

PREVENTION OF MONEY LAUNDERING ACT, NO. 5 OF 2006

[Certified on 6th March, 2006]

AN ACT TO PROHIBIT MONEY LAUNDERING IN SRI LANKA ; TO PROVIDE THE NECESSARY MEASURES TO COMBAT AND PREVENT MONEY LAUNDERING ; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

1. This Act may be cited as the Prevention of Money Laundering Act, No. 5 of 2006.
2. The provisions of the Act shall apply in relation to—
 - (a) a person who commits an offence under the provisions of this Act whilst being resident in Sri Lanka;
 - (b) an Institution which is used for the commission of an offence under the provisions of this Act, which Institution is carrying on business in Sri Lanka and is either incorporated or registered in Sri Lanka or is either incorporated or registered as a branch of a bank incorporated or registered outside Sri Lanka;
 - (c) an Act which constitutes an offence under this Act, which is committed in Sri Lanka.

PART I

MONEY LAUNDERING

3. (1) Any person, who—
 - (a) engages directly or indirectly in any transaction in relation to any property which is derived or realised, directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity;
 - (b) receives, possesses, conceals, disposes of, or brings into Sri Lanka, transfers out of Sri Lanka, or invests in Sri Lanka, any property which is derived or realised, directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity,

knowing or having reason to believe that such property is derived or realised, directly or indirectly from any unlawful activity or from the proceeds of any unlawful activity, shall be guilty of the offence of money laundering and shall on conviction after trial before the High Court be liable to a fine not less than the value of the property in respect of which the offence is committed and not more than three times the value of the property in respect of which the offence is committed or to rigorous imprisonment for a period of not less than five years and not exceeding twenty years, or to both such fine and imprisonment. The assets of any person found guilty of the offence of money laundering under this section shall be liable to forfeiture in terms of Part II, of this Act.

- (2) Any person who attempts or conspires to commit the offence of money laundering, or aids or abets, the commission of the offence of money laundering shall be guilty of an offence under this Act and shall be liable after trial before the High Court to be punished with the same punishment as is specified for the offence of money laundering.

In this subsection “abet” shall have the same meaning as in sections 100 and 101 of the Penal Code.

- (3) For the avoidance of doubts, it is hereby declared that a conviction for the commission by the accused of the unlawful activity shall not be necessary for the proof of the offence under the provisions of this Act.
4. For the purposes of any proceedings under this Act, it shall be deemed until the contrary is proved, that any movable or immovable property acquired by a person has been derived or realized directly or indirectly from any unlawful activity, or are the proceeds of any unlawful activity, if such property—
 - (a) being money, cannot be or could not have been—
 - (i) part of the known income or receipts of such person; or
 - (ii) money to which his known income or receipts has or had been converted; or

- (b) being property other than money, cannot be or could not have been—
- (i) property acquired with any part of his known income or receipts; and
 - (ii) property which is or was part of his known income or receipts; and
 - (iii) property to which is any part of his known income or receipts has or had been converted.
5. (1) Any person who knows or has reason to believe from information or other matter obtained by him in the course of any trade, profession, business or employment carried on by such person, that any property has been derived or realised from any unlawful activity, shall disclose his knowledge or belief as soon as is practicable, to the Financial Intelligence Unit.
- (2) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence under this Act, and shall on conviction after trial before the High Court be liable to a fine not exceeding fifty thousand rupees or to imprisonment of either description for a period not exceeding six months or to both such fine and imprisonment.
- (3) The disclosure by a director or officer or servant of an Institution in terms of the provisions of the Financial Transactions Reporting Act, No. 6 of 2006 of his knowledge and belief that any property has been derived or realized from any unlawful activity, shall be sufficient compliance by such director, officer or servant, of the duty imposed on him by subsection (1).
- (4) The provisions of subsection (1) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information, imposed by any written law or otherwise, and accordingly any disclosure by any person in compliance with the provisions of subsection (1) shall be deemed not to be a contravention of such obligation or restriction.
- (5) In a prosecution for an offence under subsection (2) it shall be a defence for the accused to prove to Court, on a balance of probabilities that he had reasonable grounds for not disclosing his knowledge or belief.
6. Any person who knows or has reason to believe that an investigation into the commission of the offence of money laundering has been, is being, or is about to be made, and who—
- (a) divulges, other than in the performance of his duties under this Act, that fact or other information relating to such investigation to any Court or to any other person, knowing that the investigation is likely to be prejudiced thereby; or
 - (b) discloses, other than in the performance of his duties under this Act, the identity of the person against whom such investigation has been, is being, or is about to, be made;
 - (c) knowingly falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, any document or material which is, or is likely to be, relevant to that investigation,
- shall be guilty of an offence under this Act, and shall on conviction after trial before the High Court, be liable to a fine not exceeding fifty thousand rupees or to imprisonment of either description for a period not exceeding six months, or to both such fine and imprisonment,

PART II

FREEZING AND FORFEITURE OF ASSETS IN RELATION TO THE OFFENCE OF MONEY LAUNDERING

7. (1) A Police Officer not below the rank of Superintendent of Police or in the absence of such an officer an Assistant Superintendent of Police may, where there are reasonable grounds to believe that any person is involved in any activity relating to the offence of money laundering and it is necessary for preventing further acts being committed in relation to such offence, issue an order (hereinafter referred to as a “Freezing Order”) prohibiting any transaction in relation to any account, property or investment which may have been used or which may be intended to be used in connection with such offence.
- (2) The Freezing Order obtained under subsection (1) shall be issued on—
- (a) the person who is believed to be involved in the activity referred to subsection (1) ; and
 - (b) on any other person or institution who or which may be required to give effect to such Order.

- (3) Subject to the provisions of section 8, a Freezing Order made under subsection (1) shall be in force for a period of seven days of the making thereof.
 - (4) Any person who acts in contravention of a Freezing Order issued on him, shall be guilty of an offence and shall on conviction after trial before the High Court be liable to a fine not exceeding one hundred thousand rupees or one and a half times the value of the money in such account, property or investment which has been dealt with in contravention of the Freezing Order, whichever is higher or to imprisonment of either description for a period not exceeding one year or to both such fine and imprisonment.
8. (1) The Police Officer issuing the Freezing Order under the provisions of section 6 shall, within the seven days during which such Order shall be in force, make an application to the High Court seeking confirmation of such Freezing Order and also if the circumstances so necessitate, request an extension of the original period of seven days.
- (2) Where the High Court is satisfied that there are sufficient reasons for the making of such Freezing Order, the Court may confirm the Freezing Order and also grant the application made for the extension thereof for such periods as it considers necessary, subject however—
- (a) to any Orders which may be made under section 12; and
 - (b) to the requirement that the maximum period of any extension so granted shall not exceed one year from the date of the making of the Freezing Order by the Police Officer :
- Provided that where indictment is filed for the offence of money laundering in respect of the account, property or investment which is subject to the Freezing Order, such Freezing Order shall unless vacated by Court for reasons to be recorded, remain in force until the conclusion of the trial in respect of such offence, or where an appeal is preferred against a conviction for such offence, until the determination of the appeal.
- (3) Where the High Court confirms a Freezing Order under subsection (2) it shall cause to be published in at least one newspaper circulating in the Sinhala, Tamil and English languages, Notice of such Order, in order to facilitate *bona fide* third parties to make application to Court in support of their claims to the account, property or investment which is subject to the Order of freezing.
9. No transaction shall be effected in relation to such account, property or investment while the Freezing Order is in force and any transaction so effected shall be null and void.
10. In confirming a Freezing Order made under section 7, the High Court may on an application made in that behalf, if it is of opinion that such an Order could damage legitimate business or other interests of any person affected thereby, and that essential transactions relating to such account, property or investment as may have been prohibited by such Freezing Order may be legitimately carried out, make order permitting the carrying on of such transactions subject to supervision by and under the direction of a person appointed in that behalf by Court or of a receiver appointed in that behalf under section 11.
11. Upon an application made in that behalf by a police officer not below the rank of a Superintendent of Police or in the absence of such an officer an Assistant Superintendent of Police, the High Court may appoint a Receiver to take possession of and otherwise deal with the account, property or investment which has been subjected to the Freezing Order, in accordance with such directions as may be given by Court in that behalf.
12. (1) Any Police Officer not below the rank of a Superintendent of Police shall take possession of, and otherwise deal with, any account, property or investment, which is subject to a Freezing Order, and the Court may on application of the said Police Officer and for the purpose of determining in whom the ownership, possession or control of any property to which the Freezing Order relates, lies, Order:—
- (a) that any document relevant to—
 - (i) identifying, locating or quantifying that property;
 - (ii) establishing the ownership, possession or control of that property,
 be delivered forthwith to the Police Officer; and
 - (b) that a named institution furnish to the Receiver all information obtained by the institution about any business transaction conducted by or for that person with the institution during such period before or after the date of the Order as the Court may direct.

- (2) The Court making an Order under subsection (1) shall upon being satisfied that any person is failing to comply with, is delaying or is otherwise obstructing the execution of, an order made under subsection (1) make Order authorising the Police Officer to enter and search any premises of that person, and remove any document, material or other thing therein for the purpose of executing such Order.
 - (3) Upon determining in whom the ownership, possession or control of any property to which the Freezing Order relates, lies, the Police Officer shall report the same to the Court making the Freezing Order, along with all documents establishing and supporting such ownership, possession or control, as the case may be.
- 13.** (1) Where a person is convicted of the offence of money laundering, the Court convicting such person shall, subject to the provision of subsections (2) make Order that any movable or immovable property of such person derived or realised, directly or indirectly from any unlawful activity, be forfeited to the State free from all encumbrances.
- (2) In determining whether an Order of forfeiture should be made under subsection (1), the Court shall be entitled to take into consideration the fact whether such an Order is likely to prejudice the rights of a *bona fide* purchaser for value or any other person who has acquired, for value, a *bona fide* interest in such property.
- (3) An Order made under subsection (1) shall take effect—
- (a) where an appeal has been preferred to the Court of Appeal or the Supreme Court against the Order of forfeiture, upon the determination of such appeal confirming or upholding the Order of Forfeiture;
 - (b) where no appeal has been preferred to the Court of Appeal against the Order of Forfeiture within the period allowed therefor, after the expiration of the period within which an appeal may be preferred to the Court of Appeal, against such Order of Forfeiture.
- (4) For the purposes of subsection (1), the Court making the Order of Forfeiture may presume that any movable or immovable property belonging to the person convicted of the offence of money laundering, is derived or realised, directly or indirectly from any unlawful activity if such property is not commensurate with the known sources of income of such person, and the holding of which cannot be explained on a balance of probabilities, to the satisfaction of the Court.
- 14.** (1) Any person affected by an Order of Forfeiture made under section 13 of this Act, may make an application to Court making the Order of Forfeiture within a period of thirty days of the making of such Order stating that he has suffered loss as a result of the making of such Order.
- (2) Where an application is made under subsection (1) to the Court making the Order of Forfeiture, the Court may, upon being satisfied that the applicant has suffered loss as a result of its Order, order compensation to be paid to such person from the property forfeited.
- 15.** Where any property has been forfeited to the State under section 13 of this Act, the Court making the order of Forfeiture may, appoint a Receiver to be in charge of the property so forfeited.
- 16.** The provisions of this Part of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any written law or otherwise and accordingly any disclosure of information by any person in compliance with the provisions of this Part of this Act shall be deemed not to be a contravention of such obligation or restriction.

PART III

GENERAL

- 17.** An offence under this Act shall be a cognisable and non-bailable offence, within the meaning, and for the purpose, of the Code of Criminal Procedure Act, No. 15 of 1979.
- 18.** Where an offence under this Act is committed by a body of persons, then, if that body of persons is—
- (a) a body corporate, every director, or other officer of that body corporate; and
 - (b) a firm, every partner of that firm; and

- (c) an unincorporated body other than a firm, every individual who is a member of such body and every officer of that body responsible for its management and control,

shall be guilty of an offence:

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

19. (1) No suit or prosecution shall lie—

- (a) against the Financial Intelligence Unit or any person authorised to act on behalf of the Financial Intelligence Unit for any lawful act which in good faith is done or purported to be done by the Financial Intelligence Unit or such person under this Act;
 - (b) against an Institution or any director, officer, servant or agent of any such Institution, acting in the course of his employment or agency or any person referred to in subsection (1) of section 3, for any lawful act which in good faith is done or purported to be done by such Institution, director, officer, servant, agent or person in the performance of any duty imposed by this Act, or on the directions of the Authority.
- (2) No proceedings, civil or criminal, shall be instituted in any Court or tribunal against the Financial Intelligence Unit or any person authorised to act on behalf of the Authority in respect of any report, made in good faith, by the said Financial Intelligence Unit or such person under this Act.
- (3) Any expenses incurred by the Financial Intelligence Unit in any suit or prosecution brought by, or against, the said Financial Intelligence Unit or any person authorized to act on behalf of the said Financial Intelligence Unit, before any Court or tribunal in respect of any lawful act done or purported to be done by the said Financial Intelligence Unit or a person authorised to act on behalf of the said Financial Intelligence Unit, under this Act, and any costs paid to, or recovered by, the said Financial Intelligence Unit or such person in any such suit or prosecution shall be paid out of, or credited to, as the case may be, the account of the said Financial Intelligence Unit.
- (4) Any expenses incurred by an Institution or officer, servant, agent or person referred to in paragraph (b) of subsection (1) in any suit, prosecution, brought by or against such Institution or such officer, servant, agent or person before any court or tribunal in respect of any act which is done or purported to be done by such Institution or such officer, servant, agent or person under this Act, or on the direction of the Financial Intelligence Unit, shall, if the Court or tribunal holds that the act was done in good faith, be paid by the said Financial Intelligence Unit, unless such expense is recovered by such Institution or officer, servant, agent or person, in such suit or prosecution.

20. (1) No person shall falsify, conceal, unlawfully destroy or otherwise dispose of, or cause or permit the falsification, concealment, unlawful destruction or disposal of any document, material or thing which is, or is likely to be relevant to the exercise, performance or discharge of any power, duty or function under this Act.

- (2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence under this Act and shall on conviction after trial before the High Court be liable to a fine not exceeding fifty thousand rupees or to imprisonment of either description for a period not exceeding one year or to both such fine and imprisonment.

21. (1) No person shall —

- (a) falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification concealment, destruction or disposal of, any document or material or thing which is or is likely to be relevant to the execution of any Order made in accordance with the provisions of this Act.
 - (b) divulge, the fact that an investigation into an offence of money laundering or an offence under the law of any foreign State corresponding to the offence of money laundering, is being, or is about to be made, or divulge any other information to another person whereby such investigation is likely to be prejudiced.
- (2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence under this Act and shall on conviction after trial before the High Court be liable to a fine not exceeding one hundred thousand rupees or to imprisonment of either description for a period not exceeding one year or to both such fine and imprisonment.

22. Where the Minister in consultation with the Minister of Finance considers it appropriate, either because an international arrangement so requires or permits, or in the interests of comity, he may order that the whole or any part of any property forfeited under the provisions of this Part of this Act, or the value thereof, be given or remitted to the requesting State.
23. Where any officer or servant of an Institution discloses as hereinbefore provided his knowledge or belief that any property is derived or realized by means of any illegal activity, any subsequent dealing by such Institution, officer or servant with the owner of such property, shall be deemed not to constitute the aiding or abetment by such Institution, officer or servant, of an offence under this Act.

PART IV

PROVISIONS RELATING TO EXTRADITION AND MUTUAL ASSISTANCE IN RELATION TO THE OFFENCE OF MONEY LAUNDERING

24. The Schedule to the Extradition Law, No. 8 of 1977 is hereby amended by the insertion immediately before Part B thereof, of the following:—
“(47) An offence of Money Laundering within the meaning of the Prevention of Money Laundering Act, No. 5 of 2006.”.
25. Notwithstanding anything contained in the Extradition Law, No. 8 of 1977 an offence in terms of this Act shall for the purpose only of extradition under that Law, be deemed not to be a fiscal offence, or an offence of a political character, or an offence connected with a political offence or an offence inspired by political motives.
26. Where a request is made to the Government of Sri Lanka by or on behalf of the Government of another country for the extradition of any person accused or convicted of an offence, under this Act, the Minister shall, on behalf of the Government of Sri Lanka forthwith notify the Government of the requesting State of the measures that Government of Sri Lanka has taken, or proposes to take, for the prosecution or extradition of that person for that offence.
27. (1) The provisions of the Mutual Assistance in Criminal Matters Act, No. 25 of 2002 shall, wherever it is necessary for the investigation and prosecution of an offence under section 2 of this Act, be applicable in respect of the providing of assistance as between the Government of Sri Lanka and other States who are either Commonwealth countries specified by the Minister by Order under section 2 of the aforesaid Act or Non-Commonwealth countries with which the Government of Sri Lanka entered into an agreement in terms of the aforesaid Act.
(2) In the case of a country which is neither a Commonwealth country specified by the Minister by Order under section 2 of the aforesaid Act nor a No-Commonwealth country with which the Government of Sri Lanka has entered into an agreement in terms of the aforesaid Act, then it shall be the duty of the Government to afford all such assistance to, and may through the Minister request all such assistance from such country, as may be necessary for the investigation and prosecution of an offence under section 3 to the extent required for the discharge of its obligations under the United Nations Convention (including assistance relating to the taking of evidence and statements, the serving of process and the conduct of searches).
(3) The grant of assistance to such country may be made subject to such terms and conditions as the Minister thinks fit.
28. (1) Where a person who is not a citizen of Sri Lanka is arrested for an offence under this Act, such person shall be entitled to communicate without delay with the nearest appropriate representative of the State of which he is a national or if he is a stateless person, the nearest appropriate representative of the State where he usually resides.
(2) A request under section 26 shall be deemed not to be invalidated for the purposes of any legal proceedings by reason of any failure to comply with the provisions of section 27, provided the Financial Intelligence Unit is satisfied that there is sufficient compliance with those provisions to enable it to properly execute the request.
29. (1) Where a person is arrested for an offence of money laundering, the Minister to whom the administration of this Act is assigned shall request the Minister in charge of the subject of Foreign Affairs to inform the relevant authorities in any other State which has made a request under section 26 in respect of such person, of the measures which the Government of Sri Lanka has taken or proposes to take for the prosecution or extradition of that person.

- (2) Where a request is made to the Government of Sri Lanka, by or on behalf of the Government of any State for the extradition of any person accused or convicted of an offence corresponding to the offence of money laundering, the Minister in charge of the subject of Foreign Affairs shall, on behalf of the Government of Sri Lanka, forthwith inform the Government of the requesting State, of the measures which the Government of Sri Lanka has taken, or proposes to take, for the prosecution or extradition of that person.
 - (3) Where it is decided that no order should be made under the Extradition Law, No. 8 of 1977, for the extradition of any person accused or convicted of an offence corresponding to the offence of money laundering pursuant to a request for his extradition made under that Law, by the Government of any State, the case shall be submitted to the law enforcement authorities, so that prosecution for the offence under the law of Sri Lanka, or any other appropriate action may be considered.
- 30.** (1) A request for assistance under section 27 shall:—
- (a) confirm either that an investigation or prosecution is being conducted into an offence under the law of the requesting State corresponding to an offence of money laundering or that a person has been convicted of such an offence;
 - (b) state the grounds on which any person is being investigated or prosecuted for such offence or give details of the conviction of such person;
 - (c) give particulars sufficient to identify any person referred to in the request;
 - (d) give particulars sufficient to identify an Institution or other person believed to have information, documents or material or thing relevant to the investigation or prosecution referred to in paragraph (a) ;
 - (e) request the Authority to whom the request is addressed to obtain from the Institution or other person referred to in paragraph (d) all or any of the information, documents or material or thing referred to in paragraph (d);
 - (f) specify the manner in which and the person to whom, any information, document, material or thing obtained pursuant to the request, is to be transmitted;
 - (g) state whether or not an order of freezing or order of Forfeiture required;
 - (h) contain such other information as may assist the execution of the request.
- (2) The Financial Intelligence Unit shall cause to be transmitted to the person referred to in paragraph (f) of subsection (1) of this section, any information, document, material or thing seized by, or delivered or produced to the Financial Intelligence Unit, pursuant to an Order made in accordance with the provisions of this Act.
- 31.** Where there is an extradition arrangement in force between the Government of Sri Lanka and the Government of any other State, such arrangement shall be deemed, for the purposes of the Extradition Law, No. 8 of 1977, to include provision for extradition in respect of the offence of money laundering as defined in this Act, and of attempting or conspiring to commit, aiding and abetting the commission of, or conspiring to commit, such offence.
- 32.** The Government shall afford such assistance (including the supply of any relevant evidence at its disposal) to the relevant authorities of any foreign State as may be necessary in connection with criminal proceedings instituted in the State against any person, in respect of an offence under the law of that State corresponding to the offence of money laundering.
- 33.** (1) The Minister may make regulations under this Act for any matter authorized or required to be made under this Act, or for the purpose of carrying out or giving effect to the principles and provisions of this Act.
- (2) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.
- (3) Every regulation made by the Minister shall as soon as convenient after its publication in the *Gazette* be brought before Parliament for its approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously done thereunder.
- (4) Notification of the date on which a regulation is deemed to be rescinded shall be published in the *Gazette*.
- 34.** In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

35. In this Act unless the context otherwise requires—

“designated non-finance business” includes—

- (a) individual and collective portfolio management;
- (b) investing administering or managing funds or money on behalf of other person;
- (c) safekeeping and administration of cash or liquid securities on behalf of other persons;
- (d) safe custody services;
- (e) under - writing and placement of insurance, as well as insurance intermediation by agents and brokers;
- (f) trustee administration or investment management or a superannuation scheme;
- (g) casinos, gambling houses or conducting of a lottery, including a person who carries on such a business through the internet when their customers engage in financial transactions equal to or above the prescribed threshold;
- (h) real estate agents, when they are involved in transactions for their clients in relation to the buying and selling of real estate;
- (i) dealers in precious metals and dealers in precious and semi-precious stones, including but not limited to metals and stones covered by the Gem and Jewellery Act, No. 50 of 1993, when they engage in cash transactions with a customer equal to or above the prescribed threshold;
- (j) lawyers, notaries, other independent legal professionals and accountants when they prepare for, or carry out, transactions for their clients in relation to any of the following activities :—
 - (i) buying and selling of real estate;
 - (ii) managing of client money, securities or other assets;
 - (iii) management of bank, savings or securities accounts;
 - (iv) organization of contributions for the creation, operation or management of companies; and
 - (v) creation, operation or management of legal persons or arrangements and the buying and selling of business entities;
- (k) a trust or company service provider not otherwise covered by this definition, which as a business provides one or more of the following services to third parties:—
 - (i) formation or management of legal persons;
 - (ii) acting as or arranging for another person to act as, a director or secretary of a company, a partner of a partnership or a similar position in relation to other legal persons;
 - (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or for any other legal person or arrangement;
 - (iv) acting as or arranging for another person to act as, a trustee of an express trust;
 - (v) acting as or arranging for another person to act as, a nominee shareholder for another person;
- (l) offshore business in accordance with the definitions provided for the same in other written laws; and
- (m) such other business as may be prescribed from time to time by the Minister taking into consideration the interests of the national economy;

“Financial Intelligence Unit (FIU)” means the Financial Intelligence Unit established under section of the Financial Transactions Reporting Act, No. 6 of 2006;

“finance business” includes any one of the following businesses or activities :—

- (a) banking, as defined in the Banking Act, No. 30 of 1988, including the acceptance of deposits or other repayable funds from members of the public;

- (b) finance business as defined in the Finance Companies Act, No. 78 of 1988 (irrespective of whether the person is licensed or registered under the Act) ;
- (c) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
- (d) financial leasing other than transactions relating to consumer products;
- (e) the transfer of money or value;
- (f) money and currency changing services;
- (g) issuing and managing means of payment (*i.e.* credit cards, travellers' cheques, money orders and bankers' drafts and electronic money);
- (h) issuing financial guarantees and commitments, including but not limited to, consumer credit, factoring with or without recourse and financing of commercial transactions including forfeiting;
- (i) trading for its own account or for the account of customers in money market instruments (*i.e.* cheques, bills of exchange, certificates of deposit and derivatives), foreign exchange, exchange, interest rate and index instruments, commodity futures trading and transferable securities;
- (j) participating in securities issues and the provision of financial services related to such issues; and
- (k) such other business as may be prescribed from time to time by the Minister taking into consideration the interests of the national economy.

“Institution” means any person or body of persons engaged in or carrying out any finance business or designated non-finance business within the meaning of this Act;

“Offshore Unit” means a unit or department of a licensed commercial bank carrying on banking business, subject to the provisions of Part IV of the Banking Act, No. 30 of 1988, dealing with Offshore Banking;

“person” includes a body of persons;

“property” means any currency, and includes any asset of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible whether situated in Sri Lanka or elsewhere, and legal documents or instruments in any form whatsoever including electronic or digital form, evidencing title to, or interest in, such assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit and includes any legal or equitable interest in any such property;

“transaction” means any activity connected with finance business or designated non-finance business ;

“transaction” in relation to property includes—

- (a) a purchase, sale, loan, charge, mortgage, lien, pledge, transfer, delivery, assignment, subrogation, transmission, gift, donation, creation of a trust, settlement, deposit including any deposit of any article, withdrawal, transfer between assets, extension of credit;
- (b) any agency or grant of power of attorney;
- (c) any other disposition or dealing of property in whatever form, or whatsoever description or nature, howsoever described, which results in any right, title, interest or privilege, whether present or future, or whether vested or contingent, in the whole or any part of such property being conferred on any person; and

“unlawful activity” means any act which constitutes an offence under —

- (a) the Poisons, Opium and Dangerous Drugs Ordinance (Chapter 218);
- (b) any law or regulation for the time being in force relating to the prevention and suppression of terrorism;
- (c) the Bribery Act (Chapter 26);
- (d) the Firearms Ordinance (Chapter 182), the Explosives Ordinance (Chapter 183) or the Offensive Weapons Act, No. 18 of 1966.

- (e) the Exchange Control Act (Chapter 423);
- (f) an offence under section 83c of the Banking Act, No. 30 of 1988;
- (g) any law for the time being in force relating to transnational organised crime;
- (h) any law for the time being in force relating to cyber crime;
- (i) any law for the time being in force relating to offences against children;
- (j) any law for the time being in force relating to offences connected with the trafficking of persons; and
- (k) an offence under any other law for the time being in force which is punishable by death or with imprisonment for a term of seven years or more.

FINANCIAL TRANSACTIONS REPORTING ACT, NO. 6 OF 2006

[Certified on 6th March, 2006]

AN ACT TO PROVIDE FOR THE COLLECTION OF DATA RELATING TO SUSPICIOUS FINANCIAL TRANSACTIONS TO FACILITATE THE PREVENTION, DETECTION, INVESTIGATION AND PROSECUTION OF THE OFFENCES OF MONEY LAUNDERING AND THE FINANCING OF TERRORISM RESPECTIVELY ; TO REQUIRE CERTAIN INSTITUTIONS TO UNDERTAKE DUE DILIGENCE MEASURES TO COMBAT MONEY LAUNDERING AND THE FINANCING OF TERRORISM ; TO IDENTIFY THE AUTHORITY WHICH WILL BE RESPONSIBLE FOR MONITORING THE ACTIVITIES OF ALL INSTITUTIONS TO WHOM THIS ACT APPLIES ; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

1. This Act may be cited as the Financial Transactions Reporting Act, No. 6 of 2006.

PART I

DUTIES OF INSTITUTIONS

2. (1) No Institution shall open, operate or maintain an account, where the holder of such account cannot be identified, including any anonymous account or any account identified by number only, or any account which to the knowledge of the Institution is being operated in a fictitious or false name.
- (2) An Institution shall, subject to any rules issued by the Financial Intelligence Unit under subsection (3), identify each customer and verify their customer identification data or information relating to a customer as is reasonably capable of identifying a customer on the basis of any official document or other reliable and independent source document verifying the identity of the customer, in cases where the Institution—
 - (a) enters into a continuing business relationship, or in the absence of such a relationship, conducts any transaction, with any customer ;
 - (b) detects the carrying out of an electronic funds transfer by a customer, other than any prescribed transactions ;
 - (c) entertains a suspicion relating to the commission of an unlawful activity ; or
 - (d) entertains doubts about the veracity or adequacy of the customer identification and verification documentation or information it had previously obtained.
- (3) The Financial Intelligence Unit may issue rules prescribing—
 - (a) the official or identifying document or documents, or the reliable and independent source documents, data or information or other evidence that is required for identification or verification of any particular customer or class of customers ;
 - (b) the timing of the identification and verification requirements under this section ; and
 - (c) the threshold for, or the circumstances in which, the provisions of this section shall apply to transactions carried on by the customers of an Institution.

- (4) The terms and conditions imposed by rules issued under subsection (3) may vary in respect of different categories of Institutions, different categories of transactions or different categories of customers.
 - (5) The provisions of subsection (2) shall not apply—
 - (a) if the transaction is part of an existing and regular business relationship with a person who has already produced satisfactory evidence of identify unless the Institution has reason to suspect that the transaction is suspicious or unusual ;
 - (b) if the transaction is an occasional transaction not exceeding a prescribed sum unless the Institution has reason to suspect that the transaction is suspicious or unusual ;
 - (c) if any person has been a customer of the Institution prior to the enactment of this Act, subject to a phase-in period which shall not exceed three years : Provided that by the end of such period each Institution shall apply the provisions of subsection (2) hereof to such persons subject to such regulations as may be prescribed in that behalf ; and
 - (d) in such other circumstances as may be prescribed by regulations made in that behalf.
 - (6) For the purpose of subsection (5), “occasional transactions” means any transaction, in relation to cash and electronic fund transfer, that is conducted by any person other than through an account in respect of which the person is the customer.
3. If satisfactory evidence of identity is not submitted to an Institution as required in terms of the provisions of section 2, the Institution shall not proceed any further with the transaction unless directed to do so by the Financial Intelligence Unit established in terms of this Act, and shall report the attempted transaction to the Financial Intelligence Unit as a suspicious transaction under section 7.
4. (1) Every Institution shall be required to maintain —
- (a) records of transactions and of correspondence relating to transactions and records of all reports furnished to the Financial Intelligence Unit for a period of six years from the date of the transaction, correspondence or the furnishing of the report, as the case may be ; and
 - (b) records of identity obtained in terms of section 2 for a period of six years from the date of closure of the account or cessation of the business relationship, as the case may be,
- unless directions have been issued by the Financial Intelligence Unit that such records or correspondence should be retained for a longer period, in which case the records or correspondence should be retained for such longer period.
- (2) Records required to be maintained under subsection (1) shall contain particulars sufficient to identify the—
- (a) name, address and occupation (or where appropriate business or principal activity) of each person —
 - (i) conducting the transaction ; and
 - (ii) where applicable, on whose behalf the transaction is being conducted ;
 - (b) nature and date of the transaction ;
 - (c) type and amount of currency involved ;
 - (d) parties to the transaction ;
 - (e) the name and address of the employee who prepares the record ; and
 - (f) such other information as may be specified in rules issued by the Financial Intelligence Unit.
- (3) Where any record is required to be maintained under this Act—
- (a) it shall be maintained in a manner and form that will enable an Institution to comply immediately with requests for information from the Financial Intelligence Unit or a law enforcement agency ; and
 - (b) a copy of it may be kept—
 - (i) in a machine-readable form if a paper copy can be readily produced from it ; or

- (ii) in an electronic form, if a paper copy can be readily produced from it and an electronic signature of the person who keeps the records is retained for purposes of verification.

- (4) The records maintained under subsection (1) shall be made available upon request to the Financial Intelligence Unit for purposes of ensuring compliance with this Act.

5. An Institution shall—

- (a) conduct ongoing due diligence on the business relationship with its customer ;
- (b) conduct ongoing scrutiny of any transaction undertaken throughout the course of the business relationship with a customer to ensure that any transaction that is being conducted is consistent with the Institution's knowledge of the customer, the customer's business and risk profile, including, where necessary, the source of funds,

in order to ensure that its obligations under section 2 are satisfied and that the transactions conducted are consistent with the information that the Institution has of its customer and the profile of the customer's business.

6. An Institution shall report to the Financial Intelligence Unit—

- (a) any transaction of an amount in cash exceeding such sum as shall be prescribed by the Minister by Order published in the *Gazette*, or its equivalent in any foreign currency (unless the recipient and the sender is a bank licensed by the Central Bank) ; and
- (b) any electronic funds transfer at the request of a customer exceeding such sum as shall be prescribed by regulation, in such form, manner, and within such period as may be prescribed by rules issued by the Financial Intelligence Unit.

7. (1) Where an Institution—

- (a) has reasonable grounds to suspect that any transaction or attempted transaction may be related to the commission of any unlawful activity or any other criminal offence ; or
- (b) has information that it suspects may be relevant—
 - (i) to an act preparatory to an offence under the provisions of the Convention on the Suppression of Financing of Terrorism Act, No. 25 of 2005 ;
 - (ii) to an investigation or prosecution of a person or persons for an act constituting an unlawful activity, or may otherwise be of assistance in the enforcement of the Money Laundering Act, No. 5 of 2006 and the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005,

the Institution shall, as soon as practicable, after forming that suspicion or receiving the information, but no later than two working days therefrom, report the transaction or attempted transaction or the information to the Financial Intelligence Unit.

(2) A report under subsection (1) shall—

- (a) be in writing and may be given by way of mail, telephone to be followed up in writing within twenty-four hours, fax or electronic mail or such other manner as may be determined by the Financial Intelligence Unit ;
- (b) be in such form and contain such details as may be prescribed by the Financial Intelligence Unit ;
- (c) contain a statement of the grounds on which the Institution holds the suspicion ;
- (d) be signed or otherwise authenticated by the Institution.

- (3) A person who has made a report or has given any information to the Financial Intelligence Unit shall provide to the Financial Intelligence Unit any further information that it has about the transaction or attempted transaction or the parties to the transaction if requested to do so by the Financial Intelligence Unit.

8. Every Institution shall, in relation to any person conducting transactions with such institution, forthwith disclose to the Financial Intelligence Unit—

- (a) the existence of any property in its possession or control, which to its knowledge is, or which it reasonably suspects is, property derived from the commission of any terrorist activity in terms of any law for the time being in force ;

- (b) the existence of any property in his or her possession or control, owned or controlled by or on behalf of a specified entity or for which there are reasonable grounds for suspicion that it is owned or controlled by or on behalf of a specified entity ;
- (c) any information regarding a transaction or proposed transaction in respect of property derived from the commission of any terrorist activity in terms of any law for the time being in force ; or
- (d) any information regarding a transaction or proposed transaction and there are reasonable grounds for suspicion that such transaction may involve property derived from the commission of any terrorist activity in terms of any law for the time being in force.

PART II

PROVISIONS APPLICABLE TO INSTITUTIONS AND OTHER PERSONS

9. (1) A person shall not disclose to any other person—
- (a) that a report has been made or information provided to the Financial Intelligence Unit in terms of any provisions of this Act ;
 - (b) that any suspicion in relation to a transaction has been formed as referred to in section 7 ; or
 - (c) any other information from which the person to whom the information is disclosed could reasonably be expected to infer that a suspicion has been formed or that a report has been or may be made.
- (2) The provisions of subsection (1) shall not apply to disclosures made to—
- (a) an officer or employee or agent of the person making the report under this Act for any purpose connected with the performance of that person's duties ;
 - (b) a lawyer, attorney or legal advisor for the purpose of obtaining legal advice or representation in relation to any matter ; or
 - (c) the supervisory authority of the relevant Institution, in so far as it is related to the discharge of the functions of the supervisory authority.
- (3) No person referred to in paragraph (b) of subsection (2) to whom any disclosure of information has been made, shall disclose that information other than to a person referred to therein, in so far as it is necessary for—
- (a) the performance of the first-mentioned person's duties ; or
 - (b) obtaining legal advice or representation in relation to the matter.
- (4) No person referred to in paragraph (c) of subsection 2 to whom the disclosure of any information has been made shall disclose that information except for the purpose referred to in that subsection, or for the purpose of obtaining legal advice or making representation in relation to the matter to the Financial Intelligence Unit.
10. (1) A person shall not disclose any information that will identify or is likely to identify —
- (a) the person who has handled a transaction in respect of which a suspicious transaction report under this Act has been made ;
 - (b) the person who has prepared such a suspicious transaction report ;
 - (c) the person who has reported such a suspicious transaction ; or
 - (d) the information contained in a suspicious transaction report or information provided pursuant to section 7, other than for the purpose of—
- (i) the investigation or prosecution of a person or persons for an unlawful activity, or an offence under the Prevention of Money Laundering Act, No. 5 of 2006 or the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005, respectively ; or

- (ii) the enforcement or implementation of the provisions of the Prevention of Money Laundering Act, No. 5 of 2006 and the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005.
- (2) Nothing in this section shall be deemed to prohibit the disclosure of any information for the purposes of the prosecution of any person for the violation of the provisions of section 7.
- 11.** Subject to the provisions of this Act and any other written law for the time being in force prohibiting such disclosure, nothing contained in section 9 or 10 shall prevent the disclosure of any information in connection with, or in the course of, proceedings before a Court and no person shall be required to disclose any information to which this section applies in any judicial proceeding unless the judge or other presiding officer is satisfied that the disclosure of the information is necessary in the interests of justice.
- 12.** (1) No civil, criminal or disciplinary proceedings shall lie against —
- (a) a such Institution, an auditor or supervisory authority of an Institution ; or
 - (b) a director, partner, an officer, employee or agent acting in the course of that person's employment or agency of an Institution, firm of Auditors or of a supervisory authority,
- in relation to any action by the Institution, the firm of auditors or the supervisory authority or a director, partner, officer, employee or agent of such Institution, firm or authority, carried out in terms of this Act in good faith or in compliance with regulations made under this Act or rules or directions given by the Financial Intelligence Unit in terms of this Act.
- (2) The provisions of subsection (1) shall not apply in respect of any proceedings for an offence described in section 8 of this Act.
- (3) If an Institution, firm of auditors or supervisory authority or any director, partner, officer, employee or agent, of any Institution, firm or authority or makes a report under the provisions of this Act, such person shall for the purposes of a prosecution for the offence of money laundering, be deemed not to have been in possession of that information at any time.
- 13.** (1) Nothing contained in sections 4, 5, 6, 7 or 8 of this Act shall be construed as requiring a lawyer to disclose any privileged communication only if —
- (2) (a) it is a confidential communication, whether oral or in writing, passing between —
- (i) a lawyer or legal advisor in his or her professional capacity and another barrister, solicitor, lawyer, attorney or legal advisor in such capacity ; or
 - (ii) a lawyer or legal advisor in his or her professional capacity and his or her client, whether made directly or indirectly through an agent of either ; and
- (b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance ; and
- (c) it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or unlawful act.
- (3) Where the information consists wholly or partly of, or relates wholly or partly to receipts, payments, income, expenditure, or financial transactions of a person (whether a lawyer his or her client, or any other person), it shall not be a privileged communication if it is contained in, or comprises the whole or part of any book, account, statement or other record prepared or kept by the lawyer in connection with a trust account of the lawyer.
- 14.** (1) Every Institution shall be required to—
- (a) appoint a Compliance Officer who shall be responsible for ensuring the Institution's compliance with the requirements of this Act ;
 - (b) establish and maintain procedures and systems to—
 - (i) implement the customer identification requirements under section 2 ;
 - (ii) implement procedures for the record keeping and retention requirements under section 4 ;

- (iii) implement the process of monitoring required under section 5 ;
 - (iv) implement the reporting requirements under sections 6, 7, 8 and section 22 in relation to auditors ;
 - (v) make its officers and employees aware of the laws relating to money laundering and financing of terrorism ; and
 - (vi) screen all persons before hiring them as employees ;
 - (c) establish an audit function to test its procedures and systems for the compliance with the provisions of this Act ;
 - (d) train its officers, employees and agents to recognize suspicious transaction.
- (2) The provisions of subsection (1) shall not apply to an individual who, in the course of carrying on his her business, does not employ or act in association with any other person.
- (3) An Institution shall ensure that its foreign branches and subsidiaries adopt and observe measures consistent with Parts I, II and III of this Act to the extent that local laws and regulations permit and where the foreign branch or subsidiary is unable to adopt and observe such measures, to report the matter to the relevant supervisory authority or in the absence of a supervisory authority to the Financial Intelligence Unit.

PART III

POWERS AND FUNCTIONS OF THE FINANCIAL INTELLIGENCE UNIT

15. (1) The Financial Intelligence Unit—

- (a) shall receive reports made in terms of the provisions of this Act and information provided to the Financial Intelligence Unit by any agency of another country, information provided to the Financial Intelligence Unit by a law enforcement agency or a government institution or agency, and other information voluntarily provided to the Financial Intelligence Unit about suspicions of an act constituting an unlawful activity ;
- (b) shall collect or require the supervisory authority of a financial institution to collect any information that the Financial Intelligence Unit considers relevant to an act constituting an unlawful activity, or an offence of money laundering or financing of terrorism, or a terrorist activity whether or not publicly available, including commercially available databases, or information that is collected or maintained, including information that is stored, in databases maintained by the Government ;
- (c) may request information from any Government agency, law enforcement agency and supervisory agency for the purposes of this Act ;
- (d) may analyze and assess all reports and information ;
- (e) shall carry out examinations of all Institutions as set out in section 18 ;
- (f) shall refer any matter or any information derived from any report or information it receives to the appropriate law enforcement agency if, on the basis of its analysis and assessment, the Financial Intelligence Unit has reasonable grounds to suspect that the transaction would be relevant to the investigation or prosecution under this Act or of an act constituting an unlawful activity, and in connection therewith, the Financial Intelligence Unit may send a copy of such referral or information to the relevant supervisory authority ;
- (g) shall destroy a suspicious transaction report on the expiry of six years from the date of receipt or collection of the report, if there has been no further activity or information relating to the report, or the person named in the report, or six years from the date of the last activity relating to the person or report ;
- (h) shall instruct or require the supervisory authority of an Institution to take such steps as may be appropriate in relation to any information or report received by the Financial Intelligence Unit, to enforce compliance with this Act or to facilitate any investigation anticipated by the Financial Intelligence Unit or a law enforcement agency ;

- (i) shall compile statistics and records, and may disseminate information within Sri Lanka or elsewhere, and make recommendations arising out of any information received ;
 - (j) shall issue or have the supervisory authority of an Institution issue, rules and guidelines to Institutions in relation to customer identification, record keeping, reporting obligations, the identification of suspicious transactions and such other matters in respect of which the Financial Intelligence Unit has been vested with the power to issue rules or guidelines by this Act ;
 - (k) shall periodically report to all Institutions and other relevant agencies regarding the outcome from reports or information given under the Act ;
 - (l) may obtain further information on parties or transactions referred to in a report made to it under this Act ;
 - (m) may conduct training programs for Institutions in relation to customer identification, record keeping and reporting obligations and the identification of suspicious transactions ;
 - (n) may undertake due diligence checks and other inquiries as may be necessary for performance of its duties and functions under this Act ;
 - (o) may conduct research into trends and developments in the area of money laundering and the financing of terrorism and improved ways of detecting, preventing and deterring money laundering and the financing of terrorism ;
 - (p) may educate the public and create awareness on matters relating to money laundering and the financing of terrorism ;
 - (q) may disclose as set out in section 16 and 17, any report, any information derived from such report or any other information it receives, to an institution or agency of a foreign state or of an international organization established by the governments of foreign states that has powers and duties similar to those of the Financial Intelligence Unit, if on the basis of its analysis or assessment the Financial Intelligence Unit has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of any act constituting an unlawful activity, a money laundering offence or a offence of financing of terrorism ; and
 - (r) may enter into any agreement or arrangement with any domestic government institution or agency regarding the exchange of information.
- (2) Where the Financial Intelligence Unit has reasonable grounds to suspect that a transaction or attempted transaction may —
- (a) involve the proceeds which are attributable to any unlawful activity ; or
 - (b) be connected to the commission of the money laundering offence under the Money Laundering Act, No. 5 of 2006 ; or
 - (c) be preparatory to the commission of an offence under the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005,
- it may direct the Institution in writing or by telephone to be confirmed in writing within twenty-four hours, not to proceed with the carrying out of that transaction or attempted transaction or any other transaction in respect of the funds affected by that transaction or attempted transaction for a period to be determined by the Financial Intelligence Unit, which may not be more than seven days, in order to allow the Financial Intelligence Unit —
- (i) to make any necessary inquiries concerning the transaction or attempted transaction ; and
 - (ii) if the Financial Intelligence Unit deems it appropriate, to consult or advise the relevant law enforcement agency in the inquiries.
- (3) The Financial Intelligence Unit may make an *ex -parte* application to the High Court of the Western Province, holden in Colombo, for an extension of the period of time stipulated in subsection (2) setting out the grounds for such application.

16. The Financial Intelligence Unit may disclose any report or information to an institution or agency of a foreign state or of an international organization or body or other institution or agency established by the Government of a foreign State that has powers and duties similar to those of the Financial Intelligence Unit on such terms and conditions as are set out in the agreement or arrangement between Financial Intelligence Unit and an institution, agency or organization or authority regarding the exchange of such information under section 17.

17. (1) The Financial Intelligence Unit may, with the approval of the Minister, enter into an agreement or arrangement, in writing, with—
- (a) an institution or agency of a foreign State or foreign States or an international organization established by the Governments of a foreign State that has powers and duties similar to those of the Financial Intelligence Unit ; and
 - (b) a foreign law enforcement agency or a foreign supervisory authority,
- regarding the exchange of information between the Financial Intelligence Unit and the institution, authority or agency.
- (2) The information exchanged under subsection (1) shall be information that the Financial Intelligence Unit, the Institution or agency has reasonable grounds to suspect would be relevant to the investigation or prosecution of an offence constituting an unlawful activity or an offence that is substantially similar to such an offence.
- (3) Agreements or arrangements entered into under subsection (1) shall include the following :—
- (a) restrictions on the use of information to purposes relevant to investigating or prosecuting any act constituting an unlawful activity or an offence that is substantially similar to such offence ;and
 - (b) the stipulation that the information be treated in a confidential manner and not be further disclosed without the express consent of the Financial Intelligence Unit.
18. (1) Subject to the requirements of paragraph (e) of subsection (1) of section 15, the Financial Intelligence Unit or any person authorised by it in that behalf may examine the records and inquire into the business and affairs of an Institution for the purpose of ensuring compliance with the Act or any directions, orders, rules or regulations issued under the Act, and for that purpose may—
- (a) at any reasonable time, enter any premises, in which the Financial Intelligence Unit or authorised person believes, on reasonable grounds, that there are records relevant to ensuring compliance with the provisions of Parts I, II and III of this Act ;
 - (b) use or cause to be used any computer system or data processing system found in the premises, to examine any data contained in or available to the system ;
 - (c) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or the output for examination or copying ; and
 - (d) use or cause to be used any copying equipment in the premises to make copies of any record.
- (2) The owner or person responsible for the premises referred to in subsection (1) and every person found thereon shall give the Financial Intelligence Unit or any authorized person all reasonable assistance to enable them to carry out their responsibilities and shall furnish them with any information that they may reasonably require with respect to the administration of Parts, I, II and III of this Act or the regulations made under the Act.
- (3) The Financial Intelligence Unit may transmit any information from, or derived from, such examination to the appropriate domestic or foreign law enforcement authorities or supervisory authorities, if the Financial Intelligence Unit has reasonable grounds to suspect that the information is suspicious or is relevant to an investigation for non-compliance with this Act, or amounts to an offence constituting an unlawful activity.
19. (1) A person required to conform to the requirements prescribed by or under Parts I and II of this Act, who fails to so conform, shall be liable to a penalty as may be prescribed taking into consideration the nature and gravity of relevant non-compliance : Provided however such penalty shall not exceed a sum of rupees one million in any given case. Where a person who has been subjected to a penalty on a previous occasion, subsequently fails to conform to a requirement on any further occasion such person shall be liable to the payment of an additional penalty in a sum consisting of double the amount imposed as a penalty on the first occasion and for each non-compliance after such first occasion.
- (2) The Financial Intelligence Unit shall be responsible for the collection of a penalty imposed by this section and the money so collected shall be credited to the Consolidated Fund.
- (3) If a person who becomes liable to a penalty in terms of subsection (1) fails to pay such penalty, the Unit may make an *ex- parte* application to the High Court of the Western Province holden in Colombo for an Order requiring the payment of the penalty and upon such order being made such amount shall be recoverable in the same manner as a fine imposed by Court.

- (4) The imposition of a penalty under this section shall not preclude a supervisory authority or a regulatory or self regulatory authority of an Institution from taking any regulatory or disciplinary measures including, but not limited to, the suspension of such Institution from the carrying on of a business or profession or the cancellation of a licence or authority granted for the carrying on of a business or profession, as may be permitted in terms of any applicable written law or rules for the regulation or supervision of such Institution.
- (5) Where a penalty is imposed under this section on a body of persons, then-
- (a) if that body of person is a body corporate, every person who at the time of the imposition of the requirements under subsection (1) was a Director, General Manager, Secretary or other similar officer of that body ; or
 - (b) if that body is not a body corporate, every person who at the time of the imposition of such requirements was the President, Manager, Secretary, partner or other similar officer of that body,
- shall be liable to pay such penalty, unless he proves that he had no knowledge of the failure to comply with the requirement or that he exercised all due diligence to ensure compliance therewith.
- (6) Without prejudice to the provisions of subsection (1), the Financial Intelligence Unit may issue a directive to any Financial Institution that has without reasonable cause failed to comply in whole or in part with any obligations in Parts I, II or III of this Act requiring such Institution to implement a action plan specified in such directive to ensure compliance with its obligations under the said Parts.
- (7) Where an Institution fails to comply with a directive issued under subsection (6), the Financial Intelligence Unit may, upon application to the High Court of the Western Province, holden in Colombo and upon satisfying the Court that an Institution has failed without reasonable excuse to comply in whole or in part with the directive issued by it under subsection (6), obtain an order against the Institution and any or all of the officers or employees of that Institution in such terms as the Court deems necessary to enforce compliance with such obligation.
- 20.** (1) The provisions of this section shall be applicable in relation to any person who is, or who has been, a Director, officer, employee or agent of the Financial Intelligence Unit.
- (2) Except for the purpose of the performance of his or her duties or the exercise of his or her functions under this Act, or when lawfully required to do so by any court, the person referred to in subsection (1) shall not disclose any information or matter which has been obtained by him or her in the performance of his or her duties or the exercise of his or her functions under this Act or which he or she has knowledge except for one or more of the following purposes :—
- (a) for securing compliance with, or detecting evasion of, any requirement contained in any provision of this Act or any other written law relating thereto ;
 - (b) the implementation of the Prevention of Money Laundering Act, No. 5 of 2006 and the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005 ; or
 - (c) the purposes of section 50A of the Exchange Control Act (Chapter 423).
- 21.** Any employee of the Financial Intelligence Unit or any authorised officer, agent or person appointed by the Financial Intelligence Unit for the performance of its statutory functions shall not be liable for damages for any lawful act or omission which has occurred in the discharge or purported discharge of any of its statutory functions under this Act unless it is shown that the act or omission was done in bad faith.

PART IV

FUNCTIONS OF SUPERVISORY AUTHORITY OF AN INSTITUTION AND AUDITORS

- 22.** (1) Where a supervisory authority or an auditor of an Institution has reasonable grounds to suspect that information that it has concerning any transaction or attempted transaction may, be —
- (a) relevant to an investigation or prosecution of a person or persons for any unlawful activity ;
 - (b) of assistance in the enforcement of the provisions of the Prevention of Money Laundering Act, No. 5 of 2006 and the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005 ;

(c) related to the commission of any offence constituting an unlawful act ; or

(d) preparatory to the offence of the financing of terrorism,

the supervisory authority or the auditor of the Institution shall report the transaction or attempted transaction to the Financial Intelligence Unit.

(2) The supervisory authority shall at the request of the Financial Intelligence Unit carry out any examination into any transaction or other matter relating to the Institution and report on such examination to the Financial Intelligence Unit.

(3) The Financial Intelligence Unit shall consult the supervisory authority in respect of the issue of guidelines, directions or regulations to an Institution which is regulated by such supervisory authority and shall furnish to the supervisory authority copies of all guidelines, regulation or directions issued to such Institution.

23. The relevant supervisory authority of an Institution shall—

(a) verify through regular examinations whether that an Institution is complying with provisions of the Act and shall report any non-compliance to the Financial Intelligence Unit ;

(b) co-operate with law enforcement agencies and the Financial Intelligence Unit in any investigation, prosecution or proceedings relating to any offence constituting an unlawful activity.

PART V

CURRENCY REPORTING AT THE BORDER

24. (1) Where a person —

(a) is about to leave Sri Lanka or has arrived in Sri Lanka ; or

(b) is about to board or leave, or has boarded or left, any ship or aircraft ,

an authorised officer may, with such assistance as is reasonable and necessary, and with use of force as is necessary,

(i) examine any article which a person has with him or her or in his or her luggage ; and

(ii) if the officer has reasonable grounds to suspect that an offence under section 27 of this Act may have been or is being committed, search the person ;

for the purpose of determining whether the person has in his or her possession, any cash or negotiable bearer instruments in respect of which a report under subsection 5 is required.

(2) A person shall not be searched except by a person of the same sex.

(3) An authorised officer, and any person assisting such officer may stop, board and search any ship, aircraft or conveyance for the purposes of exercising the powers conferred by subsections (1) or (2) of this section.

(4) Where an authorised officer has reasonable grounds to believe that cash or negotiable bearer instruments found in the course of an examination or search, conducted under subsections (1) or (2) above, may afford evidence as to the commission of an unlawful activity, the officer may seize the cash or negotiable bearer instruments, within twenty-four hours of such seizure.

(5) An authorised officer who has seized cash and negotiable bearer instrument under subsection (4) shall report such seizure to the Unit.

25. An authorised officer may seize and, in accordance with the provisions of this part detain, any cash or negotiable bearer instruments which is being imported into, or exported from Sri Lanka in any form or manner if he or she has reasonable grounds for suspecting that it is —

(a) derived from the commission of any unlawful activity ; or

(b) intended by any person for use in the commission of an unlawful activity ;

(c) intended to be used for or in connection with an offence connected with the financing of terrorism in term of the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005.

26. (1) Cash and negotiable bearer instruments seized under subsection (4) of section 24 or section 25 shall not be detained for more than five working days after seizure, unless the High Court for the Western Province holden in Colombo, on application made to it, grants an Order of continued detention for a period not exceeding three months from the date of seizure, upon being satisfied that —
- (a) there are reasonable grounds to suspect that it was derived from the commission of any unlawful activity or is intended by any person for use in the commission of an offence or in connection with an offence connected with the financing of terrorism under the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005 ; and
 - (b) its continued detention is justified while its origin or derivation is further investigated.
- (2) The Court may subsequently Order, after hearing, with notice to parties it determines are relevant, the continued detention of the cash and negotiable bearer instruments if satisfied of the matters mentioned in subsection (1) but the total period of detention shall not exceed two years from the date of the Order.
- (3) Subject to subsection (4), cash and negotiable bearer instruments detained under this section shall be released in whole or in part to the person from whom it was seized or to any person establishing a claim thereto-
- (a) by Order of a Court that its continued detention is no longer justified and upon application by or on behalf of that person ;
 - (b) by an authorized officer, if satisfied that its continued detention is no longer justified.
- (4) No cash or negotiable bearer instruments detained under this section shall be released where it is relevant to an investigation, prosecution or proceeding under Prevention of Money Laundering Act, No. 5 of 2006 or the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005.
- (5) Where the cash or negotiable bearer instruments have not been claimed by any person within one year of it being seized or detained, an authorised officer may make an application to the Court that such cash or negotiable instrument or its equivalent in Sri Lanka rupees upon sale to the Central Bank, as the case may be, be forfeited to the Consolidated Fund.

PART VI

OFFENCES AND LIABILITIES

27. Any person who leaves or arrives in Sri Lanka with more than the prescribed sum in cash or negotiable bearer instruments on his or her person or in his or her luggage without first having reported the fact to the relevant authority is guilty of an offence and shall be punishable on conviction with a fine not exceeding one hundred thousand rupees or imprisonment of either description for a term not exceeding one year, or to both such fine and imprisonment.
28. (1) A person who in making a report under sections 6, 7, 8 or subsection (1) of section 22 makes any statement that the person knows is false or misleading in a material particular or omits from any statement any matter or thing without which the person knows that the statement is false or misleading in a material particular is guilty of an offence punishable on conviction to a fine not exceeding one hundred thousand rupees or imprisonment of either description for a term not exceeding one year, or to both such fine and imprisonment.
- (2) If a person contravenes subsection (1) of section 9 or subsection (1) of section 10 with intent to prejudice an investigation of an offence constituting an unlawful activity or an offence of money laundering or financing of terrorism or for the purpose of obtaining directly or indirectly an advantage or a pecuniary gain for himself or herself or any other person, or for the purpose of causing any loss or disadvantage to any other person, the person is guilty of an offence punishable on conviction to a fine not exceeding five hundred thousand rupees or imprisonment of either description for a term not exceeding two years, or to both such fine and imprisonment.
- (3) If a person wilfully obstructs or hinders or fails to co-operate with the Financial Intelligence Unit or any authorized person in the lawful exercise of the powers under subsection (1) of section 18 or any person who does not comply with subsection (2) of section 18 is guilty of an offence and shall be punishable on conviction to a fine not exceeding five hundred thousand rupees or imprisonment of either description for a term not exceeding two years, or to both such fine and imprisonment.

- (4) If a person forges, conceals or does any other act to affect the authenticity or integrity of any document or material knowing or having reason to believe that such document or material is relevant to an investigation into an offence under the Prevention of Money Laundering Act, No. 5 of 2006 or the Convention for the Suppression of Financing of Terrorism Act, No. 25 of 2005 is guilty of an offence punishable on conviction to a fine not exceeding one hundred thousand rupees or imprisonment of either description for a term not exceeding one year, or to both such fine and imprisonment.
- (5) If any person destroys or otherwise disposes of any document or material which such person knows or has reason to believe is relevant to an investigation under the Prevention of Money Laundering Act, No. 5 of 2006 or the Convention for the Suppression of Financing of Terrorism Act, No. 25 of 2005, is guilty of an offence punishable on conviction to a fine not exceeding one hundred thousand rupees or imprisonment of either description for a term not exceeding one year, or to both such fine and imprisonment.
- (6) A person who opens, operates or authorizes the opening or the operation of an account with an Institution in a fictitious or false name is guilty of an offence and shall be punishable on conviction to a fine not exceeding one hundred thousand rupees or imprisonment of either description for a term not exceeding one year, or to both such fine and imprisonment.

PART VII

MISCELLANEOUS

29. (1) The Minister may make regulations under this Act for any matter authorized or required to be made under this Act, or for the purpose of carrying out or giving effect to the principles and provisions of this Act.
- (2) Without prejudice to the generality of the provisions of subsection (1) regulations may be made in respect of all or any of the following matters :—
 - (a) the identification of appropriate risk management systems in keeping with the recommendations of the Financial Action Task Force ;
 - (b) the manner in which ongoing monitoring of business relationships is to be carried out by Institutions ; and
 - (c) specifying for the purpose of the application of the Financial Action Task Force recommendations relating to risk management-
 - (i) the procedure to be followed and the guidelines that will be applicable in the categorization of customers for the purposes of risk management ;
 - (ii) the manner in which senior management approval is to be obtained prior to establishing business relationships with customers categorized as high risk customers ;
- (3) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.
- (4) Every regulation made by the Minister shall as soon as convenient after its publication in the *Gazette* be brought before Parliament for its approval. Any regulation, which is not so approved, shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously done thereunder.
- (5) Notification of the date on which a regulation is deemed to be rescinded shall be published in the *Gazette*.
30. (1) This Act shall apply only in relation to the transactions of all Institutions to which the provisions of this Act applies, which have taken place after the coming into operation of this Act.
- (2) All persons to whom this Act applies shall be required to comply with the provisions of this Act, notwithstanding anything to the contrary contained in any other written law for the time being in force.
- (3) The provisions of this Act shall prevail over any other law for the time being in force in relation to the matters set out herein.
31. An Institution shall comply with the requirements of this Act notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by any written law or otherwise.

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

33. In this Act, unless the context otherwise requires —

“account” means any facility or arrangement by which an Institution does any of the following :—

- (a) accepts deposits of currency ;
 - (b) allows withdrawals of currency ; or
 - (c) pays cheques or payment orders drawn on the Institution, or collects cheques or payment orders on behalf of a person other than the Financial Institution,
- and includes any facility or arrangement for a safety deposit box or for any other form of safe deposit;

“authorised officer” means —

- (a) a Police Officer above the rank of an Assistant Superintendent of Police or ;
- (b) a Customs Officer above the rank of Superintendent of Customs ;

“cash” means any coin or paper money that is designated as legal tender in the country of issue and includes bearer bonds, travellers’ cheques, postal notes and money orders ;

“currency” means the currency of Sri Lanka or that of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue ;

“customer” in relation to a transaction or an account includes —

- (a) the person in whose name a transaction or account is arranged, opened or undertaken ;
- (b) a signatory to a transaction or account ;
- (c) any person to whom a transaction has been assigned or transferred ;
- (d) any person who is authorised to conduct a transaction ; or
- (e) such other person as may be prescribed.

“designated non-finance business” includes—

- (a) individual and collective portfolio management ;
- (b) investing, administering or managing funds or money on behalf of other persons ;
- (c) safekeeping and administration of cash or liquid securities of behalf of other persons ;
- (d) safe custody services ;
- (e) underwriting and placement of insurance, as well as insurance intermediation by agents and brokers ;
- (f) trustee administration or investment management or a superannuation scheme ;
- (g) casinos, gambling houses or conducting of a lottery, including a person who carries on such a business through the internet when their customers engage in financial transactions equal to or above the prescribed threshold ;
- (h) real estate agents, when they are involved in transactions for their clients in relation to the buying and selling of real estate ;
- (i) dealers in precious metals and dealers in precious and semi-precious stones, including but not limited to, metals and stones covered by the Gem and Jewellery Act, No. 50 of 1993 when they engage in cash transactions with a customer, equal to or above the prescribed threshold ;
- (j) lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their clients in relation to any of the following activities :—
 - (i) buying and selling of real estate ;
 - (ii) managing of client money, securities or other assets ;
 - (iii) management of bank, savings or securities accounts ;

- (iv) organization of contributions for the creation, operation or management of companies ; and
- (v) creation, operation or management of legal person or arrangements and the buying and selling of business entities ;
- (k) a trust or company service provider not otherwise covered by this definition, which as a business provides and one or more of the following services to third parties :—
 - (i) formation or management of legal persons ;
 - (ii) acting as or arranging for another person to act as, a director or secretary of a company, a partner or a partnership or a similar position in relation to other legal persons ;
 - (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or for any other legal person or arrangement ;
 - (iv) acting as or arranging for another person to act as, a trustee of an express trust ;
 - (v) acting as or arranging for another person to act as, a nominee shareholder for another person ;
- (l) offshore units in accordance with the definitions provided for the same in other written laws ; and
- (m) such other business as may be prescribed from time to time by the Minister taking into consideration the interests of the national economy.

“document” means any record of information, and includes —

- (a) anything on which there is writing ;
- (b) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them ;
- (c) anything from which sounds, images or writings can be produced, with or without the aid of anything else;
- (d) a map, plan, drawing, photograph or similar thing ; and
- (e) any of the above kept or maintained in electronic form.

“finance business” includes any one of the following businesses or activities :—

- (a) banking business as defined in the Banking Act, No. 30 of 1988 ;
- (b) finance business as defined in the Finance Companies Act, No. 78 of 1988 (irrespective of whether the person is licensed or registered under the Act) ;
- (c) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions ;
- (d) financial leasing other than transactions relating to consumer products ;
- (e) the transfer of money or value ;
- (f) money and currency changing services ;
- (g) issuing and managing means of payment (i.e. credit cards, travellers’ cheques, money orders and bankers’ drafts and electronic money) ;
- (h) issuing financial guarantees and commitments, including but not limited to consumer credit, factoring with or without recourse and financing of commercial transactions including forfeiting ;
- (i) trading for its own account or for the account of customers in money market instruments (i.e. cheques, bills, certificates of deposit and derivatives), foreign exchange, exchange, interest rate and index instruments, commodity futures trading and transferable securities ;
- (j) participating in securities issues and the provision of financial services related to such issues ; and
- (k) such other business as may be prescribed from time to time by the Minister taking into consideration the interests of the national economy.

“Financial Intelligence Unit” means the government department, public corporation, statutory body, institution, or authority, or any department or unit of such department, corporation, body, institution or authority designated by the Minister by Order published in the *Gazette*, which shall be charged with the administration of the provisions of this Act ; the Minister shall in making the Order take into consideration the capacity of the Government department, public corporation, statutory body, or authority to be designated in relation to its functions and manpower and its overall ability to act efficiently in the discharge of the functions under this Act ;

“Institution” means any person or body of persons engaged in or carrying out any finance business or designated non-finance business within the meaning of this Act ;

“money transmission services” means a person (other than a bank licensed by the Central Bank) carrying on the business of—

- (a) exchanging cash or the value of money ;
- (b) collecting, holding, exchanging or remitting funds or the value of money, or otherwise negotiating transfers of funds or the value of money, on behalf of other persons ;
- (c) delivering funds ; or
- (d) issuing, selling or redeeming traveller’s cheques, money orders of similar instruments;

“negotiable bearer instrument” means a document representing ownership of debts or obligations, including bills of exchange, promissory notes or certificates of deposit, whether made payable to the bearer or not ;

“Offshore Unit” means a unit or department of a licensed commercial bank or a licensed specialized bank carrying on banking business, subject to the provisions of Part IV of the Banking Act, No. 30 of 1988, dealing with Offshore Banking ;

“person” means any natural or legal person including a body of persons, whether it has legal personality or not and includes a branch of such person or body of persons incorporated or established outside Sri Lanka ;

“prescribed” means prescribed by regulations made under this Act ;

“money laundering offence” means an offence as defined in section 4 of the Prevention of Money Laundering Act, No. 5 of 2006 ;

“offence of financing of terrorism” means an act constituting an offence in terms of the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005 ;

“property” means any currency, and includes any asset of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible whether situated in Sri Lanka or elsewhere, and legal documents or, instruments in any form whatsoever including electronic or digital form, evidencing title to, or interest in, such assets, including but not limited to bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit and includes any legal or equitable interest in any such property ;

“record” means any material on which data is recorded or marked and which is capable of being read or understood by a person, computer system or other device ;

“suspicious transaction report” means a report required to be made under section 6 ;

“specified entity” means —

- (a) an entity that has knowingly —
 - (i) committed ;
 - (ii) attempted to commit ;
 - (iii) participated in committing ; or
 - (iv) facilitated the commission of,

any act connected with an act constituting an offence in terms of any written law for the time being in force in Sri Lanka relating to terrorism ; or

- (b) an entity prescribed by the Minister of Foreign Affairs in terms of regulations made under the United Nations Act, No. 45 of 1968 ;

“terrorist act” means an act constituting an offence in terms of any written law for the time being in force in Sri Lanka relating to terrorism ;

“terrorist property” means :

- (a) proceeds from the commission of a terrorist act ;
- (b) property which has been, is being, or is likely to be used to commit a terrorist act ;
- (c) property which has been, is being, or is likely to be used by a terrorist group ;
- (d) property owned or controlled by or on behalf of a terrorist group ; or
- (e) property which has been collected for the purpose of providing support to a terrorist group for funding a terrorist act ;

“transaction” means any activity connected with finance business or designated non-finance business ;

“transaction” in relation to property includes—

- (a) a purchase, sale, loan, charge, mortgage, lien, pledge, transfer, delivery, assignment, subrogation, transmission, gift, donation, creation of a trust, settlement, deposit including the deposit of any article, withdrawal, transfer between assets, extension of credit ;
- (b) any agency or grant of power of attorney ;
- (c) any other disposition or dealing of property in whatever form, or whatsoever description or nature, howsoever described, which results in any right, title, interest or privilege, whether present or future, or whether vested or contingent, in the whole or any part of such property being conferred on any person ; and

“unlawful activity” means any act which constitutes an offence under :—

- (a) the Poisons, Opium and Dangerous Drugs Ordinance (Chapter 218) ;
- (b) any law or regulation for the time being in force relating to the prevention and suppression of terrorism ;
- (c) the Bribery Act (Chapter 26) ;
- (d) the Firearms Ordinance (Chapter 182), the Explosives Ordinance (Chapter 183) or the Offensive Weapons Act, No. 18 of 1966.
- (e) The Exchange Control Act (Chapter 423) ;
- (f) an offence under section 83 c of the Banking Act, No. 30 of 1988 ;
- (g) any law for the time being in force relating to transnational organised crime ;
- (h) any law for the time being in force relating to cyber crime ;
- (i) any law for the time being in force relating to offences against children ;
- (j) any law for the time being in force relating to offences connected with the trafficking of persons ; and
- (k) an offence under any other law for the time being in force which is punishable by death or with imprisonment for a term of seven years or more.

MONETARY LAW (AMENDMENT) ACT, NO. 9 OF 2006

[Certified on 31st March, 2006]

AN ACT TO AMEND THE MONETARY LAW ACT

1. This Act may be cited as the Monetary Law (Amendment) Act, No.9 of 2006.
2. The Monetary Law Act, (Chapter 422) (hereinafter referred to as the “principal enactment”) is hereby amended by the substitution for the heading appearing in Part VII of Chapter V thereof, the following heading: -

“PART VII**ADDITIONAL REGULATION OF CREDIT OPERATIONS OF BANKING INSTITUTIONS AND LICENSED SPECIALIZED BANKS”.**

3. The following new section is hereby inserted immediately before section 99 of Part VII of Chapter V and shall have effect as section 98B of that enactment :—

“Interpretation for Part VII. 98B. For the purposes of this Part of this Act, “licensed specialized bank” shall have the same meaning as in the Banking Act, No. 30 of 1988.”.
4. Section 100 of the principal enactment is hereby amended by the substitution for the words “by commercial banks after” of the words “by commercial banks and licensed specialized banks after”.
5. Section 101 of the principal enactment is hereby amended as follows : -
 - (1) in subsection (1) of that section,
 - (a) by the substitution in paragraph (a) thereof, for the words “prohibit commercial banks from” of the words “prohibit commercial banks and licensed specialized banks from”;
 - (b) by the substitution in paragraph (b) thereof, for the words “within specified periods:” of the words “within specified periods; or”;
 - (c) by the addition immediately after paragraph (b) thereof, of the following new paragraph: -

“(c) fix the minimum percentage of loans to be extended, to any identified sector of the economy, by the commercial banks or licensed specialized banks:”;
 - (d) in the proviso thereto, by the substitution for the words “require any commercial bank to” of the words “require any commercial bank or licensed specialized bank to”; and
 - (2) in subsection (2) of that section, by the substitution for the words “of each commercial bank” of the words “of each commercial bank or licensed specialized bank”.
6. Section 102 of the principal enactment is hereby amended by the substitution for the words “surplus of commercial banks” of the words “surplus of commercial banks and licensed specialized banks”.
7. Section 104 of the principal enactment is hereby amended as follows: -
 - (1) in subsection (1) of that section, by the substitution for the words “which commercial banks may” appearing in paragraphs (a) and (b) thereof, of the words “which commercial banks and licensed specialized banks may”; and
 - (2) in subsection (3) of that section, by the substitution for the words “by commercial banks in” of the words “by commercial banks and licensed specialized banks in”.
8. Section 105 of the principal enactment is hereby amended by the substitution for the words “held by banking institutions”

and “by such institutions” of the words “held by banking institutions and licensed specialized banks” and “by such institutions and banks” respectively.

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

FINANCE ACT, NO. 11 OF 2006

[Certified on 31st March, 2006]

AN ACT TO PROVIDE FOR THE IMPOSITION OF A MOTOR VEHICLE CONCESSIONARY LEVY AND A TELEDrama, FILM AND COMMERCIAL LEVY ; TO PROVIDE FOR THE AMENDMENT OF CERTAIN LEVIES AND CHARGES IMPOSED BY THE FINANCE ACT, No. 11 OF 2002, THE FINANCE ACT, No. 25 OF 2003 AND THE FINANCE ACT, No. 11 OF 2004; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

1. This Act may be cited as the Finance Act, No. 11 of 2006.

PART I

MOTOR VEHICLE CONCESSIONARY LEVY

2. (1) From and after the coming into operation of this Act, there shall be charged and levied a levy to be called and known as the Motor Vehicle Concessionary Levy (hereinafter referred to as “the levy”) -
- (a) from every primary holder of a Sri Lanka Nation Building Bond (SLNBB) who imports a motor vehicle who shall be required to pay at the time of such importation a levy at such rate as may be determined by the Minister by Order on the cost, insurance and freight value of such vehicle, in lieu of any tax which he is liable to pay in terms of the Customs Ordinance (Chapter 235), the Excise (Special Provisions) Act, No. 13 of 1989 and the Value Added Tax Act, No. 14 of 2002, on a recommendation being made to that effect by the Superintendent of Public Debt of the Central Bank of Sri Lanka, subject however to the following conditions:-
 - (i) the aggregate investment in Sri Lanka Nation Building Bonds (SLNBB) shall be of such amount, in United States Dollars or its equivalent in any other foreign currency, as may be determined by the Minister in the aforesaid Order, as is acceptable for the purchase of the aforesaid Bonds ;
 - (ii) the cost, insurance and freight value of the motor vehicle should not exceed such percentage as may be determined by the Minister in the aforesaid Order, of the value of the Sri Lanka Nation Building Bonds (SLNBB) ;
 - (b) from every individual who, commencing from the year of assessment commencing on April 1, 2000 has continued to pay in respect of each year of assessment within the period of five years immediately succeeding that year of assessment, income tax in terms of the Inland Revenue Act, No. 10 of 2006 of an amount not less than rupees two hundred and fifty thousand (250,000/-), and certified as such by the Commissioner – General of Inland Revenue, imports a motor vehicle, shall be required to pay at the time of such importation a levy in lieu of any tax or fiscal levy which such individual is liable to pay in terms of the Customs Ordinance (Chapter 235), the Excise (Special Provisions) Act, No. 13 of 1989 and the Value Added Tax Act, No. 14 of 2002, calculated at such rate as may be determined by the Minister, on the aggregate of such taxes and levies.
- (2) Every Order made by the Minister under paragraphs (a) and (b) above shall come into force from the date on which the Minister has affixed his signature on such Order.
3. Upon the required certification being made in respect of the persons referred to in paragraphs (a) and (b) of section 2 by the Superintendent of Public Debt of the Central Bank of Sri Lanka and the Commissioner – General of Inland Revenue as the case may be, it shall be the duty of the Director – General of Customs to collect the levy payable by such persons at the time of importation and remit the same to the Consolidated Fund.

4. The Secretary to the Treasury may from time to time issue such general or special directions as may be necessary for the implementation of the levy in terms of this Part of the Act.
5. Where a levy of such amount as is specified by Order under section 2 has been collected by the Director-General of Customs in terms of this Part of this Act during the period commencing on March 1, 2006, and ending on the date of commencement of this Act, from any person referred to in paragraphs (a) or (b) of section 2, who so imports a motor vehicle, such collection shall be deemed for all purposes to have been and to be, validly made, and the Director General of Customs is hereby indemnified against all action civil or criminal, in respect of such collection.

PART II

IMPOSITION OF A LEVY ON TELE-DRAMAS FILMS AND TELEVISION COMMERCIALS

6. (1) With a view to improving and regulating the quality and standard of tele dramas, films and commercials produced in Sri Lanka and thereby ensuring the propagation of Sri Lankan values through such tele dramas, films and commercials, there shall be charged and levied, from every institution licensed under the Sri Lanka Rupavahini Corporation Act, No. 6 of 1982, or such other licensing authority as may be identified from time to time, a Levy to be called the Teledrama, Film and Commercials Levy (hereafter in this Part referred to as “the Levy”), on every tele drama, film or commercial, made and or filmed outside Sri Lanka and bought into or imported into Sri Lanka for the purpose of being telecast, at such rate in relation to the duration of such tele drama, film or commercial, as shall be specified by the Minister in charge of the subject of Finance in consultation with the Minister to whom the subject of issuing of licences to television stations is assigned :

Provided however the above levy shall not be chargeable in respect of –

- (a) any documentary which is telecast in Sri Lanka, irrespective of whether such documentary was made outside Sri Lanka;
- (b) any film or tele-drama which, –
 - (i) seeks to impart educational values; or
 - (ii) is produced solely for the purposes of providing entertainment for children.
- (c) any other category of tele dramas, films or commercials which may be prescribed by regulations.
- (2) The manner and mode of payment, the time of payment and the procedure for the collection of the same and such other terms and condition which may be necessary in the implementation of the provisions of this Act shall be prescribed by regulations made in that behalf.
- (3) Every Order made under subsection (1) above shall come into force from the date on which the Minister has affixed his signature on such Order.
7. (1) Any person who defaults in the payment of the levy in the manner and within the period prescribed by regulations, shall be deemed to be a defaulter.
- (2) Every defaulter shall be liable to pay to the Secretary to the Ministry of the Minister to whom the issuing of licenses to television stations is assigned, in addition to the amount of the levy in default a surcharge calculated in the following manner:-
 - (a) ten *per centum* of the amount of such levy as is in default for the subsequent period of one month or part thereof, calculated from the date on which the levy was payable; and
 - (b) two *per centum* of the amount of such levy as is in default for each subsequent period of one month or part thereof, calculated from the date on which the payment specified in paragraph (a) was due.
- (3) The Secretary to the Ministry of the Minister to whom the issuing of licenses to television stations is assigned, shall take action to recover the levy or such part of the levy which is in default for a period of more than three months and the amount of the surcharge accrued thereon, in the manner as is specified hereafter.

- (4) The Secretary to the Ministry of the Minister to whom the issuing of licenses to television stations is assigned, shall cause to be issued on the defaulter, three weeks prior to the taking of any steps for the recovery of the levy in default along with the amount of the surcharge accrued thereon, a Notice informing the defaulter of the intention to institute proceedings for the recovery of the amount of the levy in default and the amount of the surcharge accrued thereon in terms of the provisions of this section.
 - (5) Where the Secretary to the Ministry of the Minister to whom the issuing of licenses to television stations is assigned, issues Notice on the defaulter in terms of subsection (4) but the amount of the levy in default and the amount of the surcharge accrued thereon remains unpaid even though the period of three weeks specified in such Notice has elapsed, the Secretary shall issue to the Magistrate having jurisdiction over the division in which the defaulter resides or is carrying on business, a Certificate containing the name and address of the defaulter and the total sum in default along with a statement to the effect that the person so named has defaulted in making the payment as required by this section. Where the defaulter is a body corporate, the Certificate shall contain the name of the Chairman of the Board of Directors and of every Director or principal officer of such body corporate.
 - (6) The Magistrate shall on receipt of the Certificate issued under subsection (5), issue summons on the defaulter requiring him to appear before him on a date to be specified and show cause as to why proceedings should not be taken against him for recovery of the amount of the Levy or such part of the Levy which is in default and the surcharge accrued thereon. Where the cause shown appears to the Magistrate to be insufficient so as to explain the reason for the non-payment, the Magistrate shall after recording the same, make Order for the recovery of the amount of the Levy in default and the amount of the surcharge accrued thereon, from the defaulter as if they were fines imposed by the Magistrate. The money so recovered shall be remitted to the Secretary to the Ministry of the Minister to whom the issuing of licenses to television stations is assigned, who shall remit the same to the Consolidated Fund.
8. (1) The Minister may make regulations in respect of all matters which are required by this Act to be prescribed or in respect of which regulations are required or authorized to be made under this Act.
- (2) Every regulation made under subsection (1) shall be published in the *Gazette* and shall come into operation on the date of publication, or on such later date as may be specified therein.
- (3) Every regulation made under subsection (1) shall, as soon as convenient after its publication in the *Gazette*, be placed before Parliament for approval. Every regulation, which is not so approved, shall be deemed to be rescinded as from the date of disapproval, but without prejudice to anything previously done thereunder.
- (4) Notification of the date on which any regulation is deemed to be so rescinded shall be published in the *Gazette*.
9. For the purposes of this Part –
- “film” means any audio visual presentation of a moving image produced on any form or format whatsoever, and which is intended primarily to be exhibited by proprietors on a screen in a cinema ;
- “tele drama” means a drama telecast over the television.

PART III

AMENDMENT OF FINANCE ACT, No. 5 OF 2005

10. The Finance Act No. 5 of 2005 (In this Part referred to as the “principal enactment”) is hereby amended in section 2 of Part 1 of that Act, (Imposition of Social Responsibility Levy) as follows :—
- (1) by the substitution for the words “be imposed with effect from the year commencing on January 1, 2005 and for every year thereafter, at the rate of 0.25 *percentum* on all taxes and levies chargeable in terms of the provisions of ” of the words,
- “be imposed –
- (a) for the period commencing on January 1, 2005 and ending on December 31, 2005, at the rate of 0.25 *percentum*;

(b) for the period commencing January 1, 2006 at the rate of 1 *percentum*,
on all taxes and levies chargeable in terms of the provisions of ”.

(2) by the addition immediately after the proviso to that section of the following :—

“Provided further that the Social Responsibility Levy chargeable under the provisions of the Inland Revenue Act, No. 38 of 2000 in terms of the provisions of this Part of this Act, on income tax shall—

(a) in respect of the period commencing on January 1, 2006 and ending on March 31, 2006 be calculated at the rate of 0.25 *percentum* ; and

(b) in respect of the period commencing on April 1, 2006 be calculated at the rate of 1 *percentum*.

11. The provisions of this Part of this Act shall be deemed to have come into effect on January 1, 2006.

12. Where any amount has been collected by the relevant authorities administering the enactments specified in the First Schedule to the principle enactment, as Social Responsibility Levy in terms of this Part of the Act during the period commencing on January 1, 2006 and ending on the date of commencement of this Act, the amount so collected as Social Responsibility Levy shall be deemed to have been and to be, validly made, and the respective relevant authorities collecting the same, are hereby indemnified against all actions civil or criminal in respect of the collection of the aforesaid levy.

PART IV

AMENDMENT OF FINANCE ACT, No. 25 OF 2003

13. Part II (Tourism Development Levy) of the Finance Act, No. 25 of 2003 as amended by Act, No. 11 of 2004 is hereby further amended in section 11 thereof, by the substitution for the proviso to such section of the following :—

“Provided however such levy shall not be charged on the commission carried on the sale of airline tickets from Travel Agents including General Sales Agents licensed under the Tourism Development Act, No. 14 of 1968.”.

PART V

AMENDMENT OF FINANCE ACT, No. 11 OF 2002

14. Part I (Port and Airport Development Levy) of the Finance Act No.11 of 2002 as last amended by Act, No. 6 of 2005, is hereby further amended in section 2 thereof, as follows :—

(1) by the substitution for the first proviso to that section, of the following :—

“Provided that, in respect of the cost, insurance and freight value of any article referred to above, there shall be charged and levied—

(a) in respect of the period commencing on November 19, 2004 and ending on December 31, 2005, a levy at the rate of 1.5 *percentum*; and

(b) in respect of the period commencing on January 1, 2006 a levy at the rate of 2.5 *percentum* ; and

(2) by the insertion immediately after the second proviso to that section of the following :—

“Provided further, that with effect from January 1, 2006 no levy shall be charged in respect of any article imported into Sri Lanka for the purpose of processing and re-export or to be used for the manufacture of goods for export.”.

15. The provisions of this Part shall be deemed to have come into effect on January 1, 2006.
16. Where an amount equal to 2.5 *per centum* on the cost, insurance and freight value of an article has been collected by the Director-General of Customs as Port and Airport Levy in terms of this Part of this Act during the period commencing on January 1, 2006 and ending on the date of commencement of this Act, from any person importing, an article as is referred to in Part I of the Finance Act No.11 of 2002, such collection shall be deemed for all purposes to have been and to be, validly made, and the Director General of Customs is hereby indemnified against all action civil or criminal, in respect of such collection.
17. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

BANKING (AMENDMENT) ACT, NO. 15 OF 2006

[Certified on 31st March, 2006]

AN ACT TO AMEND THE BANKING ACT, NO. 30 OF 1988

1. This Act may be cited as the Banking (Amendment) Act, No. 15 of 2006.
2. Section 19 of the Banking Act, No. 30 of 1988 (hereinafter referred to as “the principal enactment”) is hereby amended by the repeal of subsection (3)(a) of that section and the substitution therefor of the following :-

“(3) (a) The Monetary Board may, vary from time to time the amounts specified as the minimum amounts required to be maintained by a licensed commercial bank as equity capital under subsection (1) of this section, having regard to –

 - (i) the deposit liabilities or to the total liabilities including contingent liabilities or to the total assets or to any specified category of assets, of a licensed commercial bank; or
 - (ii) the viability and stability of the banking system and the interest of the national economy.”.
3. Section 46 of the principal enactment is hereby amended in subsection (1) thereof by the substitution for clause (c) of subparagraph (ii) of paragraph (d) thereof, the following new clause:-

“(c) companies in each of which an individual or company as the case may be, has either directly, indirectly or beneficially a substantial interest or significant management interest.”.
4. Section 76G of the principal enactment is hereby repealed and the following section substituted therefor :-

“Equity capital to be maintained by a licensed specialized bank.	76G. (1) Subject to the provisions of subsection (3), every licensed specialized bank shall at all times maintain an equity capital in an amount not less than fifty million rupees or such other amount as the Monetary Board may, with the concurrence of the Minister, from time to time determine, having regard to the viability and stability of the banking system and the interest of the national economy.
	(2) For the purpose of this section “equity capital” shall have the same meaning as is assigned to it in subsection (2) of section 19.
	(3) (a) The Monetary Board may, vary from time to time the amounts specified as the minimum amounts required to be maintained by a licensed specialized bank as equity capital under subsection (1) of this section, having regard to - <ol style="list-style-type: none"> (i) the deposit liabilities or to the total liabilities including contingent liabilities or to the total assets or to any specified category of assets, of a licensed specialized bank; or (ii) the viability and stability of the banking system and the interest of the national economy.

- (b) For the purpose of computing the minimum required equity capital, when such amount is prescribed with reference to liabilities or assets both capital and liabilities or assets shall be of such kind and computed in such manner as the Monetary Board may from time to time determine having regard to the interest of national economy.
 - (c) The Monetary Board shall, in writing, communicate to all licensed specialized banks any variation made by it in respect of the equity capital required to be maintained by a licensed specialized bank.
 - (d) Where any licensed specialized bank is required by such variation to augment its equity capital, it shall upon application to the Monetary Board, be afforded a period of twelve months, or such longer period as may be granted by the Monetary Board, in which to comply with that requirement.
 - (4) In the case of licensed specialized bank incorporated or established in Sri Lanka by or under any written law, the limit of foreign participation in the capital of such bank, shall at no time exceed the limit, established from time to time, by the Monetary Board.
 - (5) A licensed specialized bank shall not reduce its equity capital without the prior written approval of the Monetary Board.
 - (6) A licensed specialized bank shall not create any charge upon any unpaid capital of such bank and any such charge created in contravention of these provisions shall be null and void.
 - (7)
 - (a) Every licensed specialized bank shall at all times maintain a capital adequacy *ratio* as may be determined by the Monetary Board, which shall in determining such *ratio* to be maintained, as far as practicable adopt the guidelines for capital adequacy set out by Bank for International Settlements in Basle.
 - (b) Any variation in the capital adequacy *ratio* referred to in paragraph (a) shall be communicated to every licensed specialized bank by the Monetary Board in writing, provided that every licensed specialized bank which is required by such variation to augment its capital, shall be afforded a period of twelve months or such longer period as may be granted by the Monetary Board, in which to comply with such requirement.
 - (8) Where the equity capital or capital funds of a licensed specialized bank have become deficient in terms of the provisions of the preceding subsections, the Monetary Board may, grant a reasonable period of time for the rectification of such deficiency.”.
5. Nothing contained in section 76G of the principal enactment shall be construed as being applicable to a Regional Development Bank established under the Regional Development Banks Act, No. 6 of 1997:
- Provided however the Monetary Board may from time to time determine the applicable limits of the capital requirements in relation to such Regional Development Banks.
6. Section 76J of the principal enactment as amended by Act, No. 2 of 2005 is hereby further amended in subsection (1) thereof, as follows :—
- (1) by the repeal of sub-paragraph (ii) (b) (hh) of paragraph (q) ; and
 - (2) by the insertion immediately after clause (b) of sub-paragraph (ii) of paragraph (q) thereof, of the following :—

“(c) companies in each of which an individual or a company as the case may be, has either directly, indirectly or beneficially a substantial interest or significant management interest.”;
7. Any determination, decision or direction made or issued at any time prior to the coming into operation of this Act, under section 19 or section 76G of the principal enactment shall be deemed for all purposes to have been validly made or issued in terms of sections 19 or 76G respectively of the principal enactment as amended by this Act, and any action taken under any such determination, decision or direction shall accordingly be deemed to be valid.
8. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

NATIONAL INSURANCE TRUST FUND ACT, NO. 28 OF 2006

[Certified on 29th August, 2006]

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A FUND CALLED THE NATIONAL INSURANCE TRUST FUND AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS the Government has provided benefits and safeguards to officers in the public service and provincial public service against unforeseeable risks related to health, personal accident and damage to properties *inter alia* through a contributory insurance scheme operated by commercial insurance organizations and other funds established for such purpose :

AND WHEREAS the Government is also operating benefit schemes and insurance schemes for the benefit of the more vulnerable segments of society, including Samurdhi beneficiaries, farmers, fishermen and persons engaged in self employment :

AND WHEREAS the Government is desirous of streamlining such insurance and such other benefit schemes and to that end the Government intends to set up a National Insurance Trust Fund in order to be able to provide the aforesaid facilities in a more effective and co-ordinated manner whilst ensuring maximum benefits to all persons eligible for benefits in terms of this Act :

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

1. This Act may be cited as the National Insurance Trust Fund Act, No. 28 of 2006.
2. The provisions of this Act shall apply in relation to—
 - (a) public officers;
 - (b) persons retired from public office who are in receipt of a pension from the government;
 - (c) officers of the provincial public service;
 - (d) persons retired from the provincial public service who are in receipt of a pension from the respective Provincial Council ;
 - (e) members of local government service;
 - (f) persons retired from the local government service who are in receipt of a pension from the local government service;
 - (g) persons receiving benefits under the Samurdhi Authority Act, No. 30 of 1995;
 - (h) farmers, fishermen and persons engaged in self employment ;
 - (i) needy persons or group of persons as may from time to time be identified by the Minister by Order published in the *Gazette* subject to any limitations contained herein; and
 - (j) any property of the government which may be identified from time to time by the Minister by Order published in the *Gazette*.

PART I

ESTABLISHMENT OF NATIONAL INSURANCE TRUST FUND

3. There shall be established a Fund to be called the National Insurance Trust Fund (hereinafter referred to as “the Fund”) from which benefits shall be paid to persons to whom the provisions of this Act shall apply. There shall be paid into the Fund such moneys as are specified in section 18.
4. (1) There shall be established a body called the National Insurance Trust Fund Board (hereinafter referred to as “the Board”) consisting of such persons as are specified in section 6.
- (2) The Board shall, by the name assigned to it by subsection (1), be a body corporate having perpetual succession and a common seal and may sue and be sued in its corporate name, and may perform such acts as bodies corporate may by law perform.

5. (1) The Seal of the Board shall be in the custody of such person as the Board may decide from time to time.
- (2) The Seal of the Board may be altered in such manner as may be determined by the Board.
- (3) The Seal of the Board shall not be affixed to any instrument or document except in the presence of the Chairman of the Board, and one other member of the Board, both of whom shall sign the instrument or document in token of their presence :

Provided that where the Chairman is unable to be present at the time when the Seal of the Board is affixed to any instrument or document, any other member authorized in writing by the Chairman in that behalf, shall be competent to sign such instrument or document in accordance with the preceding provisions of this subsection.
- (4) The Board shall maintain a register of every instrument or document to which the Seal of the Board is affixed.
6. (1) The Board shall consist of the following members who shall be appointed by the Minister—
 - (a) an officer of the Ministry of the Minister to whom the subject of Finance is assigned;
 - (b) the Chief Accountant of the Ministry of the Minister to whom the subject of Finance is assigned;
 - (c) an officer of the Ministry of the Minister to whom the subject of Health is assigned;
 - (d) an officer from the Ministry of the Minister to whom the subject of Public Administration is assigned; and
 - (e) three persons to be nominated by the Minister from among persons possessing qualifications or expertise in the fields of finance, banking, insurance, management or law.
- (2) The Chairman of the Board shall be appointed by the Minister.
7. (1) Every nominated member shall hold office for a period of five years from the date of appointment, unless he earlier vacates office by death resignation or removal.
- (2) A nominated member may resign from his office by written communication addressed to the Minister in that regard.
- (3) The Minister may by written communication addressed to any nominated member, remove such member from office for reasons assigned.
- (4) A nominated member to whom a communication is addressed under subsection (3), shall cease to hold office with effect from such date as may be specified in such communication.
- (5) A nominated member who has been removed from office shall not be eligible for re-appointment as a member of the Board or to serve the Board in any other capacity.
- (6) Upon any nominated member ceasing to hold office, the Minister may appoint any other person to fill such vacancy and such person shall hold office for the un-expired period of the term of office of the member whom he succeeds.
- (7) Where any member is temporarily unable to perform the duties of his office on account of ill health, absence from Sri Lanka or any other cause, the Minister may appoint any person to act in place of such member.
8. A person shall be disqualified from being appointed, or from continuing, as a member if he—
 - (a) is a Member of Parliament, a member of a Provincial Council or a member of a local Authority; or
 - (b) is under any law in force in Sri Lanka or in any other country found or declared to be of unsound mind; or
 - (c) is a person who, having been declared an insolvent or a bankrupt under any law in Sri Lanka or in any other country, or is an undischarged insolvent or bankrupt; or
 - (d) is serving or has served a sentence of imprisonment imposed by any Court in Sri Lanka or abroad.
9. No act or proceeding of the Board shall be invalid by reason only of any vacancy among its members or any defect in the appointment of any of its members.
10. The members of the Board may be remunerated in such manner and shall carry out their functions subject to such terms and conditions as may from time to time be determined by the Board with the concurrence of the Minister to whom the subject of Finance has been assigned.

11. (1) Subject to the other provisions of this Act, the Board may regulate its procedure in regard to the meetings of the Board and the transaction of business at such meetings.
- (2) The quorum for a meeting of the Board shall be three members.

12. The objectives of the Board shall be—

- (a) to provide benefits and safeguards—
- (i) to public officers, provincial public service officers and local government service officers and to persons retired from the public service, the provincial public service and the local government service, and who are presently in receipt of a pension from the government, the Provincial Council or the local government service, as the case may be;
 - (ii) to Samurdhi beneficiaries and their families, in terms of the Samurdhi Authority of Sri Lanka Act, No. 30 of 1995 ;
 - (iii) to farmers, fishermen and persons engaged in self employment ;
 - (iv) to the needy persons or groups of persons identified by the Minister from time to time on the recommendation of the Board,

against unforeseen health risks, personal accident and damage to property through a contributory insurance scheme to be operated by the Board. Different schemes will be applicable in respect of the different categories of beneficiaries. The matters applicable in respect of the different schemes shall be prescribed ;

- (b) to promote beneficiary participation in share acquisition through the acquisition of equity interests in any incorporated company whose primary objective is to build dedicated wards for the provision of better health facilities or where available, to upgrade any wards presently providing such facilities ;
- (c) to guarantee loans of persons entitled to benefits and safeguards under this Act ;
- (d) to provide guarantees in respect of any property or category or class of property, of the government which the Minister may from time to time identify by Order published in the *Gazette* ; and
- (e) to do all such other acts or things as may be necessary for, or conducive to, the attainment of the objects above.

13. In giving effect to the principles and provisions of this Act, the Board—

- (a) shall charge and receive all sums paid under this Act as contributions by the Government, officers of the public service and provincial public service and pensioners of public service and provincial public service Samurdhi beneficiaries, farmers, fishermen and self-employees and other needy persons or groups of persons, and any income from the investment of moneys of the Fund and shall cause such sums to be credited to the Fund;
- (b) shall have custody of the moneys of the Fund;
- (c) shall pay to the persons entitled to benefits under this Act, such amounts as are due in terms of any prescribed schemes ;
- (d) may invest such of the moneys of the Fund as are not immediately required for the purposes of this Act in Government Bonds or Government Securities or in shares of any company incorporated primarily to build or upgrade dedicated wards for the provision of facilities envisaged in terms hereof;
- (e) shall maintain a general account in respect of the Fund and separate individual accounts in respect of each member of the Fund;
- (f) shall cause the books of accounts relating to the Fund to be balanced as on the thirty-first day of December in each year;
- (g) shall cause to be prepared in respect of the Fund for every financial year, a statement of receipts and payments, a statement of income and expenditure, a statement of assets and liabilities and a statement of investments showing the face value, purchase price and market value of each of the investments;
- (h) shall transmit to the Minister a copy of each of the statements prepared under paragraph (g) in respect of each year before the thirtieth day of September of the succeeding year;

- (i) shall deduct from the income received from the investment of moneys of the Fund in respect of each year, the expenses incurred in that year by the Board in the implementation of the provisions of this Act;
- (j) shall have such other powers and duties in connection with the Fund, not inconsistent with this Act as are necessary for the implementation of the above.

14. Every person who is—

- (i) a public officer, provincial public service officer or a local government service officer ; and
- (ii) a person drawing a pension from the government, a Provincial Council or the local government service, as the case may be ; and
- (iii) a member of the Samurdhi Scheme, Farmers Pensions Scheme, Fishermen's Pension Scheme or a self-employed person,

and who are persons entitled to benefits under the provisions of this Act, shall pay to the Fund a contribution, in such sum and at such times as may be specified by the Minister by Order published in the *Gazette*.

15. The Board may utilize any money in the Fund for the purpose of this Act—

- (a) by investing in shares of any company incorporated primarily to build or upgrade dedicated wards for the provision of the facilities envisaged in this Act ; or
- (b) in such government bonds or government securities as may be approved by the Board.

16. (1) The Auditor-General shall in accordance with the provisions of Article 154 of the Constitution audit the accounts of the Board each year.

- (2) Notwithstanding the provisions of subsection (1), the Minister may, with the concurrence of the Minister to whom the subject of Finance has been assigned, and in consultation with the Auditor-General, appoint a qualified auditor or auditors to audit the accounts of the Board. Where such appointment has been made by the Minister, the Auditor-General may, in writing inform such auditor or auditors that he proposes to utilize his or their services for the performance and discharge of the Auditor-General's duties and functions in relation to the Board and thereupon such auditor or auditors shall act under the direction and control of the Auditor-General.

- (3) (a) The Auditor-General may, for the purpose of assisting him in the audit of the accounts of the Board, employ the services of any qualified auditor or auditors who shall act under his direction and control.

- (b) If the Auditor-General is of opinion that it is necessary to obtain assistance in the examination of any technical, professional or scientific problem relevant to the audit of the accounts of the Board, he may engage the services of—

- (i) a person not being an employee of the Board ; or
- (ii) any technical, professional or scientific institution not being an institution which has any interest in the management of the affairs of the Board,

and such person or institution shall act under his direction and control.

- (4) (a) The Auditor-General or any person authorized by him shall, in the audit of the accounts of the Board, be entitled—

- (i) to have access to all books, records, returns and other documents of the Board ;
- (ii) to have access to stores and other property of the Board ; and
- (iii) to be furnished by the Board or its officers with such information and explanations as may be necessary for the performance of the audit of the accounts of the Board.

- (b) Every qualified auditor appointed to audit the accounts of the Board or any person authorized by such auditor shall be entitled to have like access, information and explanations in relation to Board.

- (5) Every qualified auditor appointed under the provisions of subsection (2) shall submit his report to the Minister and also submit a copy thereof to the Auditor-General.

- (6) For the purposes of this section, the expression “qualified auditor” means—
- (a) an individual who, being a member of the Institute of Chartered Accountants of Sri Lanka, or of any other Institute established by law, possesses a certificate to practice as an accountant, issued by the Council of such Institute ; or
 - (b) a firm of accountants each of the resident partners of which, being a member of the Institute of Chartered Accountants of Sri Lanka or of any other Institute established by law, possesses a certificate to practice as an accountant, issued by the Council of such Institute.
- (7) The Auditor-General shall forward his report to the Board.
- 17.** The Board shall annually prepare a report of the work of the Board and forward such report together with the report of the Auditor-General, before the lapse of the year succeeding the year to which such reports relate, to the Minister who shall table such reports in Parliament.
- 18.** (1) There shall be paid into the Fund—
- (a) such sums of money out of the Consolidated Fund as may be determined by resolution of Parliament for defraying—
 - (i) all expenditure, including capital expenditure, incurred by the Board in carrying out the provisions of this Act during the period of twelve months commencing on the date of coming into operation of this Act ; and
 - (ii) all capital expenditure incurred by the Board in carrying out the provisions of this Act during the period of twenty-four months commencing on the day immediately succeeding the date of the termination of the period referred to in paragraph (a) of this subsection ;
 - (b) all monies lying to the credit of the Samurdhi Social Development Trust Fund created by Trust Deed No. 1538 of October 19, 2005 ;
 - (c) all monies lying to the credit of the Strike, Riot and Civil Commotion and Terrorism Fund established in terms of the Cabinet Decision of November 18, 1987, in Account No. 014-1-001-1-1194790 at the Peoples Bank, Union Place Account and No. 0000001829 at the Bank of Ceylon, Corporate Branch ;
 - (d) all sums of money presently being deducted from the salary of public servants for the Agrahara Insurance Scheme established by Public Administration Circular No. 5/97 of January 31, 1977 and deposited by the Insurance Corporation of Sri Lanka in the Deputy Secretary’s Account titled “Government Employees Insurance Account 4225” at the Central Bank of Sri Lanka ;
 - (e) the contributions received in terms of section 14 and section 20 of the Act, from every-
 - (i) public officer, provincial public service officer and local government service officer ; and
 - (ii) person drawing a pension from the government, a Provincial Council or the local government service, as the case may be ; and
 - (iii) every member of the Samurdhi Scheme, the Farmers Pensions and social security benefits Scheme, the Fishermen’s Pension Scheme and every self-employed person ;
- (2) Every sum paid out of the Consolidated Fund under paragraph (a) of subsection (1) shall constitute a loan from the Government to the Board and shall be repaid in accordance with such terms and conditions as may from time to time be determined by the Minister.
- 19.** There shall be paid out of the Fund —
- (a) all moneys required for settlement of expenses in respect of persons entitled to benefits under this Act, being treated at dedicated wards of hospitals ;
 - (b) all expenses incurred for treatment of critical illness and treatment at a hospital where such treatment is available, to persons entitled to benefits under this Act, in accordance with such rates as shall be prescribed ;
 - (c) all expenses in cases of death due to accident occurring in connection with the occupation of the person entitled to benefits under this Act, provided that the death occurs before the age of retirement, in accordance with such rates as shall be prescribed :

Provided that, in the case of death occurring after the date of retirement, no payment of any benefit shall be made to the dependants.

20. All persons to whom the Act applies and who are entitled to receive benefits in terms of this Act, shall be liable to pay in respect of the benefits they will receive in terms of this Act, a monthly contribution in such amount as may be specified by the Minister by Order published in the *Gazette* which contribution shall be credited to the fund, Such contribution shall be deductible from the salary, pension, Samurdhi benefit or other benefit, as the case may be, which such eligible person receives from the government or the Provincial Council or other source, respectively.

PART II

STAFF OF THE BOARD

21. (1) The Board may appoint such other officers and servants as it considers necessary for the efficient discharge of its functions.
- (2) The officers and servants appointed under subsection (1) shall be remunerated in such manner and at such rates and shall be subject to such conditions of service as may be determined by the Board.
- (3) At the request of the Board, any officer in the public service may, with the consent of that officer and the Secretary to the Ministry of the minister to whom the subject of Public Administration has been assigned, be temporarily appointed to the staff of the Board for such period as may be determined by the Board, or with like consent be permanently appointed to such staff.
- (4) Where any officer in the public service is temporarily appointed to the staff of the Board, the provisions of subsection (2) of section 14 of the National Transport Commission Act, No. 37 of 1991 shall, *mutatis mutandis*, apply to and in relation to him.
- (5) Where any officer in the public service is permanently appointed to the staff of the Board, the provisions of subsection (3) of section 14 of the National Transport Commission Act, No. 37 of 1991 shall, *mutatis mutandis*, apply to and in relation to him.
- (6) Where the Board employs any person who has agreed to serve the Government for a specified period, any period of service to the Board by that person shall be regarded as service to the Government for the purpose of discharging the obligations of such agreement.
- (7) At the request of the Board any member of the Local Government Service or any other officer or servant of a local authority, may, with the consent of such member, officer or servant and the Local Government Service Advisory Board, or the local authority, as the case may be, be temporarily appointed to the staff of the Board for such period as may be determined by the Board or with like consent be permanently appointed to such staff on such terms and conditions including those relating to pension or provident fund rights as may be agreed upon by the Board and the Local Government Service Board or that local authority as the case may be.
- (8) At the request of the Board any officer or servant of a public corporation may, with the consent of such officer or servant, be temporarily appointed to the staff of the Board for such period as may be determined by the Board, or with like consent, be permanently appointed to such staff on such terms and conditions including those relating to pension and provident fund rights, as may be agreed upon by the Board and the said public corporation.
- (9) Where any person is temporarily appointed to the staff of the Board in pursuance of subsection (7) or subsection (8), such person shall be subject to the same disciplinary control as any other member of such staff.

PART III

MISCELLANEOUS

22. The Board or any officer authorized by the Board may direct an employer to furnish to the Board or such officer before a date specified in the direction,-
- (a) a return containing such particulars in respect of all or any of the employees of that employer as may be specified in the direction;

- (b) such information or explanation in respect of any particulars stated in any return furnished by that employer as may be specified in the direction; and
- (c) a true copy of any register required by this Act to be kept by that employer or any part of such register.

23. Any member of the Board or any officer authorized in that behalf by the Board in writing, for the purposes of this Act may-

- (a) enter and inspect at all reasonable hours by day or by night, any premises or place, for examining any register or record relating to the earnings of any employee ;
- (b) take copies of any such register or record or part thereof ;
- (c) examine any person whom he has reasonable cause to believe is an employer or any employee ; and
- (d) examine any records or other documents relating to contributions to any provident fund.

24. Every person who—

- (a) contravenes or fails to comply with any of the provisions of this Act or any regulations made thereunder ; or
- (b) makes default in complying with any direction or order made or given under this Act ; or
- (c) knowingly furnishes or causes to be furnished any false return, or information required to be furnished under this Act,

shall be guilty of an offence and shall on conviction 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.

25. Where any offence under this Act is committed by a body of persons, then-

- (a) if that body of persons is a body corporate, every director and officer of that body corporate ; or
- (b) if that body of persons is a firm, every partner of that firm ; or
- (c) if that body of persons is a trade union, every officer of that trade union ; or
- (d) if that body of persons is an unincorporated body, the President, Manager, Secretary and every other officer of that unincorporated body,

shall be deemed to be guilty of such offence :

Provided that no such person shall be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence.

26. No prosecution for an offence under this Act shall be instituted except by or with the written sanction of the Board.

27. No prosecution instituted under this Act against any person for any offence under this Act shall be a bar to any civil action brought against such person in respect of any matter arising out of this Act.

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

(2) Without prejudice to the generality of the powers under subsection (1), the Minister may make regulations in respect of all or any of the following :—

- (a) matters connected with or incidental to the procedure to be followed in the collection of contributions and other payments under this Act ;
- (b) specifying the criteria to be adhered to in determining the different categories of persons who will be beneficiaries under this Act ;
- (c) specifying the different types of schemes applicable to the different categories of persons entitled to benefits under this Act and the different rates payable to such persons as benefits in terms of this Act ;
- (d) specifying the forms and other documents which may be required for the purpose of administration of the Fund ;
- (e) specifying the manner of making a refund of any sum paid in error to or by the Fund ;

- (f) making provision setting out the manner whereby a person can be appointed to exercise, on behalf of a claimant to any benefit under this Act who is a child or who may be unable for the time being to so act, any right which the claimant may be entitled to exercise under this Act, and for authorizing a person so appointed to receive and deal with such benefit to which a claimant is entitled ;
- (g) the manner of giving notice for the suspension of the grant of any benefit under this Act pending the review by the Court of Appeal, of the determination upon the claim to such benefit or any appeal under this Act ;
- (h) setting out guidelines for treating any sum originally paid to any person under a determination made under this Act or by virtue of the provisions of any regulation, in circumstances—
 - (i) where it is subsequently decided that such sum was not payable, as having been properly paid; and
 - (ii) where it is subsequently decided that such sum has been improperly paid,
 for the recovery of the aforesaid sum from such person or fund as the case may be;
 - (i) specifying the allowances to be paid to officers and servants employed in carrying out the provisions of this Act and the method of computing such allowances.
- (3) Every regulation made by the Minister under subsection (1) shall be published in the *Gazette* and shall come into operation upon such publication or on such later date as may be specified in the regulation.
- (4) Every regulation made by the Minister under subsection (1) shall as soon as convenient after its publication in the *Gazette*, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded from the date of such disapproval but without prejudice to anything previously done thereunder.
- (5) Notice of the date on which a regulation is so rescinded shall be published in the *Gazette*.

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

30. In this Act, unless the context otherwise requires—

“dedicated wards” mean wards identified or established in specified hospitals for the purpose of providing health care and nursing to persons entitled to receive benefits under this Act.

“farmer” means a farmer who has joined the benefit scheme in terms of the Farmers’ Pension and Social Security Benefits Scheme Act, No. 12 of 1987 ;

“fisherman” means a person who is engaged in fishing as a livelihood ;

“local government service member” means an person who is or who is deemed to be a member of the local governments service constituted under the Local Government Service Act, No. 16 of 1974 ;

“local government service pensioner” means a person retired from the local government service and who is in receipt of a pension in respect of such service ;

“provincial public service officer” means a person employed in the provincial public service of a Province in terms of the Provincial Councils Act, No. 42 of 1987 ;

“provincial public service pensioner” means a person retired from the service of the provincial public service and who is in receipt of a pension from a Provincial Council ;

“public officer” means a public officer who is in service and is under sixty years of age ;

“public service pensioner” means a public officer who has retired from service and is in receipt of a pension from the government;

“Samurdhi beneficiary” means a person entitled to receive benefits in terms of the Samurdhi Authority of Sri Lanka Act, No. 30 of 1995 and includes the family of such beneficiary ; and

“self employed person” means a person who is engaged in carrying out a livelihood by himself.

PAYMENT DEVICES FRAUDS ACT, NO. 30 OF 2006

[Certified on 12th September, 2006]

AN ACT TO PREVENT THE POSSESSION AND USE OF UNAUTHORISED OR COUNTERFEIT PAYMENT DEVICES ; TO CREATE OFFENCES CONNECTED WITH THE POSSESSION OR USE OF UNAUTHORISED PAYMENT DEVICES ; TO PROTECT PERSONS LAWFULLY ISSUING AND USING SUCH PAYMENT DEVICES ; TO MAKE PROVISION FOR THE INVESTIGATION, PROSECUTION AND PUNISHMENT OF OFFENDERS ; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

1. This Act may be cited as the Payment Devices Frauds Act, No. 30 of 2006.
2. The provisions of this Act shall apply in respect of all payment devices lawfully issued by an Issuer.
3. (1) Any person who—
 - (a) possesses or has in the control or custody of such person without lawful authority, equipment used for the making or altering of payment devices including an embossing, encoding or skimming device ;
 - (b) without lawful authority, tampers with any payment device or card making or altering equipment or any equipment used for acceptance or processing of payment devices or implants foreign objects including chips, data or voice recording devices, to record transaction data ;
 - (c) uses without lawful authority a phone listening device or other similar device, including any voice or data recording device, for the purpose of capturing authorization data passing through the acquirer's point of sale networks or automated teller machine network ;
 - (d) being an employees of an Issuer or its processors or is a service provider, provides any cardholder information or full track data to unauthorised individuals, groups or syndicates without the payment device holder's authority or permission ;
 - (e) possesses or has in his control or custody, any unauthorised or counterfeit payment device ;
 - (f) makes a fraudulent application for a payment device or a fraudulent merchant application;
 - (g) uses, produces or trafficks in one or more unauthorised or counterfeit payment devices ;
 - (h) uses an unauthorized payment device or a payment device without obtaining permission therefor from either its, Issuer or holder;
 - (i) generates, valid payment device account numbers, using account generating software for the purpose of utilizing such account numbers for committing an offence under this or any other written law ;
 - (j) furnishes for the purpose of obtaining goods or services, information contained in any payment device by telephone, facsimile, email internet or other mode of telecommunication or by voice or through the postal service, without the authority or permission of the holder of the payment device and induces the person receiving the information to accept the information for the supply of goods or services ;
 - (k) makes multiple imprints of a transaction record, sales invoice or similar document, thereby making it appear that the payment device holder has entered into transactions other than those which such payment device holder had lawfully contracted for ;
 - (l) knowing that a payment device is unauthorised or counterfeit, accepts such unauthorised or counterfeit payment device as a mode of payment for goods or services ;
 - (m) submits without being an affiliated merchant, an order to collect from the Issuer of the payment device, such transaction record, sales invoice or similar document through an affiliated merchant who connives therewith, or under the false pretence of being an affiliated merchant, presents for collection such transaction record, sales invoice or similar document ;
 - (n) alters or causes another person to alter, without the payment device holder's authority or permission, any amount or other information appearing on the sales invoice ;

- (o) accepts as a mode of payment, a payment device or information imprinted on the payment device, for the purpose of dishonestly gaining a financial advantage ;
- (p) writes, or causes to be written on sales invoices, approval numbers from the Issuer of the payment device, which is proof of the fact of approval, where in fact no such approval was given, or where, if approval was actually given what is written is deliberately different therefrom;
- (q) has in such person's possession, without authority from the payment device holder or the Issuer, any material such as invoices, carbon paper or any other medium, on which the payment device is written, printed, embossed or otherwise indicated;
- (r) obtains money or goods through the use of a payment device, with intent to defraud ; or
- (s) induces, entices, permits or in any manner allows another person, for consideration or otherwise, to commit or engage in any of the acts specified in the preceding paragraphs of this section,

shall be guilty of an offence under this Act.

(2) A person guilty of an offence under this Act shall, on conviction after trial before the High Court—

- (i) in the case of an offence under paragraphs (a), (b), (c), (d), (e), (g), (h), (i), (j) or (r) be liable to a term of imprisonment not exceeding ten years or to a fine not exceeding rupees five hundred thousand or to both such imprisonment and fine;
- (ii) in the case of an offence under paragraphs (k) or (q) be liable to a term of imprisonment not exceeding five years or to a fine not exceeding two hundred thousand rupees or to both such imprisonment and fine;
- (iii) in the case of an offence under paragraphs (f), (l), (m), (n), (o) or (p) be liable to a term of imprisonment not exceeding three years or to a fine not exceeding one hundred thousand rupees or to a fine which may extend to five times the value of the money obtained by the commission of the act constituting the offence or the financial advantage gained, consequent to the commission of the act constituting the offence, whichever is higher, or to both such imprisonment and fine;
- (iv) in the case of an offence under paragraph (s) be liable to one and half times the punishment prescribed for the offence which the offender induces, entices, permits or allows another person to commit.

4. Any person who attempts to commit an offence under this Act or to cause such an offence to be committed, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one half of the maximum fine provided for each of such offences, or to imprisonment of either description for a term not exceeding one half of the maximum term provided for each of such offences, or to both such fine and imprisonment.

5. (1) Any person who abets the commission of an offence under this Act shall be guilty of an offence and shall on conviction—

- (a) if the offence abetted is committed in consequence of the abetment, be liable to the same punishment as is provided for the offence; and
- (b) if the offence is not committed in consequence of the abetment, be liable to—
 - (i) where a maximum fine or term of imprisonment is provided for, to a fine not exceeding one fourth of the maximum fine provided for the offence or to imprisonment of either description for a term not exceeding one fourth of the maximum term provided for the offence, or to both such fine and imprisonment; and
 - (ii) in cases where the maximum fine or imprisonment is not provided for, to a fine not exceeding two hundred and fifty thousand rupees or to imprisonment of either description for a term not exceeding five years or to both such fine and imprisonment.

(2) The term “abet” shall have the same meaning as in sections 100 and 101 of the Penal Code (Chapter 19) and the provisions of sections 101A, 103, 104, 105, 106 and 107 of the Penal Code shall *mutatis mutandis* apply in relation to the abetment of any offence under this Act.

6. (1) Any person who conspires to commit an offence under this Act shall be guilty of an offence and shall, on conviction after trial before the High Court be liable to be punished with the punishment prescribed for abetting the commission of that offence.
- (2) The term “conspire” shall have the same meaning as in section 113A (2) of the Penal Code (Chapter 19) and the provisions of that section shall *mutatis mutandis* apply in relation to a conspiracy to commit an offence under this Act.

PART II

INVESTIGATION

7. Except as otherwise provided in this Act, all offences under this Act shall be investigated, tried or otherwise dealt with in accordance with the provisions of the Code of Criminal Procedure Act, No. 15 of 1979.
8. (1) The Minister may, by Order published in the *Gazette* appoint a panel of experts from among persons having the prescribed qualifications in electronic engineering or software engineering or in any area of expertise identified by the Minister (hereinafter referred to as “an expert”) to assist the police in all investigation into an offence under this Act.
- (2) The qualifications (having regard to the specific areas of expertise in electronic engineering or software engineering) required by persons serving as experts and the manner and mode of appointment and the conditions of appointment of such experts shall be as prescribed by regulations.
- (3) For the avoidance of doubt it is hereby declared that for the purposes of this Act, “expert” shall be deemed to include any person, institution or any body of persons.
- (4) For the purpose of an investigation under this Act, an expert called upon to assist the police in an investigation, shall, have the power to—
 - (a) enter upon any premises along with a police officer not below the rank of a sub-inspector;
 - (b) access any information system, computer or computer system or any programme, data or information held in such computer and to cause any computer or any other device utilized for the commission of the fraud to perform any function as may be necessary for such purpose;
 - (c) require any person to produce any document, information, device or other thing as is necessary for the purpose of such investigation;
 - (d) require any person to disclose any traffic data ;
 - (e) orally examine any person; and
 - (f) do such other things as may be reasonably required, for the purposes of this Act.
- (5) An expert shall be paid such remuneration as may be determined by the Minister in consultation with the Minister in charge of the the subject of Finance.
- (6) An expert appointed under this section may be called upon to assist any Police Officer in the investigation of an offence under this Act, and it shall be the duty of such expert to render all such assistance as may be required for the purposes of such investigation. Where any proceedings have been commenced consequent to the findings of an investigation, it shall be the duty of the expert to make available for the purposes of such proceedings, any information, data, material or other matter that may be obtained by him in the course of such investigation and where called upon to do so to give evidence in such proceedings.
9. (1) Every police officer and every expert who conducts any search or inspection or does any other thing in the course of an investigation, shall make every endeavour to ensure that the ordinary course of legitimate business for which an acquirer’s point of sales network or automated teller machine network is used, is not hampered by such search, inspection or investigation and shall not seize such acquirer’s point of sales network or automated teller machine network or part thereof, if such seizure will prejudice the conduct of the ordinary course of business for which such network is used, unless—

- (a) it is not possible to conduct the inspection on the premises where such network, or part thereof is located ; or
 - (b) seizure of such network or part thereof is essential to prevent the commission of the offence or the continuance of the offence or to obtain custody of any information which would otherwise be lost, destroyed, modified or rendered inaccessible.
- (2) A police officer or an expert conducting an investigation under the Act, shall conduct and conclude such investigation as expeditiously as the circumstances of the case permit.
- 10. (1) Any police officer may, in the course of an investigation under this Act, exercise powers of arrest, search, or seizure in the manner provided for by law :

Provided that a police officer making an arrest without a warrant of a person suspected of committing an offence under this Act, shall without unnecessary delay and within twenty-four hours of such arrest, exclusive of the time taken for the journey from the place of arrest to the presence of the Magistrate, produce such person before the Magistrate of the Court nearest to the place where the suspect is arrested.
- (2) No police officer shall access any payment device, computer or acquirer's point of sales network or automated teller machine network for the purpose of an investigation under this Act unless the Inspector-General of Police has certified in writing that such police officer possesses adequate knowledge and skill in the field of information, communication, technology or electronic or software engineering and is possessed of the required expertise to perform such a function.
- 11. (1) Any person who is required by an expert or a police officer to make any disclosure or to assist in an investigation under this Act, shall comply with such requirement.
- (2) A person who obstructs the lawful exercise of the powers conferred on an expert or a police officer or fails to comply with any reasonable request made by such expert or police officer during an investigation shall be guilty of an offence and shall on conviction be liable to fine not exceeding two hundred thousand rupees or to imprisonment of either description for a period not less than one year and not exceeding two years or to both such fine and imprisonment.
- 12. (1) Every person engaged in an investigation under this Act shall maintain strict confidentiality with regard to all information as may come to his knowledge in the course of such investigation and he shall not, other than in the discharge of his duties under this Act, disclose to any person or utilize for any purpose whatsoever any information so obtained.
- (2) Every person from whom any information has been requested or obtained and any person to whom a written notice has been issued for the preservation of any information, shall maintain strict confidentiality in relation to such information and the fact that such information has been requested, obtained or required to be preserved, and shall not make any disclosure in regard to such matters other than when required to do so in compliance with the provisions of any written law.
- (3) A person referred to in this section shall not be held liable under the civil or criminal law for the disclosure of any data or other information for the purposes of an investigation under this Act.
- (4) Any person who contravenes the provisions of subsections (1) and (2) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three hundred thousand rupees or to imprisonment of either description for a term not exceeding two years or to both such fine and imprisonment.
- 13. Where in the course of any trial for an offence under this Act, it appears by the evidence led, that the offence in fact committed by the accused is different to the offence with which he has been charged, or that it is a lesser offence than the one with which he has been charged, then the court may in its discretion alter the Indictment and after such alteration has been made, proceed with the trial as if the altered Indictment had been the original Indictment.
- 14. When an offence under this Act is committed by a body of persons then—
 - (a) if that body of persons is a body corporate, every director and officer of that body of persons ; or
 - (b) if that body of persons is a firm, every partner of that firm,

shall be deemed to be guilty of that offence :

Provided that a director or an officer of such body corporate or a partner of such firm shall not be deemed to be guilty of such offence, if such director, officer or partner proves that such offence was committed without his or her knowledge or that he or she exercised all such diligence as is necessary to prevent the commission of such offence.

15. Where a fine is imposed by the Court for an offence under section 3 of this Act, such Court may direct that—

- (a) the whole or any part of the fine recovered, be paid to the Issuer of the payment device or to any other person who has suffered loss thereby, as compensation for such loss ; and
- (b) unless the court otherwise directs, all moneys, items or property, seized by the police during the course of investigations shall be returned to the issuer of the payment device as the lawful owner or to the person who establishes his lawful right to such moneys, items or property.

16. (1) A certified copy of an entry relating to a payment device located in Sri Lanka or outside Sri Lanka, kept by an Issuer or acquirer in the ordinary course of business of such Issuer or acquirer, whether kept in written form or stored by electronic, magnetic, optical or any other means in an information system or computer or payment device shall be admissible in evidence in relation to a prosecution in respect of an offence under section 3 of this Act, and shall be *prima facie* evidence of the facts stated therein.

(2) Every document, certificate, record, register or extract thereof, if duly signed and issued by an expert either in Sri Lanka or abroad, and duly authenticated by a senior executive of an Issuer or acquirer to whose transactions, or to whose interests such document, certificate record or register or extract thereof relates, shall be *prima facie* proof of the facts stated therein.

(3) In subsection (1) “a certified copy” means a copy of the entry with a certificate written at the foot of that copy by the chief executive officer of the Issuer or acquirer or any of its authorized representatives certifying it as a true copy, and where such an entry is stored in an information system or computer, a print out of such entry certified as a true copy by an officer holding a responsible position in relation to the operation of the relevant information system or computer.

(4) Notwithstanding anything to the contrary in the Evidence Ordinance or any other law the provisions of this section shall have effect and apply to the prosecution of offences under section 3.

17. Any person who has the possession, control or custody of—

- (a) a counterfeit or unauthorised payment device ;
- (b) any card making or altering equipment without lawful authority ;
- (c) a payment device without authority from its holder or Issuer ;
- (d) any equipment used for acceptance or processing of a payment device without lawful authority,

shall be presumed until the contrary is proved to have such payment device or equipment in his possession, custody or control, for the purpose of committing an offence under this Act.

18. A holder of a credit card or other payment device—

- (a) who has failed to pay the total sum due to the Issuer of such credit card or payment device within the period allowed therefor by the Issuer ; and
- (b) who changes his residence or place of employment as stated in the application for such payment device without informing the issuer of such change,

shall be presumed to have done so with intent to wilfully defraud the Issuer of such sum.

19. Notwithstanding anything to the contrary in the Judicature Act, No. 2 of 1978 every offence under this Act shall be triable by the High Court established under Article 154P of the Constitution for the Western Province holden in Colombo.

20. Notwithstanding anything to the contrary in the Code of Criminal Procedure Act, No. 15 of 1979, every offence under this Act, shall be deemed to be a cognizable offence within the meaning and for the purposes of that Code.

21. Any expenses incurred by an expert or police officer in any suit or prosecution brought against such expert or police officer in a court in respect of any act which is done, or purported to be done by him or her under this Act, shall, if the Court holds that the act was done in good faith, be paid out of the funds of the Issuer or acquirer as the case may be, who alleges the commission of the offence, unless such expense is recovered by him in such suit or prosecution.

22. The Schedule to the Extradition Law, No. 8 of 1977 is hereby amended by the insertion immediately before Part B thereof, of the following :—
- “(48) An offence within the meaning of the Payment Devices Frauds Act, No. 30 of 2006”.
23. Notwithstanding anything contained in the Extradition Law, No. 8 of 1977 an offence in terms of this Act shall for the purpose only of extradition under that law, be deemed not to be a fiscal offence, or an offence of a political character, or an offence connected with a political offence or an offence inspired by political motives.
24. Where a request is made to the Government of Sri Lanka by or on behalf of the Government of another country for the extradition of any person accused or convicted of an offence under this Act, the Minister shall, on behalf of the Government of Sri Lanka forthwith notify the Government of the requesting State of the measures that the Government of Sri Lanka has taken, or proposes to take, for the prosecution or extradition of that person for that offence.
25. (1) The provisions of the Mutual Assistance in Criminal Matters Act, No. 25 of 2002 shall, wherever it is necessary for the investigation and prosecution of an offence under section 3 of this Act, be applicable in respect of the providing of assistance as between the Government of Sri Lanka and other States who are either Commonwealth countries specified by the Minister by Order under section 2 of the aforesaid Act or Non-Commonwealth countries with which the Government of Sri Lanka has entered into an agreement in terms of the aforesaid Act.
- (2) In the case of a country which is neither a Commonwealth country specified by the Minister by Order under section 2 of the aforesaid Act, nor a Non-Commonwealth country with which the Government of Sri Lanka has entered into an agreement in terms of the aforesaid Act, then it shall be the duty of the Government to afford all such assistance to, and may through the Minister request all such assistance as may be necessary for the investigation and prosecution of an offence under section 3 to the extent required for the discharge of its obligations (including assistance relating to the taking of evidence and statements, the serving of process and the conduct of searches).
- (3) The grant of assistance to a convention country may be made subject to such terms and conditions as the Minister thinks fit.
26. (1) Where a person who is not a citizen of Sri Lanka is arrested for an offence under this Act, such person shall be entitled —
- (a) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to protect his rights or if he is a stateless person, with the nearest appropriate representative of the State in the territory where he was habitually resident; and
- (b) to be visited by a representative of that State.
- (2) A request under section 24 shall be deemed not to be invalidated for the purposes of any legal proceedings by reason of any failure to comply with the provisions of section 25 provided that there is sufficient compliance with those provisions to enable it to properly execute the request.
27. (1) Where a person is arrested for an offence under this Act, the Minister to whom the administration of this Act is assigned shall inform the Minister in charge of the subject of Foreign Affairs to inform the relevant authorities in any other State which has made a request under sections 24 and 25 in respect of such person, of the measures which the Government of Sri Lanka has taken or proposes to take for the prosecution or extradition of that person.
- (2) Where a request is made to the Government of Sri Lanka, by or on behalf of the Government of any State, for the extradition of any person accused or convicted of an offence corresponding to an offence under this Act, the Minister in charge of the subject of Foreign Affairs shall, on behalf of the Government of Sri Lanka, forthwith inform the Government of the requesting State, of the measures which the Government of Sri Lanka has taken, or proposes to take, for the prosecution or extradition of that person.
- (3) Where it is decided that no order should be made under the Extradition Law, No. 8 of 1977, for the extradition of any person accused or convicted of an offence corresponding to an offence under this Act, pursuant to a request for his extradition made under that Law, by the Government of any State, the case shall be submitted to the law enforcement authorities, so that prosecution for the offence under the law of Sri Lanka, or any other appropriate action may be considered.

28. Where there is an extradition arrangement in force between the Government of Sri Lanka and the Government of any other State, such arrangement shall be deemed, for the purposes of the Extradition Law, No. 8 of 1977, to include provision for extradition in respect of an offence under this Act and of attempting or conspiring to commit or aiding and abetting the commission of such offence.
29. The Government shall afford such assistance (including the supply of any relevant evidence at its disposal) to the relevant authorities of any foreign State as may be necessary in connection with criminal proceedings instituted in that State against any person, in respect of an offence under the law of that State corresponding to an offence under this Act.
30. (1) The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act, and in respect of matters that are by this Act required or authorised to be prescribed.
- (2) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication, or on such later date as may be specified in such regulation.
- (3) Every regulation made by the Minister shall, as soon as convenient after its publication in the *Gazette*, be brought before Parliament for approval. Any regulation which is not so approved, shall be deemed to be rescinded as from the date of such disapproval, but without prejudice to anything previously done thereunder.
- (4) Notification of the date on which a regulation is deemed to be rescinded shall be published in the *Gazette*.
31. In the event of any inconsistency, between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.
32. In this Act, unless the context otherwise requires—
- “acquirer” means the bank or the financial institution that is authorized to appoint merchants to accept payment device transactions or offers cash disbursement services to payment device holders or both such functions, and where the payment devices accepted by the merchants are cleared and settled and the proceeds are reimbursed by the acquirer;
- “authorisation” means the process by which an acquirer obtains an approval from the Issuer for a payment device transaction. The authorisation process could be either by voice recognition or by electronic means;
- “cardholder” means the person or organization named on the face of a payment device to whom or for whose benefit the payment device is issued by an Issuer;
- “counterfeit payment device” means a counterfeit, fictitious, altered or forged payment device, or a payment device where an identifiable component is counterfeit;
- “card making or altering equipment” means a part of, or complete equipment or machinery, whether manual, electro magnetic or electronic, used for embossing, encoding, recording or storing data on any payment device and which may also be used for producing counterfeit payment devices;
- “computer” means an electronic or similar device having information processing capabilities;
- “data” means a representation of information or of concepts that are being prepared or have been prepared in a form suitable for use in a computer or in a payment device or which is stored or generated by a computer;
- “fraudulent application” means an application made to obtain a payment device which contains any falsified documents, false information, fictitious identity and address or any other false pretences or misrepresentations and which induces the Issuer to issue a payment device;
- “fraudulent merchant application” means an application made by a person, a body of persons, entity or organization pretending to be a merchant using information that is false, incorrect or misleading in order to mislead the acquirer into believing that the merchant will accept the payment device;
- “full track data” means the data including the discretionary data encoded on track one and two on the magnetic stripe of a payment device;
- “holder” means a person to whom a payment device is issued on an application made to an Issuer;
- “Information” includes data, text, images, sound, codes, computer programmes, databases or microfilm;

“information system” includes a system, whether automated or manual (including telecommunications, computer or computer related or interconnected system or sub-systems of equipment or both such systems or sub-systems) which comprises people, machines and methods, that is used to collect, process, store, manipulate, manage, transmit, display, disseminate, switch, interchange, or receive voice or data, or both and includes software, firmware and hardware;

“Issuer” means a banking institution or other body, authority or institution legally authorized to issue a payment device and thereby enter into a contractual relationship with the holder thereof;

“merchant” means a person or an organisation which is acknowledged by an issuer to sell goods and services or disburse cash on the acceptance of a payment device;

“payment device” means—

- (a) a credit card and includes any card, plate, code, account number, microchip, optical instrument or document wherein magnetised encoding has taken place; or
- (b) a device in which account numbers and mandatory or discretionary data or information relating to the holder of such device is recorded and stored by mechanical, electronic, electro magnetic, optical or other means, and which card or device is recognized by the Issuer thereof, and which facilitates—
 - (i) the extension of credit for obtaining goods or services; or
 - (ii) the making of cash withdrawals and doing other acts in relation to a bank account,

to or by the holder to whom such card or device has been lawfully issued by an Issuer);

“payment device holder information” includes, any information imprinted, encoded or embossed on the payment device such as the account number or name or address of the holder thereof;

“point of sales network” means the network of point of sales terminals deployed by the acquiring bank;

“produce” means design, alter, authenticate, duplicate or assemble;

“skimming” means the copying of encoded data on the magnetic stripe of one payment device to another genuine or counterfeit device including white plastic;

“traffic” includes manufacturing, importing, exporting, keeping with intent to transfer, concealing, buying, selling, giving, receiving, storing, administering, transporting, carrying, sending, delivering, procuring, supplying or distributing without lawful authority or reasonable excuse one or more counterfeit or unauthorised payment devices;

“traffic data” means—

- (a) data that relates to the attributes of a communication by means of an information system or computer system;
- (b) generated by an information system or computer system that is part of a service provider;
- (c) data, which shows communications origin, destination, route, time, data, size, duration or details of subscriber information; and
- (d) any data flowing through a communication system.

“unauthorised payment device” means any payment device which is stolen, lost, expired, revoked, cancelled, suspended or obtained or used by misrepresentation of facts.