991

[Certified on 21st August, 1991]

AN ACT TO AMEND THE COMPANIES ACT, NO. 17 OF 1982.

1. This Act may be cited as the Companies (Amendment) Act, No. 33 of 1991.

2. Section 74 of the Companies Act, No. 17 of 1982 (hereinafter referred to as "the principal enactment") is hereby amended by the substitution in subsection (2) thereof for the words "appropriate number.", of the words "appropriate number:

Provided nothing in this subsection shall apply where all the shares in a company or all the shares of a particular class in a company are fully paid up and rank equally with each other.”.

3. Section 108 of the principal enactment is hereby amended, in paragraph (a) of subsection (1) thereof, by the substitution for the words "each member, distinguishing", of the words "each member and where required by the provisions of subsection (2) of section 74, distinguishing".

4. Section 109 of the principal enactment is hereby amended, by the insertion immediately after subsection (1) of that section, of the following new subsection :—

"(1A) Where an index referred to in subsection (1) contains the name of any company referred to in subsection (2) of section 114, there shall be annexed to such index, all written notices given by such company relating to the person for whose benefit the shares registered in the name of that company are held in trust by such company.”.

5. Section 110 of the principal enactment is hereby amended in paragraph (b) of subsection (1) thereof, by substitution for the words "the warrant distinguishing", of the words "the warrant and where required by the provisions of subsection (2) of section 74, distinguishing.”.

6. Section 114 of the principal enactment is hereby amended as follows :—

- (1) by the renumbering of that section as subsection (1) of that section;
- (2) in the renumbered subsection (1) of that section by the substitution for the words "section 55(1)", of the words "section 55 (1) and subsection (2) of this section,";
- (3) by the addition immediately after the renumbered subsection (1), of the following new subsections :—

"(2) Notwithstanding the provisions of subsection (1), a company shall enter in its register and the Registrar shall receive a notice of any trust, expressed, implied or constructive given by a company—

- (a) primary object of which is to act as a central depository to a stock exchange licensed under the Securities Councils Act, No. 37 of 1987; and
- (b) which has been approved by the Minister in consultation with the Securities Council established by the said Act.

(3) Where a notice of any trust , expressed, implied or constructive is entered in the register of a company under subsection (2), the person for whose benefit any shares in such company are held in trust shall, in respect of those shares and notwithstanding anything to the contrary in this Act, enjoy all such rights and privileges and be subject to all such duties and obligations, as a registered shareholder of those shares would be entitled to , or be subject to under this Act.”.

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

INLAND REVENUE (AMENDMENT) ACT, NO. 49 OF 1991

[Certified on 21st December, 1991]

AN ACT TO AMEND THE INLAND REVENUE ACT, NO. 28 OF 1979

1. This Act may be cited as the Inland Revenue (Amendment) Act, No. 49 of 1991.
2. Section 8 of the Inland Revenue Act, No. 28 of 1979 (hereinafter referred to as "the principal enactment") is hereby amended as follows :—

- (1) in paragraph (a) of that section –
 - (a) by the substitution, in sub-paragraph (LVIII), of that paragraph for the words "International Committee of the Red Cross; and", of the words "International Committee of the Red Cross;";
 - (b) by the substitution, in sub-paragraph (LIX) of that paragraph for the words and figures "Institute of Policy Studies of Sri Lanka Act, No. 53 of 1988.", of the words and figures "Institute of Policy Studies of Sri Lanka Act, No. 53 of 1988;";
 - (c) by the addition immediately after sub-paragraph (LIX) of that paragraph, of the following sub-paragraphs :—
 - "(LX) the Credit Information Bureau of Sri Lanka established by the Credit Information Bureau of Sri Lanka Act, No. 18 of 1990, for any year of assessment commencing on or after April 1, 1991; and
 - "(LXI) Rubber Research Board established under the Rubber Research Ordinance, for any year of assessment commencing on or after April 1, 1991."; and
- (2) in paragraph (c) of that section –
 - (a) by the substitution for sub-paragraph (iv) of that paragraph of the following sub-paragraph :—
 - "(iv) a foreign currency banking unit from all off-shore transactions of the unit.

For the purpose of this sub-paragraph any foreign currency transaction which any foreign currency banking unit enters into, on or after April 1, 1991, with any other foreign currency banking unit, shall be deemed to be an off-shore transaction;";
 - (b) by the addition immediately after sub-paragraph (iv) of that paragraph of the following sub-paragraph :—
 - "(v) a foreign currency banking unit arising on or before March 31, 1991, from such on-shore foreign currency transactions of the unit as may be approved by the Minister having regard to the foreign exchange benefits that are likely to accrue to the country from such transactions;".

3. Section 9 of the principal enactment is hereby amended, in subsection (1) of that section, as follows :—

- (1) in paragraph (b) of that subsection –
- (a) by the insertion, immediately after sub-paragraph (iii) of that paragraph of the following sub-paragraph :–
“(iiia) an employee of any Provincial Council or an officer of a provincial public service;”;
- (b) by the insertion, immediately after sub-paragraph (ix) of that paragraph, of the following sub-paragraphs :–
“(x) the Governor for a Province appointed under Article 154B of the Constitution;
(xi) any member of any Provincial Council;”;
- (c) by the substitution, for the words and figures “referred to in items (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) or (ix);”, of the words and figures “referred to in sub-paragraph (i), (ii), (iii), (iiia), (iv), (v), (vi), (vii), (viii), (ix), (x) or (xi);”; and
- (2) by the substitution, for paragraph (l) of that subsection, of the following paragraph :–
“(l) profits and income not exceeding in the aggregate –
- (a) one thousand two hundred rupees, for any year of assessment ending on or before March 31, 1991, and
- (b) two thousand four hundred rupees, for any year of assessment commencing on or after April 1, 1991.
- from all sources other than employment, derived by or arising or accruing to , an individual or any child whose total statutory income is aggregated with the income of that individual, if the total statutory income, for that year of assessment, of that individual consists only of –
- (i) profits and income from employment not exceeding –
- (a) thirty thousand rupees, in any year of assessment commencing on or after April 1, 1979 but prior to April 1, 1986;
- (b) forty-two thousand rupees, for the year of assessment commencing on April 1, 1986;
- (c) forty-five thousand rupees, for any year of assessment commencing on or after April 1, 1987 but prior to April 1, 1991; and
- (d) sixty thousand rupees, for any year of assessment commencing on or after April 1, 1991; and
- (ii) profits and income not exceeding –
- (a) one thousand two hundred rupees, for any year of assessment ending on or before March 31, 1991; and

(b) two thousand four hundred rupees, for any year of assessment commencing on or after April 1, 1991,

from all sources of profits and income other than employment,

and accordingly, where any income tax has been paid, by deduction or otherwise, by such individual in any year of assessment, in respect of any profits and income which are exempt under this paragraph, such tax shall, on an application in that behalf being made in writing by such individual within three years of the end of that year of assessment, be refunded to him;”.

4. Section 10 of the principal enactment is hereby amended in paragraph (b) of that section by the substitution, for the words “for any year of assessment, by”, of the words and figures “for any year of assessment ending on or before March 31, 1991, by”.

5. Section 14 of the principal enactment is hereby amended in paragraph (a) of that section as follows :–

- (a) by the substitution, in sub-paragraph (xvii) (b) of that paragraph, for the words and figure, “referred to in section 17E, if the sum”, of the words and figure “referred to in section 17F, if the sum”; and
- (b) by the substitution in sub paragraph (xix) of that paragraph for the words and figures “referred to in section 22DDD”, of the words and figure “referred to in section 22DDDD”.

6. Section 15 of the principal enactment is hereby amended as follows :–

- (1) in paragraph (CCC) of that section, by the addition, at the end of that paragraph, of the following :–

‘For the purposes of this paragraph, “vocation” means a vocation in the field of literature or fine arts.’; and

- (2) by the addition, immediately after paragraph (v) of that section, of the following paragraph :–

“(w) any profits and income within the meaning of paragraph (a) of section 3, derived by, or accruing to , any person, from the sale after one year from the date of acquisition by such person but before April 1, 1994, of any share in any quoted public company.”.

7. Section 17c of the principal enactment is hereby amended in paragraph (c) of subsection (2) of that section, as follows :–

- (1) in sub-paragraph (i) of that paragraph, by the substitution for the words “industrial processes; or”, of the words “industrial processes;”;
- (2) in sub-paragraph (ii) of that paragraph, by the substitution for the words “industrial design:”, of the words “industrial design; or”; and
- (3) by the insertion, immediately after sub-paragraph (ii) of that paragraph, of the following sub-paragraph :–
“(iii) an undertaking of a pioneering nature, based on computer technology,

for the development and provision, of telecommunication services in Sri Lanka.”.

8. Section 17F of the principal enactment is hereby amended in subsection (3) of that section as follows :–

- (1) by the substitution, for the words “For the purposes of this section and in relation to any industrial undertaking –”, of the words “For the purposes of this section–”;
- (2) by the substitution in paragraph (c) of that subsection, for the words “not to be new capital expenditure.”, of the words “not to be new capital expenditure;”;
- (3) by the addition, at the end of that subsection of the following paragraph :–
‘(d) the expression “production or manufacture of goods or commodities” includes the growing of fruits, vegetables, flowers or foliage plants.’

9. Section 17G of the principal enactment is hereby repealed and the following section substituted therefor :–

'Exemption from income tax, of the profits and income of certain omnibuses.'

17G (1) Such part of the profits and income within the meaning of paragraph (a) of section 3 (other than any profits and income from the sale of capital assets), of any undertaking for the transport of passengers, as consist of the profits and income from the operation of any specified omnibus shall be exempt from income tax for a period of three years from the date of the first registration of that omnibus by the Registrar of Motor Vehicles.

- (2) For the purposes of this section –
 - (i) “specified omnibus” means any omnibus which –
 - (a) is new;
 - (b) is first registered by the Registrar of Motor Vehicles on or after January 1, 1990 but prior to April 1, 1992; and
 - (c) has a seating capacity of not less than thirty persons excluding the driver; and
 - (ii) “profits and income from the operation of any specified omnibus” in relation to any undertaking for the transport of passengers and to any year of assessment, means the sum which bears to the gross receipts from the transport of passengers by that omnibus (other than any receipts from the transport of any group of passengers every member of which is transported to a common destination or common destinations, whether such destination is determined by such group or not, for pleasure, sight seeing, performance of religious or other rites) the same proportion as profits and income (other than any profits and income from the sale of capital assets) of the undertaking from the transport of passengers bear to the aggregated gross receipts of that undertaking from the transport of passengers.’.

10. The following new section is hereby inserted immediately after section 17G of the principal enactment, and shall have effect as section 17H of that enactment :–

"Exemption from income tax of the profits and income of any new or rehabilitated cinema.

17H. (1) The profits and income, within the meaning of paragraph (a) of section 3 (other than any profits and income from the sale of capital assets) of any undertaking referred to in subsection (2), from the exhibition of any cinematograph film in any new or rehabilitated cinema referred to in subsection (2), shall be exempt from income tax for a period of three years reckoned from the date on which the business of the exhibition of cinematograph films in such cinema commences.

(2) The provisions of subsection (1) shall apply to any undertaking which—

- (a) commences before April 1, 1994, the business of exhibiting cinematograph films in a cinema—
 - (i) the construction of which commenced on or after January 1, 1991; or
 - (ii) which is certified by the Secretary to the Ministry of the Minister in charge of the subject of Rehabilitation, Reconstruction and Social Welfare, as having been destroyed on or after July 23, 1983, by riot or civil commotion, and the rehabilitation or reconstruction of which commenced on or after January 1, 1991, but before April 1, 1992; and
- (b) is approved by the Minister by notice, published in the *Gazette*, before April 1, 1992, to be an undertaking to which this section applies.”.

11. Section 22DDD of the principal enactment is hereby amended in subsection (2) of that section by the substitution, for the words “any company approved for the purposes of this section by the Minister by notice published in the *Gazette* and”, of the words and figures “any company which commenced to carry on business on or after January 1, 1990 and which is approved for the purposes of this section by the Minister by notice published in the *Gazette*, before April 1, 1992 and”.

12. Section 22E of the principal enactment is hereby amended as follows :–

- (1) in paragraph (a) of that section, by the substitution for the words and figures “section 20 or section 22C or section 22D has not taken any steps to commence business; or”, of the words and figures “section 17A or section 17C or section 17D or section 20, or section 22C, or section 22D, or section 22DDD, or section 22DDDD, has not taken any step to commence business or that any undertaking approved under section 17F has not taken any step to expand its productive capacity, as the case may be, or”; and
- (2) in the marginal note to that section by the substitution for the words and figures “section 16, 16A, 16b, 20, 22A, 22B, 22C, or 22D,” of the words and figures “section 16, 16A, 16B, 17A, 17C, 17D, 20, 22A, 22B, 22C, 22D, 22DDD or 22DDDD”.

13. Section 23 of the principal enactment is hereby amended in subsection (1) of that section, by the substitution, for paragraph (k) of that subsection of the following paragraph :–

"(k) any -

- (i) business turnover tax payable under the Finance Act, No. 11 of 1963;
- (ii) turnover tax payable under the Turnover Tax Act, No. 69 of 1981, less any deduction allowable under section 47 or section 48 of the Act; or
- (iii) tax corresponding to business turnover tax or turnover tax, referred in subparagraph (i) or (ii) respectively and payable, on or after January 1, 1991, under any statute enacted by any Provincial Council :

Provided that where at the time of making any assessment it appears to an Assessor that any such tax so payable has not been paid, he may refuse to allow any deduction in respect of such tax :

Provided further that where it appears to an Assessor that any such tax in respect of which a deduction has been refused, has been paid within a period of six years from the end of the year of assessment to which such assessment relates, he shall, on an application made in writing within twelve months of making such payment and supported by such proof as he may require, make an amended assessment allowing such deduction notwithstanding the provisions of section 123, and any tax found to have been paid in excess as result of such amended assessment, shall be refunded notwithstanding the provisions of section 149."

14. Section 24 of the principal enactment is hereby amended in subsection (1) of that section, by the addition, immediately after paragraph (r) of that subsection of the following paragraph :-

- (s) such part of any sum paid or payable by such person, not being any venture capital company, any unit trust or any mutual fund, as consideration for the management of any trade, business, profession or vocation carried on or exercised by him as exceeds -
 - (i) one million rupees or one *per centum* of the turnover of such trade, business, profession or vocation during the period of which profits and income are being ascertained whichever is lower; or
 - (ii) such amount as may be determined by the Commissioner-General, having regard to all the circumstances of the case, as being reasonable and commercially justifiable as such consideration,

which ever is higher.

For the purposes of this paragraph, the term "turnover" in relation to any trade, business, profession or vocation and to any period, means the total amount received or receivable from transactions entered into, or for services performed, in that period, in carrying on or exercising such trade, business, profession or vocation, excluding any amount received or receivable from the sale of capital assets.'

15. Section 29 of the principal enactment is hereby amended as follows :-

- (1) in paragraph (b) of subsection (2) of that section, by the substitution for the words and figures "the amount of a loss other than a capital loss or a loss referred to in subsection (7) incurred by him", of the words and figures "the

amount of a loss (other than a capital loss, a loss referred to in subsection (7), or a loss referred to in subsection (7A)), incurred by him”;

- (2) in paragraph (a) of subsection (3) of that section, by the substitution, for the words and figures “section 17A, or section 22A or section 22B, or section 22C, or section 22D, or section 22DD of this Act,”, of the words and figures “ section 17A, or section 17B, or section 17C, or section 17D; or Section 17G, or section 17H, or section 22A or section 22B, or section 22C or section 22D , or section 22DD, or section 22DDD, or section 22DDDD of this Act,”; and
- (3) by the insertion, immediately after subsection (7) of that section, of the following subsection :—

“(7A) There shall be deducted from the total statutory income of a person for any year of assessment commencing on or after April 1, 1992, where such income includes profits and income of any foreign currency banking unit arising from on-shore foreign currency transactions and which are not exempt from income tax under this Act, any loss for any year of assessment commencing on or after April 1, 1991 incurred by such foreign currency banking unit from on-shore foreign currency transactions which if it had been a profit would have been assessable under this Act, and which has not been so deducted from his total statutory income of a previous year:

Provided that such deduction shall in no case exceed the amount of the profits and income of such foreign currency banking unit included in such total statutory income and shall be made, as far as possible, from the total statutory income of such person for the first year of assessment after that in which the loss was incurred and so far as it cannot be so made, then from the total statutory income of the next succeeding year of assessment and so on.”.

16. Section 31 of the principal enactment is hereby amended in subsection (2) of that section as follows :—

- (1) in paragraph (b) of that subsection, by the addition, immediately after subparagraph (vii) of that paragraph of the following sub-paragraph :—

“(viii) a fund established by Provincial Council and approved by the Minister;”; and
- (2) in paragraph (k) of that subsection by the addition immediately after subparagraph (x), of that paragraph of the following new sub-paragraph :—

“(xi) the J. R. Jayawardena Centre established by the J. R. Jayawardena Centre Act, No.77 of 1988.”.

17. Section 32 of the principal enactment is hereby amended as follows :—

- (1) in subsection (2) of that section, by the substitution, for paragraph (b) of that subsection of the following paragraph :—

“(b) a sum received as a retiring gratuity, other than such part of such sum as exceeds one million five hundred thousand rupees, or”; and

(2) in subsection (3BB) of that section –

(i) by the substitution for the words “where the taxable income of a person includes any capital gain arising from the change of ownership of any share in any quoted public company, within a period of one year from the date of acquisition of such share by such person, and the rate of income tax”, of the words and figures “where the taxable income of any person includes –

(a) any capital gain from the change of ownership, or

(b) any profits and income within the meaning of paragraph (a) of section 3 from the sale, before April 1, 1994,

of any share in any quoted public company being a share which such person has held for a period of one year or less from the date of its acquisition by such person and the rate of income tax”; and

(ii) by the substitution, sub-paragraph (ii) of paragraph (a) of that subsection for the words “above ten *per centum* as are applicable”, of the words “above twenty *per centum* as are applicable.”

18. The following new section is hereby inserted immediately after section 32D of the principal enactment and shall have effect as section 32DD of that enactment :–

“Rate of income tax on the profits of any foreign currency banking unit. 32DD. the profits and income, of any foreign currency banking unit arising on or after April 1, 1991, from any on-shore foreign currency transaction, shall, notwithstanding anything to the contrary in any other provision of this Act, be liable to income tax at the rate of fifteen *per centum*.”.

19. Section 32E of the principal enactment is hereby amended by the substitution, for the words and figures “for any year of assessment commencing on or after April 1, 1990,” wherever those words and figures occur in that section, of the words and figures “for the year of assessment commencing on April 1, 1990.”.

20. The following new section is hereby inserted immediately after section 32E, and shall have effect as section 32EE of the principal enactment :–

“Tax credit against tax on profits from employment for year of assessment commencing on or after April 1, 1991. 32EE. There shall be deducted from the income tax payable for any year of assessment commencing on or after April 1, 1991, by any individual, not being an individual to whom the provisions of subsection (7) of section 67 apply, whose assessable income for that year of assessment includes profits from employment, and amount equal to one thousand five hundred rupees or the amount of income tax which is attributable to profits from employment, whichever is less.

For the purposes of this section the amount of income tax which is attributable to profits from employment of any individual for any year of assessment shall be the sum which bears to the income tax (other than such part of such tax as is charged at the appropriate rates specified in Part IV of the First Schedule to this Act), payable by that individual for that year of assessment, the same proportion as the proportion which the profits from employment

(other than such part of such profits as consists of any sum referred to in section 32 (2)) of that individual for that year of assessment bears to the assessable income (other than such part of the assessable income as consists of any sum referred to in section 32 (2)) of that individual for that year of assessment.”.

21. Section 33 of the principal enactment is hereby amended in subsection (1C) of that section by the substitution, for the words and figures “the provisions of subsections (3A) and (3B) of section 32,”, of the words and figures “that provisions of subsections (3A), (3B) and (3BB) of section 32”.

22. Section 45 of the principal enactment is hereby amended as follows :-

- (1) in paragraph (v) of that section by the substitution for the words and figures “referred to in section 10(e);”, of the words and figures “referred to in section 10(e);”;
- (2) by the addition immediately after paragraph (v) of that section of the following new paragraph :-

“(w) any share in any quoted public company held by such person.”.

23. Section 65 of the principal enactment is hereby amended in subsection (4) of that section by the substitution, for the words from “The precedent partner of a partnership”, to “a notice in such form as may be specified by the Commissioner-General”, of the following :-

“The precedent partner of a partnership or where no active partner is resident in Sri Lanka, the agent in Sri Lanka of the partnership shall –

- (a) in respect of any year of assessment ending on or before March 31, 1991, issue to each partner of that partnership on or before the thirty-first day of July, October and January of that year of assessment and the thirtieth day of September immediately succeeding the end of that year of assessment; and
- (b) in respect of any year of assessment commencing on or after April 1, 1991, issue to each partner of that partnership on or before the thirty-first day of July, October and January of that year of assessment and the thirtieth day of April immediately succeeding the end of that year of assessment,

a notice in such form as may be specified by the Commissioner-General”.

24. Section 73 of the principal enactment is hereby amended in subsection (3) of that section by the substitution for the words “any sum received by a non-resident person”, of the words and figures “any sum received, in any year of assessment commencing on or before April 1, 1990, by a non-resident person”.

25. The following new section is hereby inserted immediately after section 84 of the principal enactment and shall have effect as section 84A of that enactment :-

84A. (1) Where any person or any partner of any partnership, referred to in subsection (2) proves to the satisfaction of the Commissioner-General that in respect of his income referred to in subsection (2), he has paid or is likely to pay for any year of assessment commencing on or after April 1, 1991, income tax in Sri Lanka and income tax for the corresponding period in any other country, then, such person shall be entitled to relief from income tax payable by him in Sri Lanka of an amount equal to the excess, if any, of the income tax, in respect of such income, payable by him in Sri Lanka (before granting any relief under this section), over the income tax, in respect of such income, payable by him in such other country.

(2) The provisions of subsection (1) shall apply—

- (a) to any non-resident person, or, to any partner of any partnership registered outside Sri Lanka, being a person or partnership who or which provides, in Sri Lanka, management consultancy services in areas specified by the Commissioner-General, by notice published in the *Gazette*; and
- (b) in respect of the profits and income arising in or derived from Sri Lanka on or after April 1, 1991, from the provision of management consultancy services referred to in paragraph (a).

(3) For the purposes of subsection (1), the income tax in Sri Lanka or in any other country, payable by any person or by any partner of any partnership, referred to in subsection (2), in respect of his profits and income referred to in subsection (2), shall be computed at the rate equivalent to the quotient obtained by dividing the income tax payable by such person or such partner, (before granting any relief under this section) in Sri Lanka, or in such other country, as the case may be, in respect of his taxable income ascertained for the purposes of income tax in Sri Lanka, or, in such other country, as the case may be, by his taxable income ascertained for the purposes of income tax in Sri Lanka, or, in such other country, as the case may be.”.

26. Section 85A of the principal enactment is hereby amended, by the substitution, for all the words and figures from “Where the net foreign exchange earnings” to “fifty *per centum* of the specified sum”, of the following words and figures :-

“Where the net foreign exchange earnings of a person from the export turnover of an undertaking referred to in section 20 (1) or section 20A (1)—

- (a) is certified by the Export Development Board to be—
 - (i) seventy five *per centum*, in the case of any year of assessment commencing prior to April 1, 1987 and,
 - (ii) fifty *per centum*, in the case of any year of assessment commencing on or after April 1, 1987, but prior to April 1, 1991, or
- (b) is twenty-five *per centum*, in the case of any year of assessment commencing on or after April 1, 1991,

or more of the value (before charging freight and insurance) of such exports for each year for a period of—

ten years, in the case of any year of assessment commencing prior to April 1, 1987 or

five years, in the case of any year of assessment commencing on or after April 1, 1987,

immediately succeeding the end of the last year for which the whole or any part of the profits and income of that person is exempt from income tax under the provisions of those sections, such person shall be entitled to a deduction from the income tax payable by him on the export profits and income for any of the aforementioned ten or five years, of a sum equal to fifty *per centum* of the specified sum:

Provided that for any year of assessment commencing on or after April 1, 1991, the Minister may, specify by notice published in the *Gazette*, the manner in which such net foreign exchange earnings of any person form the export turnover of any undertaking referred to in section 20 (1) or section 20A (1) are to be computed.”.

27. Section 92A of the principal enactment is hereby amended as follows :—

- (1) in subsection (1) of that section, by the substitution, for the words from “requiring such person to furnish for any year of assessment”, to the end of that subsection of the following:—

“requiring such person to furnish within the period specified in such notice, in respect of any year of assessment, a statement of accounts and any schedules containing such particulars as may be specified in the notice of such trade, business, profession or vocation, for that year of assessment or for any period in respect of which the statutory income for that year of assessment is computed :

Provided that where the turnover of such trade, business, profession or vocation exceeds five million rupees for any year of assessment commencing on or after April 1, 1991 or for any period in respect of which the statutory income of such trade, business, profession or vocation for any such year of assessment is computed, such partner or such person shall, notwithstanding that a notice under this section has not been given to him, furnish in respect of such year of assessment or period such statement of accounts and such schedules.”;

- (2) in paragraph (b) of subsection (2) of that section, by the substitution, for the words “specified by Commissioner-General.”, of the words and figures “specified by the Commissioner General :

Provided that where the turnover of any trade, business, profession or vocation exceeds five million rupees for any year of assessment commencing on or after April 1, 1991, or for any period in respect of which the statutory income of such trade, business, profession or vocation for that year of assessment is computed, a statement of accounts furnished for that year of assessment or period, by the person carrying on such trade, business or vocation shall be prepared by an approved accountant.”; and

(3) by the substitution for subsection (3) of that section, of the following subsection:-

'(3) For the purposes of this section-

(i) "approved accountant" means-

- (a) an accountant who is a member of the Institute of Chartered Accountants of Sri Lanka;
- (b) an accountant who is approved by the Commissioner-General for the purpose of the definition of authorised representative; or
- (c) any individual who is registered as an auditor under the Companies (Auditors) Regulations and approved by the Commissioner-General for the purpose of the definition of "authorised representative"; and

(ii) "turnover" in relation to any trade, business, profession or vocation and to any period, means the total amount received or receivable from transactions entered into, or, for services performed, during that period in carrying on or exercising such trade, business, profession or vocation (excluding any amount received or receivable from the sale of capital assets)

28. Section 99 of the principal enactment is hereby amended by the repeal of subsection (1) of that section, and the substitution therefor, of the following subsection :-

(1) Every employer who employs-

- (a) an individual who receives remuneration in excess of three thousand five hundred rupees per mensum or forty-two thousand rupees per annum, or
- (b) any non-resident individual receiving remuneration for services rendered in Sri Lanka in excess of eighty-five rupees per mensum or one thousand rupees per annum, and

who has not given notice to the Commissioner-General under section 107C(1) of the Inland Revenue Act, No. 4 of 1963 or under this Chapter of this Act, shall give notice to the Commissioner-General not later than March 15, 1992, that he has in his employ such individual (hereinafter in this Chapter referred to as a "specified employee").'.

29. Section 109 of the principal enactment is hereby amended by the insertion, immediately after subsection (2) of that section, of the following new subsections :-

"(2A) Every employer preferring an appeal under subsection (1) against the amount of an assessment for any pay period falling within any year of assessment commencing on or after April 1, 1991, shall (unless such employer has already done so,) remit to the Commissioner-General the whole or any part of the income tax which such employer was required, under the provisions of this Chapter, to deduct, from the remuneration paid to his employees in respect of such pay period and to remit to the Commissioner-General but which has not been remitted together with any penalty, under section 110 which accrued thereon

upto the date of the notice of such assessment, and shall attach to the petition of appeal a receipt in proof of such remittance.

(2B) A petition of appeal which does not conform to the provisions of subsections (2) and (2A) shall not be valid.”.

30. Section 113G of the principal enactment is hereby amended, by the insertion, immediately after subsection (2) of that section, of the following subsections :–

“(2A) Every bank or financial institution preferring an appeal under subsection (1) against the amount of an assessment for any year of assessment commencing on or after April 1, 1991, shall, (unless such bank or financial institution has already done so), remit to the Commissioner-General the whole or any part of the income tax (which such bank or financial institution was required, under the provisions of this Chapter, to deduct from the interest paid by such bank or financial institution in respect of that year of assessment , and to remit to the Commissioner-General but which has not been remitted together with any penalty under section 113H which has accrued thereon upto the date of the notice of such assessment, and shall attach, to the petition of appeal, a receipt in proof of such remittance.

(2B) A petition of appeal which does not conform to the provisions of subsection (2) and (2A) shall not be valid.”.

31. Section 117 of the principal enactment is hereby amended as follows :–

(1) by the insertion immediately after subsection (3) of that section, of the following subsection :–

“(3A) Every person preferring an appeal under subsection (1) against the amount of an assessment for any year of assessment commencing on or after April 1, 1991, shall, (unless such person has done so already), pay to the Commissioner-General the amount of the tax payable by such person on the basis of the return furnished by him for that year of assessment together with any penalty thereon accrued upto the date of such notice of assessment, and shall attach, to the petition of appeal, a receipt in proof of such payment :

Provided that the Commissioner-General upon being satisfied that owing to serious financial hardship suffered by the appellant at or about the time of such notice of assessment or, owing to other reasonable cause, the appellant was prevented from paying such tax and such penalty, may grant an extension of time for the payment of such tax and penalty thereon accrued upto the date of payment, and accordingly a receipt in proof of payment of such tax and penalty thereon accrued upto the date of payment, furnished within such extended time shall, for the purposes of this subsection, be deemed to have been attached to the petition of appeal.”;

(2) in subsection (4) of that section, by the substitution, for the words and figures “provisions of subsections (2) and (3) shall not be valid.”, of the words and figures “provisions of subsections (2), (3) and (3A) shall not be valid.”.

32. Section 125 of the principal enactment is hereby amended in paragraph (ii) of the proviso to subsection (2) of that section, by the substitution for all the words from "the preceding provisions of this section until", to "instalment of tax become due.", of the following words and figures :–

"the preceding provisions of this section–

- (a) where such year of assessment is an year of assessment ending on or before March 31, 1991, until the thirtieth day of November, and
- (b) where such year of assessment is an year of assessment commencing on or after April 1, 1991, until the thirtieth day of September,
immediately succeeding the end of the year of assessment in respect of which such quarterly instalment of tax became due.”.

33. Section 151 of the principal enactment is hereby amended in subsection (1) of that section as follows :–

- (1) by the substitution, in paragraph (a) of that subsection for the words and figures “or section 92 (5) or section 93”, of the words and figures “or section 92(5) or section 92A(1) or section 93”; and
- (2) by the substitution, in paragraph (d) of that subsection for the words and figures “or section 92(1) or section 92AA”, of the words and figures “or section 92 (1) or section 92A (1) or section 92AA”.

34. Section 158 of the principal enactment is hereby amended in subsection (4) of that section , by the insertion, immediately after paragraph (a) of that subsection of the following paragraph:–

- (aa) the Commissioner of Revenue of any Provincial Council, being a matter which relates to the turnover, for any period commencing on or after January 1, 1991, of any wholesale or retail trade or business carried on by any person or partnership within the Province for which such Provincial Council is established to such an extent as the Commissioner-General may deem necessary to enable such Commissioner to ascertain such turnover.

For the purposes of this paragraph, the expression, “turnover” has the meaning assigned to it by paragraph (s) of subsection (1) of section 24.”;

35. The following new section is hereby inserted immediately after section 161, of the principal enactment and shall have effect as section 161A of that enactment:–

161A. (1) The Commissioner-General or any other officer of the Department of Inland Revenue who is specially authorised in that behalf by the Commissioner-General in writing, may do all or any of the following acts:–

- “Power to search business premises**
- (a) enter and inspect for the purposes of this Act any place or building where any trade, business, profession or vocation is carried on or exercised by any person or partnership;
 - (b) open and examine any receptacle where any book of account, register, record or any other document may be found and make an inventory of the articles found therein;

- (c) examine and take copies of, or make extracts from, any book of account, register, record or other document found in such place or building;
 - (d) take possession of any such book of account, register, record or other document or place marks of identification thereon;
 - (e) count and make a record immediately of the cash found in such place or building;
 - (f) require any person whom he finds in such place or building to give such information as is in his power to give with respect to any matter under this Act;
 - (g) examine either alone or in the presence of any other person, as he thinks fit, with respect to any matter under this Act, any person whom he finds in such place or building.
- (2) Where an officer authorised by the Commissioner-General under subsection (1), takes into his possession any book of account, register, record or other document from any person or partnership, such officer shall issue to that person or partnership, as the case may be, a memorandum specifying the book, register, record or document he has taken into his possession.

(3) Any book of account, register, record or other document taken into his possession under subsection (1) by any officer may be retained in the possession of such officer as long as may be necessary for the examination of such book, register, record or document or for the institution of legal proceedings against the person to whom such book, register, record or other document belongs.

(4) For the purposes of this section—

“article” has the same meaning assigned to it by section 161.’.

36. Section 163 of the principal enactment is hereby amended by the insertion, immediately after the definition of “property”, of the following definition :—

“Provincial Council” means any Provincial Council established for a Province, under Article 154A of the Constitution;’.

37. (1) The amendment to section 9 of the principal enactment made by section 3(1) of this Act shall be deemed for all purposes to have come into force on November 14, 1987;

(2) The amendment to section 14(a) of the principal enactment made by section 5 of this Act, shall be deemed for all purposes to have come into force on November 29, 1990.

(3) Amendment to section 15 of the principal enactment made by section 6(2) of this Act shall be deemed, for all purposes, to have come into force on November 29, 1990.

(4) The amendment to section 17F and section 17G of the principal enactment made respectively by section 8 and section 9 of this Act, shall be deemed for all purposes to have come into force on November 29, 1990.

(5) The amendment to section 32 (3BB) of the principal enactment made by section 17 of this Act, shall be deemed for all purposes to have come into force on November 29, 1990.

(6) The amendment to section 33(1C) of the principal enactment made by section 21 of this Act, shall be deemed for all purposes to have come into force on November 29, 1990.

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

DEFENCE LEVY ACT, NO. 52 OF 1991

[Certified on 21st December, 1991]

AN ACT TO PROVIDE FOR THE IMPOSITION OF A DEFENCE LEVY FOR THE YEAR COMMENCING ON JANUARY 1, 1992; TO PROVIDE OF THE APPLICATION OF THE PROVISIONS OF THE TURNOVER TAX ACT, NO. 69 OF 1981 FOR THE RECOVERY THEREOF; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

1. This Act may be cited as the Defence Levy Act No. 52 of 1991.
2. (1) This Act shall apply to every person who –
 - (a) carries on the business of manufacturer of any article; or
 - (b) imports any article manufactured outside Shri Lanka; or
 - (c) carries on the business of insurance or banking or finance.

(2) Every person referred to in subsection (1) shall, hereafter in this Act be referred to as a “person to whom this Act applies”.
3. (1) Subject to the succeeding provisions of this Act, there shall be charged from every person to whom this Act applies, for every quarter of the year commencing on January 1, 1992, (hereinafter in this Act referred to as a “relevant quarter”), a defence levy (hereinafter in this Act referred to as the “levy” equivalent to one *per centum* of the turnover, within the meaning of section 5 of the Turnover Tax Act, of that person for that quarter.
 - (2) Notwithstanding the preceding provisions of this section, turnover of a person to whom this Act applies shall, for the purposes of this Act, be deemed not to include –
 - (a) the proceeds from the export by such person of any article manufactured by him;
 - (b) the value of any article not being plant, machinery or fixtures imported by such person exclusively for use in the manufacture by such person of any article for export; and
 - (c) the proceeds from the sale of any article manufactured outside Shri Lanka by the person importing such article.
4. Subject to the provisions of sections 5 and 6, every person to whom this Act applies shall, notwithstanding that no assessment has been made on him, pay to the Commissioner-General the amount of the levy payable by him for any relevant quarter in three instalments, in the following manner –
 - (a) an amount equivalent to one *per centum* of the turnover of that person for the first month of that quarter, on or before the fifteenth day of the second month of that quarter;
 - (b) an amount equivalent to one *per centum* of the turnover of that person for the second month of that quarter, on or before the fifteenth day of the third month of that quarter; and

(c) the amount of the levy payable by such person for that quarter reduced by the aggregate of the amounts paid by him in accordance with provisions of paragraph (a) and of paragraph (b), on or before the fifteenth day of the month immediately succeeding the end of that quarter.

5. (1) Every bank shall –

(a) at the time at which it opens any letter of credit, in any month in a relevant quarter, on an application in that behalf by any person to whom this Act applies, being an importer of an article, collect from such person, an amount equal to one *per centum* of the value of that letter of credit; and

(b) remit the amount so collected to the Commissioner-General, on or before the fifteenth day of the month immediately succeeding the month in which the amount was collected together with a declaration in such form and containing such particulars as may be specified by the Commissioner-General.

(2) Every bank which collects any amount in accordance with the provisions of subsection (1), shall make an endorsement on the import invoice relating to the letter of credit with reference to which such amount was collected specifying the amount so collected.

(3) Any amount collected by any bank from any person to whom this Act applies, in accordance with the provisions of subsection (1), shall be deemed to have been paid to the Commissioner-General by such person on the date on which such bank collected such amount, and shall be set off against the levy payable by such person for the relevant quarter in which such amount was deemed to have been paid by him.

(4) Notwithstanding anything in any other law, any amount collected by any bank under the preceding provisions of this section and held by such bank for remittance to the Commissioner-General shall be deemed not to be such property of such bank as is liable to execution or administration in the event of the bankruptcy, liquidation or dissolution of such bank or to assignment for the benefit of creditors and such amount shall remain apart from, and form no part of, the estate in bankruptcy, liquidation or assignment of such bank.

(5) Where any bank fails to collect, from any person to whom this Act applies, any amount required to be collected from such person under this section, or where any bank has collected such amount and has not remitted the amount so collected to the Commissioner-General on or before the fifteenth day of the month immediately succeeding the month in which such amount was collected, such bank shall be liable to the amount it was required to collect under the provisions of this section but has not collected, or as the case may be, for the amount or part thereof collected and not remitted to the Commissioner-General and such amount not collected or collected and not remitted, as the case may be, shall be deemed to be in default from the day following the day on which such amount was required to have been remitted to the Commissioner-General and such bank shall be deemed to be a defaulter, with effect from such date, and such amount may be recovered from such bank in the manner provided in this Act.

6. Where any person to whom this Act applies being a person carrying on the business of manufacturer of any article has paid in any relevant quarter, the levy in respect of the import of any article, (other than any plant, machinery or fixture), he shall be entitled to deduct the amount of the levy so paid from the levy payable by him for that quarter, in respect of such business of manufacturer.

7. (1) Where the levy payable by a person to whom this Act applies for any relevant quarter is not paid on or before the date specified in section 4, for the payment of that Levy, or part thereof, the amount of the levy or part thereof shall be deemed to be in default with effect from that date and the person by whom such amount is payable, or where such amount is payable by more than one person or by a partnership, then each of such persons and each partner of the partnership, shall be deemed to be a defaulter for the purposes of this Act, with effect from such date.

(2) Where any levy or part thereof is in default by reason of the operation of section 5 or this section the defaulter shall, in addition to the levy or part thereof in default, pay as a penalty—

- (a) a sum equivalent to ten *per centum* of the levy or part thereof in default, and
- (b) where any levy or part thereof in default is not paid before the fifteenth day of the month succeeding the month in which such levy has begun to be in default, a further sum equivalent to two *per centum* of the amount in default in respect of each period ending on the fifteenth day or each succeeding month or part of such period during which such amount it is in default :

Provided, however, that the total amount payable as a penalty under this subsection shall in no case exceed fifty *per centum* of the levy or part thereof in default and any such amount may be waived or reduced if the Commissioner-General is satisfied, that by reason of any special circumstances in which the default occurred, a waiver of reduction of such amount would be just and equitable.

8. The provisions of Chapters V, VIII, IX, X and XII of the Turnover Tax Act relating to the furnishing of returns, assessment, appeals against assessment, finality of assessment and penalty for incorrect return, recovery, and refund of turnover tax, the provisions of Chapters XI, XIII (other than the provisions of section 44 and 45) and XVI relating to special cases, miscellaneous matters, and penalties and offences, under the Turnover Tax Act, and the provisions of Chapter XVII relating to the administration of the Turnover Tax Act, shall, *mutatis mutandis*, apply to furnishing of returns, assessment, appeals against assessment, finality of assessment and penalty for incorrect return, recovery and refund of the levy, and to special cases, miscellaneous matters, penalties and offences under this Act, and to the administration of this Act, subject to the following modifications :—

- (a) The requirement imposed by this Act, on any person to whom this Act applies, to furnish a return of the turnover in respect of which the levy is payable by such person under this Act, for every relevant quarter, shall apply notwithstanding that his turnover for that quarter is less than twenty five thousand rupees;
- (b) Where an Assessor makes an assessment or an additional assessment on any person to whom this Act applies, of the turnover tax payable by such person under the Turnover Tax Act, for any quarter referred to in paragraph (a), the

Assessor may, at the same time and in the same form, make an assessment or additional assessment, as the case may be, of the levy payable by such person under this Act, for that quarter. The assessments or the additional assessments, as the case may be, shall be deemed to be separate assessments issued under the respective Acts:

Provided that an Assessor may, make an assessment or an additional assessment on any person to whom this Act applies, of the levy payable by such person under this Act for any relevant quarter, without at the same time making an assessment or an additional assessment of turnover tax payable, for that quarter, under the Turnover Tax Act; and

- (c) Where under Chapter XII of the Turnover Tax Act, a certificate is issued to a Magistrate or a notice, statement or certificate is issued to any person, such notice, statement or certificate, as the case may be, may also include the particulars of the levy, if any, in default under this Act. The notices, statements or the certificates shall be deemed to be separate notices, statements or certificates issued under the respective Acts.

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

10. In this Act, unless the context otherwise requires –

'article', 'assessor', 'business', 'Commissioner-General', 'person' and 'quarter' shall have the respective meanings assigned to them in the Turnover Tax Act;

'bank' means a licensed commercial bank within the meaning of the Banking Act, No. 30 of 1988;

'banker' means any company or body of persons carrying on the business of banking;

'importer' has the same meaning as in paragraph (f) and (g) in the definition of "manufacturer" in the Turnover Tax Act;

'manufacturer' has the same meaning as in paragraphs (a), (b), (c), (d) and (e) of the definition of manufacturer in the Turnover Tax Act;

'Turnover Tax Act' means the Turnover Tax Act, No. 69 of 1981.

APPROPRIATION ACT, NO. 53 OF 1991

[Certified on 21st December, 1991]

AN ACT TO PROVIDE FOR THE SERVICE OF THE FINANCIAL YEAR, 1992, TO AUTHORIZE THE RAISING OF LOANS IN OR OUTSIDE SRI LANKA, FOR THE PURPOSE OF SUCH SERVICE, TO MAKE FINANCIAL PROVISION IN RESPECT OF CERTAIN ACTIVITIES OF THE GOVERNMENT DURING THAT FINANCIAL YEAR, TO ENABLE THE PAYMENT, BY WAY OF ADVANCES OUT OF THE CONSOLIDATED FUND OR ANY OTHER FUND OR MONEYS OF, OR AT THE DISPOSAL OF, THE GOVERNMENT, OF MONEYS REQUIRED DURING THAT FINANCIAL YEAR FOR EXPENDITURE ON SUCH ACTIVITIES, TO PROVIDE FOR THE REFUND OF SUCH MONEYS TO THE CONSOLIDATED FUND, AND TO MAKE PROVISION FOR MATTERS CONNECTED WITH, OR INCIDENTAL TO, THE AFORESAID MATTERS.

1. This Act may be cited as the Appropriation Act, No. 53 of 1991.

2. (1) Without prejudice to any other law authorising any expenditure, the expenditure of the Government which it is estimated will be rupees one hundred and two thousand five hundred and fifty one million three hundred and sixty thousand and ten for the service of the period beginning on January 1, 1992, and ending on December 31, 1992 in this Act referred to as the "financial year 1992", shall be met –

- (a) from payments which are hereby authorised to be made out of the Consolidated Fund or any other fund or moneys of, or at the disposal of, the Government; and**
- (b) from the proceeds of loans which are hereby authorised to be raised, whether in or outside Sri Lanka, for and on behalf of the Government, so however, that the aggregate of such proceeds does not exceed rupees sixty nine thousand two hundred and ninety five million and ten.**

The sum of rupees one hundred and two thousand five hundred and fifty one million three hundred and sixty thousand and ten herein before referred to may be expended as specified in the First Schedule to this Act.

(2) The provisions of subsection (1) of this section shall have effect without prejudice to the provisions of any other written law authorising the raising of loans for and on behalf of the Government.

3. (1) The receipt of the Government during the financial year, 1992, from each activity specified in column 1 of the Second Schedule to this Act shall be credited to the account of such activity, and the aggregate of receipts so credited shall be not less than the minimum limit specified in the corresponding entry in column III of that Schedule. The net surplus, if any, of such activity shall be paid to the Consolidated Fund before the expiry of six months after the close of the financial year, 1992.

(2) For the purpose of determining the net surplus under subsection (1), the following charges shall be set off against the revenue of each activity: –

- (a) the working, establishment and other expenses of the activity whether paid or accrued properly chargeable to the revenue of the activity; and**
- (b) provision to cover the depreciation of the movable and immovable property of the activity.**

(3) The expenditure incurred by the Government, during the financial year, 1992, on each activity specified in column I of the Second Schedule to this Act shall be paid out of the receipts of the Government from such activity during that financial year, but such expenditure shall not exceed the maximum limit specified in the corresponding entry in column II of that Schedule.

(4) The debit balance, outstanding at the end of the financial year, 1992, of any activity specified in column I of the Second Schedule to this Act shall not exceed the maximum limit specified in the corresponding entry in column IV of that Schedule and the total liabilities of that activity at the end of that financial year shall not exceed the maximum limit specified in the corresponding entry in column V of that Schedule.

4. Whenever, at any time during the financial year, 1992, the receipts of the Government from any activity specified in column I of the Second Schedule to this Act are insufficient to meet the expenditure incurred by the Government on such activity, the Minister may, from time to time, by Order direct that such sums as he may deem necessary to meet such expenditure shall be payable, by way of advances, out of the Consolidated Fund or any other fund or moneys of, or at the disposal of the Government, so however, that the aggregate of the sums so advanced shall not exceed the maximum limit of expenditure specified in the corresponding entry in column II of that Schedule. Any sums so advanced in respect of such activity shall be refunded to the Consolidated Fund in such manner as the Minister may by Order direct.

5. (1) Any moneys which, by virtue of the provisions of the First Schedule to this Act, have been allocated to Recurrent Expenditure under any Programme appearing under any Head specified in that Schedule, but have not been expended or are not likely to be expended, may be transferred to the allocation of Capital Expenditure within that Programme, or to the allocation of Recurrent Expenditure or Capital Expenditure under any other Programme within that Head by order of the Secretary to the Treasury or any other officer authorised by him.

(2) No moneys allocated to Capital Expenditure under any Programme appearing under any Head specified in the First Schedule to this Act shall be transferred out of that Allocation.

6. Where the Minister is satisfied –

- (1) That receipts from taxes and other sources will be less than the amounts anticipated to finance authorised expenditure; or
- (2) that amounts originally appropriated for a particular purpose or purposes are no longer required,

he may, with the approval of the Government, withdraw in whole, or in part, any amounts previously released for expenditure under the authority of a warrant issued by him from the Consolidated Fund or from any other fund or moneys of, or at the disposal of, the Government.

7. The Minister with approval of the Government, may on or before May 31, 1993, by order, vary or alter –

- (a) any of the maximum limits specified in column II, column IV and column V of the Second Schedule to this Act;

- (b) by the minimum limits specified in column III of the Second Schedule to this Act.

No order made under this section shall have effect unless it has been approved by Parliament, by resolution.

Any such Order shall, if so expressed therein, be deemed to have had effect from such date prior to the date of making such Order as may be specified therein.

8. Parliament may, by resolution, amend the Second Schedule to this Act, by adding to the appropriate columns of that Schedule any activity and—

- (a) all or any of the maximum limits relating to such activity;
- (b) the minimum limit relating to such activity.

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

**EMERGENCY (BANKING SPECIAL PROVISIONS) REGULATION,
NO. 2 OF 1991**

[Certified on 28th December, 1991]

Regulation

1. These Regulations may be cited as the Emergency (Banking Special Provisions) Regulations No. 2 of 1991.

2. Where upon a report made by the Director of Bank Supervision of the Central Bank of Sri Lanka, the Monetary Board of the Central Bank of Sri Lanka (hereinafter referred to as the "Board") is satisfied that any licensed commercial bank incorporated outside Sri Lanka is unable to carry on business in Sri Lanka, or is unable to meet the demands of its depositors and other persons who have had transactions with such licensed commercial bank (hereinafter referred to as the "defaulting bank"), and that its continuance in business is likely to involve serious economic loss to, and to adversely affect, the monetary and banking system and the national economy, the Board may, notwithstanding the provisions of any other law to the contrary, by Order published in the *Gazette* vest, the business, of such defaulting bank in another licensed commercial bank (hereinafter referred to as the "acquiring bank") which consents to such vesting.

3. (1) No Order under regulation 2 shall be made by Board unless –

- (a) the Board is satisfied that the proposed acquiring bank is capable of carrying on in a competent manner, the business of the defaulting bank and thereby meeting its liabilities to its depositors and creditors;
- (b) the proposed acquiring bank agrees in writing to comply with such terms and conditions as may be specified by the Board relating to the manner in which the existing assets of the defaulting bank are to be used and the existing liabilities of the defaulting bank are to be met. The Board may, interalia, specify such terms and conditions as to the manner in which any payments due to a sovereign Government from the defaulting bank are to be made and the manner in which compensation, if any, arising from the vesting of the business of the defaulting bank in the acquiring bank, shall be met.

(2) Upon the making of an Order under regulations 2–

- (a) the acquiring bank shall comply with such terms and conditions as may be specified by the Board under paragraph (1) of this regulation and such other directions as the Board may lawfully give; and
- (b) the defaulting bank shall cease to carry on business in Sri Lanka and any license issued under any law permitting it to carry on business in Sri Lanka shall be deemed to be cancelled with effect from the date of the Order.

4. Upon the vesting of the business of the defaulting bank in the acquiring bank by an Order made under Regulation 2, the acquiring bank shall from and after the date of

such vesting, have lawful control and possession of the business of the defaulting bank, and become the transferee of the defaulting bank , in respect of such business.

5. Notwithstanding anything to the contrary in law or in the provisions of any of the other regulations hereunder the liability of the acquiring bank to meet the demands of any foreign currency depositor of the defaulting bank, in the case of such currency deposits being not made available to the acquiring bank, shall be only in respect of such depositors who agree to accept the terms and conditions of any scheme to grant relief to such depositors, as may be formulated by the Board, upon a review of the business of the defaulting bank.

6. All contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature pertaining, or relating to the business of the defaulting bank, (other than instruments relating to the transfer of immovable property), and subsisting, or having effect, immediately before the date of vesting and to which the defaulting bank is a party or which are in favour of the defaulting bank shall be of full force and effect, from the date of vesting, against or in favour of, the acquiring bank and maybe enforced or acted upon as fully and effectually as if in the place of the defaulting bank, the acquiring bank had been a party thereto or as if they had been issued in favour of the acquiring bank.

7. Where on the date of vesting of the business of the defaulting bank in an acquiring bank by an Order made under Regulation 2, any suit or appeal or other proceeding of whatever nature by, or against, the defaulting bank in respect of the business of the defaulting bank, is pending, the same shall not abate be discontinued or in any way be prejudicially affected, by reason of such vesting but such suit , appeal or other proceeding may be continued, prosecuted and enforced by, or against, the acquiring bank with effect from the date of vesting.

8. Notwithstanding anything to the contrary in any law or any liquidation or winding up proceedings commenced outside Sri Lanka in respect of the defaulting bank, such defaulting bank shall be prohibited from alienating, or otherwise dealing with, its rights of ownership in any immovable property owned by it in Sri Lanka till such time as the defaulting bank makes available to the acquiring bank any assets which are outside Sri Lanka and which have vested in the acquiring bank in terms of an Order made under Regulation 2.

9. For purposes of these regulations –

“business” in the relation to the defaulting bank, unless the context otherwise requires, means the undertaking in Sri Lanka of the defaulting bank excluding the offshore banking business and includes :-

- (i) the domestic banking business of the defaulting bank;
- (ii) all property (other than immovable property) owned by the defaulting bank on the day preceding the date of vesting and used for the purposes of such undertaking in Sri Lanka (including cash balances, reserve funds, investments and deposits);
- (iii) all rights, powers, privileges, authorities and interests arising in, or out of, any property movable or immovable owned by the defaulting bank

on the day preceding the date of vesting (including lease-hold rights, tenancy rights and rights under mortgages but not including rights arising from the ownership of immovable property);

- (iv) subject to regulation 5 all the liabilities of the defaulting bank in Sri Lanka; and
- (v) all books, accounts and documents relating or appertaining, to such undertaking in Sri Lanka”

“domestic banking business” in relation to a defaulting bank, means the business of such bank other than the business of its off-shore unit;

“licensed commercial bank” shall have the same meaning as in the Banking Act, No. 30 of 1988;

“off-shore banking business” in relation to a defaulting bank, means the business of the off-shore unit of such bank on off-shore banking business in terms of Part IV of the Banking Act, No. 30 of 1988.