



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

EMPLOYEES' PENSION BENEFITS FUND

A

BILL

**to establish an Employees' Pension Benefits Fund to provide pension benefits
to certain employees who become eligible to such pension in terms of this
Act: and to provide for matters connected therewith or incidental thereto.**

*Presented by the Prime Minister and Minister of Buddha Sasana and
Religious Affairs on 08th April, 2011*

(Published in the Gazette on March 28, 2011)

Ordered by Parliament to be printed

[Bill No. 98]

PRINTED AT THE DEPARTMENT OF GOVERNMENT PRINTING, SRI LANKA
TO BE PURCHASED AT THE GOVERNMENT PUBLICATIONS BUREAU, COLOMBO 5

Price : Rs. 23.00

Postage : Rs. 7.50

Employees' Pension Benefits Fund

L.D.—O. 24/2011.

AN ACT TO ESTABLISH AN EMPLOYEES' PENSION BENEFITS FUND TO PROVIDE PENSION BENEFITS TO CERTAIN EMPLOYEES WHO BECOME ELIGIBLE TO SUCH PENSION IN TERMS OF THIS ACT; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

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

1. This Act may be cited as the Employees' Pension Benefits Fund Act, No. of 2011. Short title and date of operation.

5 **PART I**

ESTABLISHMENT AND ADMINISTRATION OF THE ACT

2. (1) For the purpose of this Act there shall be established a fund called the Employees' Pension Benefits Fund (hereinafter in this Act referred to as "the Fund"). Establishment of Employees' Pension Benefits Fund.

10 (2) There shall be paid into the Fund—

(a) ten percentum of the annual profit of the Employees' Trust Fund;

15 (b) the moneys lying in inactive accounts of members of the Employees' Provident Fund, where such members have passed the age of seventy years; and

(c) a Government Bond for rupees one thousand million having long term maturity period.

20 3. (1) An employee shall become a member of the Fund at the time such employee first becomes liable under section 12 and section 13 to pay contributions to the Fund, and shall continue to be a member of the Fund for so long as there remains to his credit, any sum of money in his individual account in the Fund. Membership of the Fund.

(2) Neither a member of the Fund nor any person claiming under him shall have any interest in, or claim to, the moneys of the Fund otherwise than by virtue of any provision of this Act or of any regulation.

5 **4.** (1) Except as otherwise provided for in this Act, the Administration of this Act.
Commissioner- General, shall be in charge of the general
administration of this Act.

(2) Subject to any general or special directions of the
Commissioner, any Deputy Commissioner of Labour or any
10 Assistant Commissioner of Labour may exercise, perform or
discharge any power, duty or function of the Commissioner,
under this Act or any regulation framed under this Act.

(3) There may be appointed such number of officers,
including District Secretaries, Divisional Secretaries and
15 Grama Niladharies as may be required for the purpose of
carrying out or giving effect to the provisions of this Act.

(4) The Commissioner may either generally or specifically
authorize any officer under subsection (3) of this section to
exercise, perform or discharge any power, duty or function
20 of the Commissioner under this Act or under any regulation.

5. (1) The Monetary Board— Powers and
duties of the
Monetary
Board in
relation to
the Fund.

(a) may appoint such officers and servants as may be
required by the Board for exercising its powers,
performing its duties and discharging its functions
25 under this Act, fix the salaries and wages of such
officers and servants and determine their conditions
of service;

(b) shall receive all sums paid under this Act as
contributions, surcharges and fees, and the income
30 from the investment of moneys of the Fund and
shall credit such sums and income to the Fund;

- 5 (c) The Board shall determine with the concurrence of the Minister, the amount of surcharge to be distributed, among the members affected by the failure of their employers to pay the contributions due from him to the Fund, on the day such contribution is due, out of the money received by way of surcharge under the provisions of section 18;
- (d) shall have custody of the moneys of the Fund;
- 10 (e) shall pay to the persons certified by the Commissioner the benefits to which those persons are entitled under this Act;
- 15 (f) may invest such of the moneys of the Fund as are not immediately required for the purposes of this Act, in such securities as the Board may consider fit, while ensuring that not less than two thirds of such monies are invested in Government Securities;
- 20 (g) shall maintain a general account in respect of the Fund, and a separate account (in this Act referred to as an individual account) in respect of each member of the Fund;
- (h) shall maintain a operate a Suspense Account, for the matters specified in section 6;
- 25 (i) shall cause the books of accounts relating to the Fund to be balanced as on the thirty-first day of December in each year;
- 30 (j) shall cause to be prepared in respect of the Fund for each year a statement of receipts and payments, a statement of assets and liabilities, a statement of income and expenditure, a statement of investment showing the face value, purchase price, and market value of each of the investments;

- (k) shall transmit to the Minister a copy of each of the statements prepared under the preceding paragraph (j) for each year within three months after the thirty-first day of December of that year;
- 5 (l) shall notify each member of the Fund within six months after the thirty-first day of December in each year, of the amount lying as a positive or negative balance of the individual account of such member on that day;
- 10 (m) shall, deduct from the income from the investment of moneys of the fund, the expense incurred by the Board and the Commissioner in carrying out their respect functions under this Act;
- 15 (n) may establish such reserves out of the income of the Fund as the Monetary Board may determine, to meet any contingencies or any depreciation in the market value of the assets of the Fund;
- 20 (o) shall have such other powers and duties in connection with the Fund as may be conferred or imposed on such Board, by Order published in the Gazette, by the Minister with the concurrence of the Minister in charge of the subject of Finance.
- (2) Every officer or servant appointed under paragraph (a) of subsection (1) shall be deemed to be employed for the performance of duties under the Monetary Law Act, for the purpose of application of the provisions of the said Act relating to officers and servants.
- (3) For the purposes of paragraph (m) of subsection (1) "expenses" shall include –
- 30 (i) any loss of moneys on account of theft, misappropriation or overpayment;

(ii) any loss of articles, being furniture, office equipment or stationary used in or purchased for the administration of the Fund, the cost of which cannot be recovered from the persons responsible for such loss; and

(iii) the value of any articles being stationery, furniture, or office equipment which are not usable or which are not functioning and are incapable of being repaired.

10 **6.** (1) There shall be credited to the Suspense Account maintained and operated by the Monetary Board all contributions received under this Act in respect of which-

Suspense
Account of
Monetary
Board.

(a) employers have failed to furnish relevant returns in terms of this Act or any regulations made thereunder;

15 or

(b) the returns furnished are deficient or incorrect and the moneys cannot be credited to individual accounts.

(2) Any moneys as are specified above which are held in an Account maintained by the Fund shall be transferred by the Monetary Board to the Suspense Account.

(3) At the point at which an employer, who has failed to furnish relevant returns as referred to above, furnishes a correct return in respect of his employee, the Monetary Board shall transfer the moneys lying in the Suspense Account to the individual account of the member as indicated by the employer.

(4) Where any moneys are transferred from the Suspense Account to an individual account as provided for in this paragraph, interest shall be paid on the sum, for the period from the date of receipt of such moneys to the date of transfer of such moneys to the individual account, for a period not

exceeding six years prior to the date of such transfer, and the rate of interest shall be the rate determined in terms of subsection (1) of section 16 of the Act, and applicable for the year in respect of which the interest is paid.

- 5 **7.** (1) The accounts of the Fund in respect of each year shall be audited by the Auditor General and the cost of the audit shall be paid to be him out of the Fund. All payments made to the Auditor- General under this subsection shall be credited to the Consolidated Fund. Auditor General to audit the accounts of the Fund, & c.,
- 10 (2) The Auditor-General or any officer of his department authorized by him to audit the accounts of the Fund, shall have access to all such books and documents as the Auditor-General or such officer may consider necessary for the purposes of the audit of such accounts, and shall be furnished
- 15 by the Monetary Board and the Commissioner with such information within their knowledge or ascertainable by them, as may be required for such purposes.
- (3) The Auditor-General shall examine the accounts of the Fund and submit to the Minister annually a report -
- 20 (a) stating whether he has or has not obtained all the information required by him;
- (b) stating whether the accounts referred to in the report are properly drawn up so as to exhibit an accurate and justifiable analysis of the affairs of the moneys
- 25 lying to the credit of the Pension Fund; and
- (c) drawing attention to any item in such accounts which in his opinion may be of interest to Parliament in any examination of such accounts.
- (4) Such report shall not disclose the name of any member
- 30 of the Fund.
- (5) The Minister shall lay before Parliament a copy of the Auditor-General's report submitted to the Minister under

subsection (3) of this section and copies of the statements transmitted to the Minister by the Monetary Board under paragraph (k) of sub-section (1) of Section 5.

8. Every sum paid out of the Consolidated Fund - Repayments to Government.
- 5 (1) to the Commissioner prior to the date of enactment of this Act, for defraying the expenditure incurred in making preliminary arrangements for the establishment of the Fund;
- 10 (2) to the Monetary Board, for defraying all expenditure, including capital expenditure incurred by such Board and the Commissioner in implementing the provisions of this Act during the period commencing on the date of enactment of this Act and ending on the date of the coming into operation of this Act,
- 15

shall constitute a loan from the Government to the Monetary Board and shall be repaid in accordance with such terms and conditions as may be determined by the Minister with the concurrence of the Minister in charge of the subject of Finance.

20

9. The expenses incurred by the Commissioner and the Monetary Board in carrying out the provisions of this Act shall be charged on the income from the investment of the moneys of the Fund. Provided, however that the expenses 25 out of the provisions of Part IV of this Act shall be paid out of the income from the investment of moneys of the Fund.
- Expenses incurred in the administration of the Act.

PART II

EMPLOYEES TO WHOM THIS ACT APPLIES AND CONTRIBUTIONS

10. (1) For the purposes of this Act, all persons other 30 than persons-
- Persons to whom this Act applies.
- (a) holding any post which is a pensionable post for the purposes of the Minutes on Pension as declared by the Director – General of Pensions; or

- (b) who are members of any "approved scheme or fund" approved ne by the Commissioner of Labour in terms of the provisions of the Employees' Provident Act, No. 15 of 1958, including persons employed under a contract of employment,

shall be deemed to be persons to whom this Act applies.

(2) All employees who are not covered by (a) and (b) above, -

- (i) if such person is of an age where such person has more than ten years in which to become entitled to receive a pension in terms of this Act, be deemed to be members of the Fund; and
- (ii) if such person is of an age where such person has less than ten years in which to become entitled to receive a pension in terms of this Act, be entitled to apply to the Commissioner-General to become a member of the Fund.

11. Where the immediate employer of any person is himself in employment of some other person and the first mentioned person is employed to do any work in the course of, or for the purposes of, the business of that other person, such other person shall for the purposes of this Act, be deemed to be the employer of the first-mentioned person jointly with the immediate employer.

Immediate employer being himself in the employment of another person.

12. Subject to the provisions of section 14, all persons who are members of the Fund, shall contribute to the Fund. The contributions relating to such employee shall be paid in the following manner;-

Contributions in relation to employees.

- (a) an amount equivalent to not less than two percentum of the monthly Gross Salary of the employee, being the employer's contribution;

- (b) an amount not less than two percentum of the employee's monthly gross salary, being the employee's contribution;
 - 5 (c) an amount not less than ten percentum of the Gratuity, payable to an employee in terms of the Payment of Gratuity Act, No. 12 of 1983, to be transferred by the employer, at the time such Gratuity becomes payable; and
 - 10 (d) an amount not less than two percentum of the earnings lying to the credit of an employee in an individual account of a provident fund to be transferred by the Commissioner of Labour or such other person in authority, upon the money in such fund becoming payable to the employee;
 - 15 (e) an amount of ten percentum of the earnings lying to the credit of an employee in a co-operative society registered under the Co- operative Societies Law, No. 5 of 1972.
- 20 **13.** (1) Subject to the provisions of section 14, an employee who is employed in an institution which, -
- (a) prior to January 1, 1996, provided for the payment of pension benefits to its employees;
 - (b) after January 1, 1996, has withdrawn the payment of pension benefits to its employee,
- 25 shall, provided that such employee joined such institution after the date of withdrawal of such pension benefit but prior to the date of the coming into operation of this Act, be entitled to contribute to the Fund.
- 30 (2) The contributions relating to such employee shall be paid taking into consideration the period of service of each such member, in the following manner:-
- (a) an amount equivalent to five percentum of the monthly gross salary of the employee, as the

Contributions in relation to employees in institutions that does not extend pension benefits to its employees after January 1, 1996.

- 5 employer's contribution, for the period commencing from the date that such institution had withdrawn the pension rights benefit to the date on which such member becomes a member of the Fund. Such amount shall be paid in one installment.
- (b) an amount equivalent to five percentum of the monthly gross salary of the employee, as the employer's contribution payable monthly;
- 10 (c) the total amount due as Gratuity and payable to an employee in terms of the Payment of Gratuity Act, No. 12 of 1983 on the date on which such employee becomes a member of the Fund, shall be paid to the Fund by the employer in one installment: the employee who being entitled to a Gratuity in terms of the Payment of Gratuity Act, No. 12 of 1983
- 15 subsequently becomes a member of the Fund, shall be required to renounce his entitlement to such Gratuity under the aforesaid Act;
- 20 (d) the amount due and payable as gratuity to the employee after the date of the coming into operation of this Act, shall be paid annually, ensuring that an amount equivalent to half a months salary of the last drawn salary of such employee for every year of service is paid;
- 25 (e) an amount not less than five percentum of the earnings lying to the credit of an employee in an individual account of a provident fund to be transferred by the Commissioner of Labour or such other person in authority, upon the money in such fund becoming payable to the employee;
- 30 (f) an amount of ten percentum of the earnings lying to the credit of an employee in a co-operative society registered under the Co- operative Societies Law, No. 5 of 1972.
- 35

(3) The provisions of the section shall apply in relation to an employee who is employed on or before May 1, 2011, in any institution as is specified in this section, notwithstanding anything to the contrary contained therein.

- 5 **14.** The liability of an employee in a covered employment, his employer and the Commissioner of Labour or such other authority, to pay contributions under section 12 and section 13 shall commence on the day immediately after the date fixed in relation to such employment by the
10 Minister by Order published in the *Gazette*.

Commencement of liability to pay contributions.

- 15 **15.** (1) Where the Commissioner is satisfied that the employer of any employee has, during the period of one year immediately before the appointed date or at any time on or after that date, reduced the earnings of such employee
for the purpose of reducing the amount of, such contributions, the Commissioner shall, by written notice, direct such employer to pay to the Fund in such installments and before such dates as may be specified in that notice, in
20 respect of the entire period during which such employee receives such reduced earnings, the difference between the sum he should have paid during that period as contributions had such contributions been calculated on the basis of the earnings of such employee before the reduction and the sum actually paid by him as contributions during that period.

Commissioner's directions to employer who has reduced the earnings of any employee for purpose of reducing the amount of the employer's contributions under this Act in respect of the employee.

- 25 (2) Where the Commissioner gives any employer a direction under subsection (1) of this section, such employer shall comply with that direction.

- 30 **16.** (1) An annual interest rate, not less than two point five percentum, as may be annually fixed by the Monetary Board with the concurrence of the Minister in charge of the subject of Finance, shall be credited to the individual accounts on a monthly basis, out of the income from the investment of the moneys of the Fund, on the amount standing to the credit of the individual account of each member of the
35 Fund;

Interest on contributions & c.,

(2) Where the income from the investment of the moneys of the Fund is inadequate to pay any part of the interest payable on contributions paid to the Fund under this Act, the amount of the deficit shall be met out of the moneys
5 provided by Parliament for the purpose.

(3) Any sum provided by Parliament under subsection (2) of this section shall constitute a loan from the Government to the Monetary Board and shall be repaid in accordance with such terms and conditions as may be
10 determined by the Minister with the concurrence of the Minister in charge of the subject of Finance.

(4) The Fund shall be deemed to be a Pension Fund approved by the Commissioner-General of Labour for the purposes of the Inland Revenue Act, No.10 of 2006.

15 **17.** (1) The employer of an employee to whom this Act applies shall deduct and pay to the Fund the contribution for each month of such employee under this Act pertaining to Section 11 (1) before the last day of the succeeding month from the earnings of such employee; and a contribution paid
20 under this section to the Fund by such employer on behalf of such employee under Section 11 (2) shall be deemed to have been paid to the Fund by such employee.

Payment of contribution due from employees.

(2) The employer of an employee who deducts and pays to the Fund the contribution on behalf of such employee
25 shall maintain proper records of every such deduction. The Commissioner – General of Labour may in order to satisfy himself that such deductions are correctly made, require any employer to forward such records for his inspection. Any employer who has failed to so maintain records shall be
30 required to make a statement to the Commissioner – General in connection with such omission.

18. Where contributions payable under this act in respect of any month have not been made to the Fund before the last day of the succeeding month and the employer is
35 unable to explain to the satisfaction of the Commissioner that the failure to pay such contributions was due to

Imposition of surcharge on employers on failure to pay contributions on due date.

circumstances beyond his control, he shall be liable to pay the Fund in addition to the amount of the contribution due, a surcharge on such amount calculated in the following manner :-

- 5 (a) where the contributions are in arrears for a period not exceeding ten days, a surcharge of five *percentum* of the amount of the contributions due ;
- 10 (b) where the contributions are in arrears for a period exceeding ten days but not exceeding one month, a surcharge of fifteen *percentum* of the amount of the contributions due ;
- 15 (c) where the contributions are in arrears for a period exceeding one month but not exceeding three months, a surcharge of twenty *percentum* of the amount of the contributions due ;
- 20 (d) where the contributions are in arrears for a period exceeding three months but not exceeding six months, a surcharge of thirty *percentum* of the amount of the contributions due ;
- 25 (e) where the contributions are in arrears for a period exceeding six months but not exceeding twelve months, a surcharge of forty *percentum* of the amount of the contributions due;
- (f) where the contributions are in arrears for a period exceeding twelve months, a surcharge of fifty *percentum* of the amount of the contributions due.

- 30 **19.** (1) Any moneys due to the Fund shall be recoverable, as a debt due to the State, by an action in which proceedings may be taken by way of summary procedure. The provisions of the Civil Procedure Code relating to actions of which the procedure is summary shall apply to an action under this section , and, for the purposes only of the application of

Recovery of contributions.

such provisions to such action, section 8 of that Code shall have effect as if, for the words "by this Ordinance" occurring in that section, there were substituted the words "by this Ordinance or by any other written law".

5 (2) Proceedings for the recovery of any moneys due to the Fund may be instituted by the Commissioner or any officer authorized in that behalf by him, and the Commissioner or such officer may, notwithstanding anything to the contrary in any other written law conduct
10 such proceedings.

(3) The provisions of the Prescription Ordinance shall not apply to the recovery of any sums payable as contributions or surcharges under this Act.

15 **20.** The contributions of a member of the Fund and of his employer in respect of him and the interest on such contribution shall be credited by the Monetary Board to the individual account of such member. The sums to be credited to the individual accounts of members

20 **21.** No employer shall, by reason of his liability to pay in respect of any employee any contribution or surcharge under this Act, reduce the earnings of that employee or alter to his detriment any benefits which he is entitled to under the provisions of any other written law or under his contract of employment with that employer. Employer prohibited from reducing earnings of his employees & c.

25 **22.** The employer of any employee shall not deduct from the earnings of that employee any sum which that employer is liable to pay as a contribution or surcharge under this Act, and any contract entered into by that employer with that employee whereby any part of the liability of that employer under this Act is transferred to that employee shall
30 be null and void. Employer prohibited from deducting from earnings of employee payments due from employer under this Act in respect of employee.

23. Any sum due under this Act from an employer on the day immediately following the end of the period within which that sum is required by this Act to be paid by him shall be the first charge on his assets notwithstanding anything to the contrary in any other written law.

Amount due under this Act from an employee to be the first charge on his assets.

24. Every assignment of, or charge on, any sum to the credit of the individual account of a member of the Fund and every agreement to assign or charge any such sum shall be void, and, where that member is adjudged insolvent by a competent court, any such sum shall not part to any assignee acting on behalf of that members creditors notwithstanding the provisions of the Insolvency Ordinance.

Money to the credit of individual accounts to be inalienable.

PART III

PENSION

- 25.** (1) Subject to section (3) and (4), a member of the Fund covered under section 12 shall be paid a minimum monthly pension upon such member attaining the age of 60 years computed in the following manner:-
- (a) If such member has not less than ten years and not more than nineteen years of contribution during his service, a sum calculated on a simple average equivalent to fifteen percentum of the salary of the respective employee;
- (b) If such member has not less than twenty years and not more than twenty-nine years of contribution during his service, a sum calculated on a simple average equivalent to thirty percentum of the salary of the respective employee,
- (c) If such member has thirty years of contribution during his service and above, a sum calculated on a simple average equivalent to sixty percentum of the salary of the respective employee.

Time at which pension be paid in relation to employees and the period within which contributions have to be made.

(2) Subject to sub section (4) a member of the funded covered under section 13 shall be paid a monthly pension upon such member attaining the age of 60 years, computed in the following manner.

- 5 (i) If such member has not less than 20 years of service, a sum equivalent to 30 percentum of the last drawn salary of the respective employee;
- (ii) If such member has a grater period of service, he will be entitled to an extra 2 percent for every 1
10 year of additional service;

Provided however, for the basis of computation in terms of this section the maximum salary increase that will be counted for in any one year shall not be over and above 6.5 percentum of the salary of the preceding year.

- 15 (3) In the event the member does not have the respective number of years as required in section 12 within which contributions have to be made by him, prior to his reaching the age of sixty, the member could opt to make the balance payments relating to such period, in installments as may be
20 approved by the Fund.

- (4) The Commissioner shall require the respective District Secretary, Divisional Secretary or the Grama Niladabri to confirm at least annually, that a person to who this Act applies and who is a member of the Fund, is alive. In respect
25 of those members who are residing outside Sri Lanka, the verification shall be done through the Sri Lankan Mission based in the respective countries or in the absence through the available diplomatic channels. Action shall be taken to strike off the name of any member reported to be dead.

- 30 **26.** (1) Where a member of the fund dies—

- (a) before receiving a Pension having contributed as required in terms of this Act; or

Powers to whom a lump sum shall be paid in certain circumstances.

- (b) before receiving a Pension without having completed making the contribution as required under this Act;

5 Leaving a child below eighteen years of age or a child who is certified by a registered medical practitioner to be physically or mentally disabled, and who therefore is unfit to earn a living on their own, a lump sum equivalent to sixty percentum of the amount lying to the credit of the member's individual account shall be paid to such dependent. If there
10 is more than one dependent, such amount will be divided among the dependents in equal shares.

(2) Where a member of the fund ceases to be employed by reason of a permanent incapacity to work and is certified by a registered medical practitioner to be unfit for work for that
15 reason, and such member has not completed making the contributions as required under this Act , a sum equivalent to sixty percent of the amount lying to the credit of the member's individual account shall be paid to such member.

20 **27.** It shall be a condition of any person's right to a pension under this Act that he or any person on his behalf in instances so permitted under this Act shall make a claim thereto in the prescribed manner. Claim to receive a pension.

PART IV

DETERMINATION OF CLAIMS

25 **28.** All claims to pensions shall be determined by the Commissioner or by any officer authorized in that behalf by him and the determination of the Commissioner or such officer shall, subject to any decision on an appeal made against such determination in accordance with the
30 provisions of this Act, be final: Commissioner or an officer authorized by the commissioner to determine claims.

Provided that any determination made by any officer under this section may within the prescribed period be

reviewed by the Commissioner on his own motion; and in such case the determination of the Commissioner shall be deemed, for the purposes of section 29 to be the determination in that case.

5 **29.** (1) Any person aggrieved by any determination Appeals.
made under section 28 may appeal from such determination
to an Appeals Tribunal (hereinafter in this Act referred to as
"the Tribunal") comprising of not less than three persons
and not more than ten members, from amongst retired Judges
10 of the Superior Courts, who shall be appointed by the
Minister having related experience, and the decision of the
Tribunal on such appeal shall, subject to any Order which
the Court of Appeal may make in appeal, be final.

15 (2) Where the Commissioner or any party to an appeal
made to the Tribunal is dissatisfied with the decision of the
Tribunal on such appeal, the Commissioner or that party
may by written petition in which every other party to the
appeal is mentioned as a respondent, appeal to the Court of
Appeal from that decision on a question of law. The petition
20 of appeal shall state the question of law to be argued, shall
bear a certificate by an attorney-at-law that such question is
fit for adjudication by the Court of Appeal, shall be presented
to the Tribunal by the appellant within twenty- one days
after the date of the Tribunal's decision from which the
25 appeal is preferred, and shall be accompanied by a sufficient
number of copies for service on each of the persons
mentioned as respondents. Every such petition of appeal
shall be accompanied by the prescribed fee.

30 (3) Where a petition of appeal is presented to the Tribunal
in the manner and within the time specified in subsection
(2) of this section, it shall be the duty of the Tribunal-

35 (a) to cause the petition to be transmitted to the Court
of Appeal together with the record of the
proceedings in which the decisions of the Tribunal
against which the petition is preferred was made,
and

(b) to cause notice of the appeal and a copy of the petition of appeal to be served on each of the respondents named in the petition of appeal.

(4) Every appeal to the Court of Appeal under this section
5 may be heard and determined by any two Judges of that Court.

(5) Upon a decision being given by the Court of Appeal in any appeal under this section, the Registrar of that Court shall remit the case to the Tribunal together with the decision
10 of that Court, and it shall be the duty of the Tribunal, if the decision of that Court so requires, to rescind or vary in such manner as is required by the decision of that Court, the decision of the Tribunal from which the appeal was preferred and, where necessary for the purpose of giving effect to the
15 decision of that Court, to make a fresh decision in that regard within thirty days thereof.

(6) In any appeal made to the Court of Appeal under this section that Court may make such Order in regard to costs as to that Court may seem fit.

20 (7) Any costs ordered by the Court of Appeal under subsection (6) of this section to be paid by any person may, notwithstanding anything contained in any other written law, be recovered, on application made in that behalf to the Magistrate's Court having jurisdiction in the place where
25 that person is resident, in like manner as a fine imposed by that Magistrate's Court, notwithstanding that such of its ordinary jurisdiction impose.

(8) Subject to any regulations made under this Act, the Tribunal may regulate its own procedure.

30 **30.** The members of the Tribunal may be paid such remuneration as the Minister may determine with the concurrence of the Minister in charge of the subject of Finance. Remuneration of members of the Tribunal.

PART V

GENERAL

31. There shall be a Consultative Committee comprising of the Secretary to the Minister in charge of the subject of Labour, Commissioner General of Labour and two other members as may be nominated by the Minister in charge of the subject of Labour, one representing the employers and one representing the employees. The Monetary Board from time to time shall consult such Consultative Committee on the operations of the Fund.

32. (1) The Commissioner may, for the purposes of this Act, direct in writing any person to furnish to him before a date specified in the direction-

Consultative Committee.

Power of Commissioner to call for returns, & c.,

- (a) a return containing such particulars as he may require; and
- (b) such explanation in writing as he may require in respect of any particulars specified in any return so furnished.

and such person shall comply with such direction. A direction under the preceding provisions of this subsection may be given by notification published in the *Gazette* and in two or more newspapers circulating in Sri Lanka.

(2) Any person furnishing any document under subsection (1) of this section may transmit with such document a request in writing that the contracts of where such document should be treated as confidential and, where such request is made, the contents of such document shall not be disclosed without the consent previously obtained of such person.

(3) Nothing in the preceding provisions of this section shall be deemed to require or permit any person to disclose any explanation or to produce any document in any case

where such disclosure or production by that person is prohibited by or under the provisions of any written law other than this Act.

- 33.** Where any employer, who is required in terms of this Act or any regulation made there under, to furnish a return together with any contribution, has failed to furnish such return, within the specified period or has furnished incorrect or deficient return and is unable to explain to the satisfaction of the Commissioner, the reason for the failure to furnish such return for that period, he shall be liable to pay the Fund a surcharge at the rate of one percent of the amount of such contribution for every completed month or part thereof from the last date on or before which the return was due to the date of receipt by the Central Bank of Sri Lanka of a duly completed return.

Imposition of a surcharge on employers who fail to furnish returns.

- 34.** Subject to such conditions and restrictions as may be prescribed, the Commissioner or any officer authorized in that behalf by him in writing, for the purpose of carrying out the provisions of this Act, may-
- (a) enter and inspect at all reasonable hours by day or 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 an employee; and
 - (d) examine any records or other documents related to any provident fund or pension scheme.

Power of Commissioner and other officers to inspect premises & c.,

- 35.** Every employer of employees in a covered employment shall maintain such records as may be determined by the Commissioner and notified in the Gazette.

Employers to keep records.

36. Any person who- Offences.

- (a) contravenes any provision of this Act or of any regulation made thereunder;
- 5 (b) furnishes, for the purposes of this Act, information which is, or any document the contents of which are, or any part of contents of which is, to his knowledge untrue or incorrect;
- (c) willfully delays or obstructs the Commissioner or any other officer in the exercise of powers under
10 section 34; or
- (d) contravenes any direction made by the Commissioner in the exercise of this power under section 32,

shall be guilty of an offence under this Act.

15 **37.** Where an act or omission which constitutes an offence for which an employer is liable under this Act has in fact been committed or made by some manager, agent, servant or other person, the manager, agent, servant or other person shall be liable to be proceeded against for the offence in the
20 same manner as if he were the employer, and either together with the employer, or before or after the conviction of the employer, and shall be liable to the like punishment as if he were the employer.

Liability of manager, agent, & c., of employer for offences.

25 **38.** (1) Where any employer is charged with an offence under this Act, he shall, upon complaint duly made by him in accordance with the provisions of section 136 of the Code of Criminal Procedure Act, No. 15 of 1979, and on giving to the prosecution not less than three days notice of his intention, be entitled, subject to the provisions of Chapter
30 XIV of that Act, to have any other person whom he charges, as the actual offender brought before the court, and if, after commission of the offence by such other person has been

Where the employer proves that some other person is guilty of an offence.

proved, the employer proves to the satisfaction of the court that he has used due diligence to enforce the provisions of this Act and such other person has committed the offence without his knowledge, consent or connivance, then such
 5 other person shall be convicted of the offence and the employer shall be exempt from any punishment in respect of the offence.

(2) Where in any case referred to in subsection (1) of this section complaint is made by an employer against any other
 10 person, -

- (a) the prosecution against such other person shall be conducted by or on behalf of the employer;
- (b) any witness called by the prosecution in the proceeding against such other person may be cross-
 15 examined by any officer authorized in that behalf by the Commissioner; and
- (c) pending the determination of the proceedings against such other person, the proceedings in the prosecution of the employer shall be adjourned.

20 **39.** Every person who is guilty of an offence under this Act shall be liable, on conviction after summary trial before a Magistrate, to a fine not exceeding fifty thousand rupees or to imprisonment of either description for a term not exceeding 6 months or to both such fine and imprisonment,
 25 and shall in addition be liable to a fine not exceeding rupees five hundred in respect of each day on which the offence is continued to be committed after conviction.

Punishment
for offences.

30 **40.** (1) Where an employer makes default in the payment of any sum which he is liable to pay under this Act and Commissioner is of opinion that recovery under section 17 of the Act is impracticable or inexpedient, he may issue a certificate to the District Court having jurisdiction in any district in which the member or members of the fund respect of whom default is made, is or was employed by such

Recovery of
arrears of
payments
due in certain
cases.

defaulting employer, containing particulars of the sum due and the name and place of residence of such employer, and the court shall thereupon direct a writ of execution to issue to the Fiscal authorizing and requiring to seize and sell all
5 the property, movable and immovable, of the defaulting employer, or such part thereof as he may deem necessary for the recovery of the amount so due, and the provisions of section 226 to 297 of the Civil procedure Code shall, *mutatis mutandis*, apply to such seizure and sale.

10 (2) Where an employer makes default in the payment of any sum which he is liable to pay under this Act and the Commissioner is of the opinion that it is impracticable or inexpedient to recover that sum under section 17 or under
15 subsection (1) of this section or where the full amount due has not been recovered by seizure and sale, then, he may issue a certificate containing particulars of the sum so due and the name and place of residence of the defaulting employer, to the Magistrate having jurisdiction in the division in which the place of work of the member of members
20 of the Fund in respect of whom default is made, is situate. The Magistrate shall, thereupon, summon such employer before him to show cause within a period of fourteen days, as to why further proceedings for the recovery of the sum due under this Act should not be taken against him and in
25 default of sufficient cause being shown, such sum shall be deemed to be a fine imposed by a sentence of the Magistrate on such employer for an offence punishable with imprisonment and the provisions of section 291 (except paragraphs (a),(d), and (i) of subsection (1) thereof of the
30 Code of Criminal procedure Act, No. 15 of 1979 relating to the default of payment of fine imposed for such an offence shall thereupon apply and the Magistrate may make any direction which, by the provisions of that subsection, he could have made at the time of imposing such sentence.

35 (3) The correctness of any statement in a certificate issued by the Commissioner for the purpose of this section shall not be called in question or examined by the Court in any

proceedings under this section, and accordingly nothing in this section shall authorize the Court to consider or decide the correctness of any statements in such certificate and the Commissioner's certificate shall be sufficient evidence that
5 the amount due under this Act from the defaulting employer has been duly calculated and that such amount is in default.

(4) The provisions of this section shall have effect notwithstanding anything in section 17 of this Act.

10 **41.** In any proceedings against any employer under section 17 of this Act for failure to pay any sum due from him under this Act, the burden of proving that the sum was paid of shall lie on the employer. Burden of proof.

42. Where an offence under this Chapter is committed by a body of person, then – Offences by bodies of persons.

15 (a) if that body of persons is a body corporate, every director and officer of that body corporate;

(b) if that body of persons is a firm, every partner of that firm; and

20 (c) if that body of persons is a trade union, every officer of that trade union,

shall be deemed to be guilty of the offence:

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

43. No prosecution for an offence under this Act shall be instituted except by or with the written sanction of the
30 Commissioner. No prosecution without the sanction of the Commissioner.

44. (1) An extract of the Gazette in which any regulation or order made under this Act is published, or a copy of such regulation or order purporting to have been certified by the Commissioner to be a true copy, may produced in court in proof of such Regulation or Order.

Proof of regulations and orders & c.,

(2) In any legal proceedings -

(a) a copy of an entry in any book of accounts maintained by the Monetary Board for the purposes by an account of the Central Bank of Sri Lanka to be a true copy; or

(b) a copy of an entry in any book or record maintained by the Commissioner for the purposes of this Act purporting to have been certified by him to be a true copy,

shall be *prima facie* evidence of the fact that such entry has been made and of the contents thereof.

45. (1) The income from the investment of any moneys of the Fund shall be exempt from income tax chargeable under any written law relating to the imposition of income tax.

Exemption from income tax.

(2) The Fund shall be deemed to be a pension fund approved by the Commissioner, for the purposes of the Inland Revenue Act, No. 10 of 2006.

(3) In this subsection "Commissioner" and "Commissioner-General" shall have the same meaning as in the Inland Revenue Act, No. 10 of 2006.

46. Stamp duty shall not be chargeable upon such documents used in connection with the purpose of this Act as may be prescribed.

Exemption from stamp duty.

47. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any regulations made there under.

Protection for action taken under this Act.

48. (1) The Minister may make regulations for the Regulations.
purpose of giving effect to the principles and provisions of
this Act and in respect of matters required by this Act to be
prescribed or in respect of which regulations are authorized
5 or required to be made.

(2) Without prejudice to the generality of the powers
conferred by subsection (1), the Minister may make
regulations in respect of all or any of the following matters –

- 10 (a) in respect of all matters connected with or incidental
to the collection of contributions and other
payments under this Act;
- (b) in respect of the refund of any sums paid in error to
the Fund;
- 15 (c) for enabling a person to be appointed to exercise,
on behalf of a claimant to a beneficiary who is a
child or who may be unable for the time being to
act, any right which the claimant may be entitled to
exercise under this Act, and for authorizing a person
20 so appointed to receive and deal with a benefit to
which a claimant is entitled;
- (d) in respect to whom the amount standing to the credit
of that member's individual account in the Fund
may be paid in the event of that member's death ;
- 25 (e) in respect of the manner in which and the time within
which appeals to the Tribunal constituted under
this Act shall be made;
- (f) in respect of the fees to be paid for appeals to such
Tribunal;
- 30 (g) in respect of the procedure to be followed and the
powers exercisable by such Tribunal;

- (h) in respect of the circumstance in which costs may be awarded by such Tribunal against any party to an appeal made to the Tribunal and the manner of recovery of such costs;
- 5 (i) to provide for matters arising-
 - (i) pending the determination under this Act (whether in the first instance or on appeal) of any claim to a benefit or of any question affecting any person's right to a benefit or
10 any person's liability for contributions to the Fund; or
 - (ii) out of the revision on appeal to the Tribunal of any decision on any such claim or question;
- 15 (j) for the suspension of the grant of a pension pending the review by the Commissioner of the determination upon the claim to that pension;
- (k) for treating any sum paid to any person under a determination made under this Act or by virtue of
20 any provision of any regulation, which it is subsequently decided was not payable, as properly paid, or for the repayment by him and for the recovery from him of that sum;
- 25 (l) the payment of allowances to officers and servants employed in carrying out the provisions of this Act and the method of computing such allowances;
- (m) for the recovery of fees to be charged from employers and the writing off of losses which may be incurred, in connection with the administration
30 of this Act; and
- (n) in respect of all matters necessary for carrying out the provisions of this Act or giving effect to the principal thereof.

(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 regulations.

5 (4) 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
10 previously done thereunder.

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

49. In this Act, unless the context otherwise requires - Interpretation.

15 “Commissioner” means the Commissioner-General of Labour;

“covered employment” means an employment declared by regulation to be a covered employment;

20 “employee” means any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, or oral or in writing, and whether it is a contract of service or of apprenticeship or a contract personally to execute any work labour,
25 and included any person ordinarily employed under any such contract, whether such person is or is not in employment at any particular time;

“Employees’ Trust Fund” means the fund established by the Employees’ Trust Fund Act, No. 46 of 1980;

30 “Employees’ Provident Fund” means the fund established by the Employees Provident Fund Act, No. 15 of 1958;

“employer” means any person who employs or on whose behalf any other person employs any workman and includes a body of employers (whether such body is a firm, company, corporation or trade union) , and any person who on behalf of any other person employs any workman, and includes the legal heir, successor in law, executor or administrator and liquidator of a company; and in the case of an incorporated body, the President or the Secretary of such body, and in the case of a partnership, the Managing Partner or Manager;

“earnings” means -

- (a) wages, salary or fees;
- (b) cost of living allowance, special living allowance and other similar allowances ;
- (c) payment in respect of holidays;
- (d) the cash value of any cooked or uncooked food provided by the employer to employees in prescribed employments and any such commodity used in the preparation or composition of any food as is so provided, such value being assessed by the employer subject to an appeal to the Commissioner whose decision on such appeal shall be final;
- (e) meal allowance;
- (f) such other forms of remuneration as may be prescribed;
- (g) any other payment made to the employee in connection with the service rendered by him, but excluding overtime, bonus or any

payment made for reimbursement of expenses incurred by an employee.

“ Monetary Board” means the Monetary Board established under the Monetary law Act;

- 5 **50.** The provisions of this Act shall have effect notwithstanding anything contained in any other written law, and in any case of conflict or inconsistency between the provisions of this Act and such other law, the provision of this Act shall prevail. Act to prevail in case of conflict with other written law.
- 10 **51.** In the event of an inconsistency between Sinhala and the Tamil text of this Act the Sinhala text shall prevail. Sinhala text to Prevail in case of inconsistency.

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