

PARLIAMENT OF CEYLON

2nd Session 1966-67



Port Tally and Protective Services Corporation Act, No. 10 of 1967

Date of Assent : April 27, 1967

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AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A CORPORATION FOR THE PROVISION OF TALLY AND PROTECTIVE SERVICES IN THE PORT OF COLOMBO AND IN OTHER PORTS AS MAY BE DETERMINED BY THE MINISTER BY ORDER PUBLISHED IN THE Gazette AND TO MAKE PROVISION FOR PURPOSES CONNECTED WITH THE MATTERS AFORESAID.

[Date of Assent: April 27, 1967]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Port Tally and Protective Services Corporation Act, No. 10 of 1967.

Short title.

PART I

CONSTITUTION, POWERS AND DUTIES OF THE PORT TALLY AND PROTECTIVE SERVICES CORPORATION AND ITS BOARD OF DIRECTORS

2. (1) There shall be established a Corporation which shall be called the "Port Tally and Protective Services Corporation" (hereinafter referred to as "the Corporation") and which shall consist of the persons who are for the time being members of the Corporation under section 3.

Establishment of Port Tally and Protective Services Corporation.

(2) The Corporation shall by the name assigned to it by sub-section (1) be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in such name.

3. The members of the Board of Directors shall be the members of the Corporation.

Members of the Corporation.

4. (1) It shall be the general duty of the Corporation—

General duty of the Corporation.

(a) to provide in the Port of Colombo and in any other port that may be determined by Order published in the *Gazette* efficient and regular tally and protective services (hereinafter referred to as "port services");

(b) to conduct the business of the Corporation in such manner, and to make in accordance with the provisions of this Act such charges for

services rendered by the Corporation, as will secure that the revenue of the Corporation is not less than sufficient for meeting the charges which are proper to be made to the revenue of the Corporation, and for establishing and maintaining an adequate general reserve.

(2) Nothing in this section shall be construed as imposing on the Corporation either directly or indirectly any form of duty or liability enforceable by proceedings before any court or tribunal.

Powers of the Corporation.

5. (1) The Corporation may exercise all or any of the following powers:—

- (a) to acquire, hold, take or give on lease or hire, mortgage, pledge and sell or otherwise dispose of any immovable or movable property;
- (b) to do anything for the purpose of advancing the skill of persons employed by the Corporation, including the provision by the Corporation, and the assistance of the provision by others, of facilities for training persons required to carry out the work of the Corporation;
- (c) to establish a provident fund, and provide welfare and recreational facilities, houses, hostels and other like accommodation for persons employed by the Corporation;
- (d) to purchase, maintain and repair anything required for the purpose of the business of the Corporation;
- (e) to delegate to any officer of the Corporation any such function of the Corporation as the Corporation may consider necessary so to delegate for the efficient transaction of business;
- (f) to enter into and perform all such contracts as may be necessary for the performance of the duties and the exercise of the powers of the Corporation;
- (g) to make rules in relation to its officers and servants, including their appointment, promotion, remuneration, disciplinary control, conduct and the grant of leave to them;
- (h) to make rules in respect of the administration of the affairs of the Corporation; and

(i) to do all other things which, in the opinion of the Corporation, are necessary to facilitate the proper carrying on of its business.

(2) Nothing in the preceding provisions of this section shall be construed as authorizing the disregard by the Corporation of any law for the time being in force.

6. (1) The Minister may, after consultation with the Board of Directors, give such Board general or special directions in writing as to the performance of the duties and the exercise of the powers of the Corporation, and such Board shall give effect to such directions.

Powers of the Minister in relation to the Corporation.

(2) The Minister may, from time to time, direct in writing the Board of Directors to furnish to him, in such form as he may require, returns, accounts and other information with respect to the property and business of the Corporation, and such Board shall carry out every such direction.

(3) The Minister may, from time to time, order all or any of the activities of the Corporation to be investigated and reported upon by such person or persons as he may specify, and, upon such order being made, the Board of Directors shall afford all such facilities, and furnish all such information, as may be necessary to carry out the order.

7. (1) The Corporation shall have a Board of Directors consisting of not more than five members appointed by the Minister.

Board of Directors.

(2) A person shall be disqualified for being appointed or continuing as a Director—

(a) if he is a Senator or a Member of Parliament; or

(b) if he, directly or indirectly, by himself or by any person on his behalf or for his use or benefit, holds or enjoys any right or benefit under any contract made by or on behalf of the Corporation; or

(c) if he has any such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a Director.

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(3) Where a Director is, by reason of illness or other infirmity or absence from Ceylon, temporarily unable to perform the duties of his office, the Minister may appoint any person to act in his place.

(4) The Minister may, without assigning a reason, remove any Director from office. The removal of any Director from office by the Minister shall not be called in question in any court.

(5) A Director may resign the office of Director by letter addressed to the Minister.

(6) Subject to the provisions of sub-section (4) and sub-section (5), the term of office of a Director shall be three years:

Provided that a Director appointed in place of a Director who dies or resigns or otherwise vacates office shall, unless he earlier resigns or otherwise vacates office, hold office for the unexpired part of the term of office of the Director whom he succeeds.

Remuneration
of Directors.

8. All or any of the Directors may be paid such remuneration, out of the funds of the Corporation, as may be determined by the Minister.

Director to
disclose
interest in
contract
proposed to be
made by the
Corporation.

9. A Director who is directly or indirectly interested in a contract proposed to be made by the Corporation shall disclose the nature of his interest at a meeting of the Board of Directors. The disclosure shall be recorded in the minutes of such Board, and such Director shall not take part in any deliberation or decision of such Board with respect to such contract.

Quorum for
meeting of
Board of
Directors.

10. The quorum for any meeting of the Board of Directors shall be three.

Regulation of
procedure.

11. Subject to the other provisions of this Act, the Board of Directors may regulate the procedure in regard to the meetings of such Board and the transaction of business at such meetings.

Board of
Directors
may act
despite
vacancy.

12. The Board of Directors may act notwithstanding a vacancy among the members thereof.

Board of
Directors to
administer the
affairs of the
Corporation.

13. The Board of Directors shall administer the affairs, may exercise the powers, and shall perform the duties, of the Corporation.

14. (1) The Board of Directors may delegate to a Director or to the General Manager or other employee of such Board any of its powers and duties.

Delegation
of powers
and duties
of Board of
Directors.

(2) The Director, General Manager or other employee to whom any of the powers or duties of the Board have been delegated under sub-section (1) shall exercise or perform the powers or duties so delegated subject to the general or special directions of the Board of Directors.

15. (1) The Minister shall appoint a Chairman of the Board of Directors from among the Directors.

Chairman of
Board of
Directors.

(2) If the Chairman is, by reason of illness or other infirmity or absence from Ceylon, temporarily unable to perform the duties of his office, the Minister may appoint one of the Directors to act in his place.

(3) The Minister may, without assigning a reason, terminate the appointment of the Chairman. The termination of the appointment of the Chairman shall not be called in question in any court.

(4) The Chairman may resign the office of Chairman by letter addressed to the Minister.

(5) Subject to the provisions of sub-section (3), and sub-section (4), the term of office of the Chairman shall be the period of his membership of the Board of Directors.

16. (1) The seal of the Corporation shall be in the custody of the Board of Directors.

Seal of the
Corporation.

(2) The seal of the Corporation may be altered in such manner as may be determined by the Board of Directors.

(3) The seal of the Corporation shall not be affixed to any instrument or document except in the presence of a member of the Board of Directors who shall sign the instrument or document in token of his presence.

PART II

FINANCE

17. (1) The initial capital of the Corporation shall be one million rupees.

Capital of the
Corporation.

(2) The amount of the initial capital of the Corporation shall be paid to the Corporation out of the Consolidated Fund of Ceylon in such instalments

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as the Minister of Finance may, in consultation with the Minister, determine:

Provided, however, that such amount as has been advanced towards the setting up of the Corporation, prior to the date of establishment of the Corporation, from Advance Account, Item No. 193, Tally and Watchmen Services Organization, in the Second Schedule to the Appropriation Act, No. 7 of 1965, as amended, under section 7 of that Act, by resolution of the House of Representatives, hereinafter called "Advance Account, Item No. 193", and has not been paid back to Advance Account, Item No. 193, shall be deducted from the initial capital of the Corporation and credited to Advance Account, Item No. 193, or to a corresponding Advance Account in a subsequent Appropriation Act.

(3) All assets acquired and liabilities incurred, prior to the establishment of the Corporation, in respect of Advance Account, Item No. 193, shall be deemed to be assets, and liabilities, respectively, of the Corporation.

(4) The Board of Directors may request the Minister for such advances from the Consolidated Fund of Ceylon as may be necessary for meeting the obligations of the Corporation or discharging its duties under this Act and the Minister may, in consultation with the Minister of Finance, authorize such advances as may be required by way of loan carrying, or free of, interest, repayable in such instalments and under such terms and conditions as may be determined by the Minister of Finance.

Borrowing
powers of
the Board of
Directors.

18. The Board of Directors may, with the consent of the Minister, borrow temporarily, by way of overdraft or otherwise, such sums as the Board may require for meeting the obligations of the Corporation or discharging its duties under this Act.

Investment
of funds of the
Corporation.

19. Any funds of the Corporation which are not immediately required for the purposes of the business of the Corporation may be invested by the Board of Directors in such manner as the Board may determine with the approval of the Minister.

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20. The revenue of the Corporation in any year shall be applied in defraying the following charges in the order of priority set out hereunder:—

Application
of the
revenue of the
Corporation.

- (a) the working and establishment expenses (including allocations to the insurance reserve and depreciation reserve), in connection with the exercise and performance of the powers and duties of the Corporation, properly chargeable to revenue account;
- (b) the interest on any temporary loan raised by the Corporation ;
- (c) any sums required to be transferred to any sinking fund or redemption fund; and
- (d) the interest on and the repayment of the principal of any Government loan to the Corporation.

21. (1) The Board of Directors—

Reserves.

- (a) may establish and maintain an insurance reserve to cover the insurance of the movable and immovable property of the Corporation, all such monies being applied for all purposes of insurance as may be required by the Corporation, the sole insurer being the Insurance Corporation of Ceylon, and to meet liabilities arising under the Workmen's Compensation Ordinance; and

(b) shall establish and maintain—

- (i) a depreciation reserve to cover the depreciation of the movable and immovable property of the Corporation, and
- (ii) a general reserve not exceeding such amount as may from time to time be determined by the Minister.

(2) Such amount out of the surplus of the revenue of the Corporation in any year remaining after the charges mentioned in section 20 have been satisfied as can be paid to the general reserve without causing it to exceed the amount determined by the Minister under paragraph (b) (ii) of sub-section (1) shall be paid to that reserve and the balance, if any, of such surplus shall be paid to the Deputy Secretary to the Treasury to be credited to the Consolidated Fund of Ceylon.

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Accounts
and audit
of accounts.

22. (1) The Board of Directors shall cause proper accounts of the income and expenditure of the Corporation and of all its other transactions to be kept and shall prepare an annual statement of accounts and statistics relating to the business of the Corporation in such form and containing such particulars as the Minister with the concurrence of the Minister of Finance may from time to time specify.

(2) The accounts of the Corporation shall be audited annually by a qualified auditor (hereinafter referred to as "the auditor") appointed by the Minister on the advice of the Auditor-General. The auditor so appointed shall be—

(a) an individual who, being a member of the Institute of Chartered Accountants of Ceylon, possesses a certificate to practise as an Accountant issued by the Council of that Institute; or

(b) a firm of Chartered Accountants each of the partners of which, being a member of that Institute, possesses a certificate to practise as an Accountant issued by the Council of that Institute.

The auditor shall receive such remuneration from the funds of the Corporation as the Minister may, with the concurrence of the Auditor-General, determine.

(3) The Auditor-General shall have power—

(a) to direct the manner in which the accounts of the Corporation shall be audited by the auditor and to give the auditor instructions in regard to any matter relating to the performance of his functions as auditor, and

(b) to conduct a supplementary or test audit of the accounts of the Corporation by such person or persons as the Auditor-General may authorize in that behalf and, for the purposes of such audit, to require information or additional information to be furnished to any person or persons so authorized, on such matters, by such person or persons, and in such form, as the Auditor-General may, by general or special order, direct.

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(4) The auditor shall examine the accounts of the Corporation and furnish a report to the Auditor-General stating—

(a) whether he has or has not obtained all the information and explanations required by him, and

(b) whether in his opinion the accounts have been drawn up so as to exhibit a true and fair view of the affairs of the Corporation.

(5) The Auditor-General shall have the right to comment upon or supplement the auditor's report in such manner as the Auditor-General may think fit.

(6) The Auditor-General shall transmit the auditor's report together with his comments upon, or his supplement to, such report to the Corporation.

23. The Auditor-General and any person assisting the Auditor-General shall have access to all such books, deeds, contracts, vouchers and other documents of the Corporation as the Auditor-General may consider necessary for the purposes of the audit, and shall be furnished by the Directors and officers of the Corporation with such information within their knowledge as may be required for such purposes.

Powers of
the Auditor-
General
and his
assistants.

24. (1) The Board of Directors shall, as soon as possible after the end of each financial year of the Corporation, make to the Minister a report on the exercise and performance by such Board of its powers and duties during that year and on its policy and programme. Such report for any year shall set out any direction given by the Minister to the Board of Directors during that year. The Minister shall lay a copy of such report before the Senate and the House of Representatives.

Report of
the Board of
Directors
and copies of
the Auditor-
General's
report and
statement of
accounts and
statistics to
be sent to
the Minister
and laid
before the
Senate and
the House of
Representatives.

(2) The Board of Directors shall, on receipt of the Auditor-General's report in each year, transmit to the Minister—

(a) a copy of such report, and

(b) a copy of the statement of accounts and statistics prepared under sub-section (1) of section 22.

(3) The Minister shall lay copies of the report and statement referred to in sub-section (2) before the Senate and the House of Representatives within three months of the closing of the financial year of the Corporation.

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PART III

COMMENCEMENT OF BUSINESS BY THE CORPORATION

Date on and
after which
certain port
services are
to be provided
by the
Corporation.

25. (1) The Minister shall, after consultation with the Board of Directors, by Order published in the *Gazette*, declare that, on and after such date as shall be specified in the Order, the port services referred to in section 4 shall be provided in the Port of Colombo exclusively by the Corporation.

(2) Where by Order of the Minister under paragraph (a) of sub-section (1) of section 4 any port other than the Port of Colombo is determined as a port in which the port services referred to in that section shall be provided by the Corporation, the Minister shall, after consultation with the Board of Directors, by Order published in the *Gazette*, declare that, on and after such date as shall be specified in the Order, the afore-said port services shall be provided exclusively by the Corporation in the port so determined.

(3) The date specified in an Order made under sub-section (1) or sub-section (2) as the date on and after which the port services referred to in section 4 shall be provided exclusively by the Corporation in any port specified in that Order may, before that date expires, be altered by the Minister, after consultation with the Board of Directors, by Order published in the *Gazette*.

The Corporation
not liable
for loss
caused by
commencement
of business.

26. No person shall be entitled to compensation from the Corporation or any member or employee thereof for any loss incurred by him, whether directly or indirectly, by reason of the fact that the Corporation has commenced business or that steps were taken preliminary to the Corporation commencing business :

Provided, however, that compensation may be paid by the Corporation from its profits to the Ceylon Port Services Ltd. for losses sustained during the period commencing on the first day of December, 1964, and ending on the thirty-first day of August, 1965, by reason of the fact that an organization known as the Tally and Watchmen Services Organization was established by the Government :

Provided, further, that in the event of any dispute as to the quantum of compensation the decision of the Deputy Secretary to the Treasury shall be final and conclusive.

PART IV

EMPLOYEES OF THE CORPORATION

27. (1) The Corporation shall have the power—

- (a) to appoint, with the approval of the Minister, a General Manager who shall be the chief executive officer of the Corporation ;
- (b) to appoint such other officers and servants as may be necessary for the purposes of the Corporation ; and
- (c) to exercise disciplinary control over and dismiss any officer or servant of the Corporation :

Appointment
of officers,
servants and
agents of the
Corporation.

Provided that the Corporation shall not, without the approval of the Minister, dismiss the General Manager or any such officer or servant of the Corporation as is appointed to the staff of the Corporation in accordance with the provisions of sub-section (4).

(2) The officers and servants of the Corporation shall be remunerated at such rates as the Corporation may determine:

Provided that the terms and conditions of employment shall be generally not less favourable than what they enjoy on the date specified in section 25 (1).

(3) In the appointment of officers and servants, preference shall be given by the Corporation to persons who are already in employment in the organization known as the Tally and Watchmen Services Organization.

(4) At the request of the Corporation any officer in the public service may, with the consent of the officer and of the Secretary to the Treasury, be temporarily appointed to the staff of the Corporation for such period as may be determined by the Corporation with like consent, or be permanently appointed to such staff.

(5) Where any officer in the public service is temporarily appointed to the staff of the Corporation, sub-section (2) of section 26 of the Government-Sponsored Corporations Act shall *mutatis mutandis* apply to and in relation to him.

(6) Where any officer in the public service is permanently appointed to the staff of the Corporation, sub-section (3) of section 26 of the Government-Sponsored Corporations Act shall *mutatis mutandis* apply to and in relation to him.

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Officers and
servants of the
Corporation
deemed to
be public
servants.

28. All officers and servants of the Corporation shall be deemed to be public servants within the meaning and for the purposes of the Penal Code.

PART V

CHARGES THAT MAY BE MADE BY THE CORPORATION

Charges that
may be made
by the
Corporation.

29. (1) The charges that may be made by the Corporation for prescribed services rendered by it shall be fixed, and may be revised from time to time, by Order made by the Minister in consultation with the Board of Directors and published in the *Gazette*.

(2) The charges that may be made by the Corporation for services which are not prescribed services shall be fixed, and may be revised from time to time, by the General Manager.

(3) Charges in respect of services rendered by the Corporation shall become payable immediately on the completion of the services or within such time after their completion as may be determined by the Corporation.

(4) If the master, owner or agent of any vessel fails to pay to the Corporation on demand made by the Corporation any charges or any part of any charges that are payable to the Corporation for any services rendered by the Corporation in respect of that vessel, an officer of the Corporation may notify such failure in writing to the Collector of Customs of the port in which that vessel is. Upon such notification being made section 24 of the Customs Ordinance shall apply to the recovery of such charges as if such charges were referred to in that section, and, in the application of such section to the recovery of such charges, such section shall have effect as if the reference therein to the demand of such charges were a reference to the demand of such charges by the Corporation and as if the references therein to the Crown were references to the Corporation. Any such charges which are recovered by such Collector of Customs shall be transmitted to the Corporation.

(5) Nothing in sub-section (4) shall be deemed to be in derogation of the right of the Corporation to recover the charges or any part of the charges referred to in that sub-section by any other legal proceedings.

30. The Board of Directors may remit the whole or any portion of the charges payable by any person under this Act for services rendered by the Corporation.

Power of
Board of
Directors
to remit
charges
wholly or
partly.

PART VI

GENERAL

31. (1) The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act.

Regulations.

(2) In particular, and without prejudice to the generality of the powers conferred by sub-section (1), the Minister may make regulations in respect of any matter required by this Act to be prescribed or in respect of which regulations are authorized by this Act to be made.

(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 the Senate and the House of Representatives for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of the disapproval, but without prejudice to anything previously done thereunder.

32. Any person who—

Offences.

(a) contravenes the provisions of this Act or of any regulation made thereunder; or

(b) wilfully obstructs any officer of the Corporation in the exercise of his duties under this Act,

shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to imprisonment for a period not exceeding one year or to a fine not exceeding one thousand rupees, or to both such fine and imprisonment.

33. It shall be lawful for the Board of Directors or an officer of the Board to whom such power has been delegated to call for from the masters, owners or agents of vessels, documents which show the amounts of payments made by them to their contractors for tally and protective services and the manner in which such payments were made and the manner in which such agents have billed the masters or the owners of vessels as expenses for their services in that connection.

Documents
which may
be called
for from
masters,
owners or
agents of
vessels.

Power of
Board of
Directors to
compound
claims.

34. The Board of Directors may compound any claim or demand made against the Corporation by any person for such sum or other compensation as the Board may deem sufficient.

Liability of
Directors
and certain
officers of a
body corporate
for offence
committed by
that body.

35. Where an offence under this Act is committed by a body corporate, every person who at the time of the commission of the offence was a director, general manager, secretary or other similar officer of the body corporate shall be deemed to be guilty of that offence unless he proves that that offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of that offence as he ought to have exercised having regard to the nature of his functions and in all the circumstances.

Protection
for action
taken under
this Act or
on the
direction of
the Board of
Directors.

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

(a) against the Corporation for any act which in good faith is done or purports to be done by the Corporation under this Act; or

(b) against any member, officer or servant of the Corporation for any act which in good faith is done or purports to be done by him under this Act or on the direction of the Board of Directors.

(2) Any expense incurred by the Corporation in any suit or prosecution brought by or against the Corporation before any court shall be paid out of the funds of the Corporation, and any costs paid to, or recovered by, the Corporation in any such suit or prosecution shall be credited to the funds of the Corporation.

(3) Any expense incurred by any person as is referred to in paragraph (b) of sub-section (1) in any suit or prosecution brought against him before any court in respect of any act which is done or purports to be done by him under this Act or on the direction of the Board of Directors shall, if the court holds that such act was done in good faith, be paid out of the funds of the Corporation, unless such expense is recovered by him in such suit or prosecution.

No writ to
be issued
against
person or
property of
a member
of the
Corporation.

37. No writ against person or property shall be issued against a member of the Corporation in any action brought against the Corporation.

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38. The Corporation shall be deemed to be a scheduled institution within the meaning of the Bribery Act and the provisions of that Act shall be construed accordingly.

The Corporation deemed to be a scheduled institution within the meaning of the Bribery Act.

39. No suit shall lie against any person, who has heretofore performed tally and protective services, in respect of the termination, without any notice or without proper notice, of the services of any person employed by him in connection with such tally and protective services, by reason of such first-mentioned person ceasing to perform such tally and protective services by virtue of sub-section (1) or sub-section (2) of section 25.

Protection of persons who have performed tally and protective services for termination of employments without notice or without proper notice.

40. In this Act unless the context otherwise requires—

Interpretation.

“ Board of Directors ” means the Board of Directors constituted under this Act ;

“ Director ” means a member of the Board of Directors ; and

“ tally and protective services ” means tally and watchmen and other protective services performed by persons employed on board a ship or ashore in the interests of the owner, agent or master of the ship and includes receipt keepers, assistant receipt keepers, supervisors, plan clerks and pier clerks.