

PART IV

PART IV

MAJOR LEGISLATIVE ENACTMENTS OF 2005 RELATING TO THE FUNCTIONS AND OPERATIONS OF THE CENTRAL BANK AND BANKING INSTITUTIONS IN SRI LANKA

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**NATIONAL DEVELOPMENT BANK OF SRI LANKA (CONSEQUENTIAL PROVISIONS) ACT,
NO. 1 OF 2005**

[Certified on 7th February, 2005]

AN ACT TO MAKE PROVISIONS CONSEQUENTIAL TO THE REGISTRATION OF THE NATIONAL DEVELOPMENT BANK OF SRI LANKA AS A PUBLIC COMPANY; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

1. This Act may be cited as the National Development Bank of Sri Lanka (Consequential Provisions) Act, No. 1 of 2005.
2. The National Development Bank of Sri Lanka Act, No. 2 of 1979 shall as from such date as may be specified by the Minister by Order published in the *Gazette* (hereinafter referred to as the "specified date"), be repealed. Such date shall be a date which is not later than six months from the date of the Certification of this Bill as an Act of Parliament by the Speaker under Article 79 of the Constitution.
3. (1) The Minister may, at any time after the coming into operation of this Act, forward to the Registrar of Companies a Memorandum and Articles of Association duly approved by the Monetary Board together with a direction to such Registrar requiring him to register the National Development Bank of Sri Lanka as a public company under the Companies Act, No. 17 of 1982, in such name as is specified by the Minister in such direction.
(2) Notwithstanding anything contained in the Companies Act, No. 17 of 1982, the Registrar of Companies shall, on receipt of a direction under subsection (1)—
 - (a) issue a Certificate of Incorporation under subsection (1) of section 15 of the aforesaid Act, in such name as is specified in the direction under subsection (1); and
 - (b) publish an Order in the *Gazette* declaring that from the specified date a public company is incorporated in the name specified in the direction under subsection (1), (hereinafter referred to as "the company") to take over and carry on the business of the National Development Bank of Sri Lanka as a going concern.
4. With effect from the specified date, the business of the National Development Bank of Sri Lanka established by section 2 of the National Development Bank Act, No. 2 of 1979, shall vest absolutely in the company referred to in the Order published under subsection (2) of section 3.
5. Upon the repeal of the National Development Bank of Sri Lanka Act, No. 2 of 1979, as provided for in section 2 of this Act—
 - (a) the share capital of the National Development Bank of Sri Lanka as on the day immediately preceding the specified date shall be deemed to be the share capital of the company as at the specified date;
 - (b) all shareholders of the National Development Bank of Sri Lanka on the day immediately preceding the specified date shall be deemed to be the shareholders of the company as at the specified date and the shares held by such shareholders in the company shall be identical in number to that held by them in the Bank on the day immediately preceding the specified date and all share certificates issued by the Bank shall be read and construed as if such share certificates were share certificates issued by the company;
 - (c) all officers and servants of the National Development Bank of Sri Lanka holding office on the day immediately preceding the specified date shall be deemed to be employees of the company with effect from the specified date and such officers and servants shall continue to hold office on terms and conditions not less favourable than the terms and conditions enjoyed by them under the Bank, immediately preceding the specified date;
 - (d) all contracts, deeds, bonds, agreements, guarantees, powers of attorney, grants of legal representation and other instruments of whatever nature of the National Development Bank of Sri Lanka, subsisting or having effect on the day immediately preceding the specified date and to which the Bank is a party or which are in favour of the Bank shall be deemed with effect from the specified date to be contracts, deeds, bonds,

- agreements, guarantees, powers of attorney, grants of legal representation and other instruments of whatever nature entered into by or granted in favour of, as the case may be, by the company;
- (e) all reserves maintained by the National Development Bank of Sri Lanka for purposes of the Banking Act or otherwise, on the day immediately preceding the specified date shall be deemed with effect from the specified date, to be reserves of the company;
 - (f) all actions and proceedings of whatever nature instituted by or against the National Development Bank of Sri Lanka and pending on the day immediately preceding the specified date shall be deemed as from the specified date, to be actions and proceedings instituted by or against the company and may be continued accordingly;
 - (g) the National Development Bank of Sri Lanka Provident Fund, the National Development Bank of Sri Lanka Pension Fund and the National Development Bank Employee Share Option Scheme established by the Bank and existing on the day immediately preceding the specified date and shall be deemed as from the specified date, to be the Provident Fund, Pension Fund and Share Option Scheme respectively, established by the company;
 - (h) all tax credits, refunds, losses, concessions, relief, benefits and liabilities of the National Development Bank of Sri Lanka subsisting on the day immediately preceding the specified date shall be deemed as from the specified date, to be tax credits, refunds, losses, concessions, reliefs, benefits and liabilities of the company;
 - (i) all judgments, decrees or orders entered in favour of, or against the National Development Bank of Sri Lanka by any Court in any action or proceeding shall with effect from the specified date be deemed to be a judgment, decree or order entered in favour of, or against the company.
6. Notwithstanding the repeal of the National Development Bank of Sri Lanka Act, No. 2 of 1979 by section 2 of this Act, the provisions of subsections (2), (3), (4), (5) and (6) of section 30 of the National Development Bank of Sri Lanka Act, No. 2 of 1979 shall from and after the specified date, continue to be operative and of full force and avail in law as if such section had never been repealed, until the loans so guaranteed by the Government of Sri Lanka in terms of such section are repaid in full and no further. Every loan guaranteed as aforesaid prior to the specified date and subsisting on the day immediately preceding the specified date, shall as from the specified date continue to subsist as if the loans so guaranteed were loans raised by the company.
7. With effect from the specified date every reference to the National Development Bank of Sri Lanka in any Act, regulation, notification, contract, instrument, record, share certificate, document, deed, bond, agreement, guarantee, power of attorney, grant of legal representation and other instruments of whatever nature whatsoever, shall be deemed to be a reference to the company whenever it is appropriate or necessary to give effect to the provisions of this Act and the name of the company specified in the direction under subsection (1) of section 3, shall, whenever it is necessary or appropriate so to do, be substituted in place of the name of the Bank.
8. (1) The Monetary Board may make rules as it deems necessary to assist the company to conform within a specified period (hereinafter referred to as "compliance period") with the requirements of the Banking Act, No. 30 of 1988 and the Monetary Law Act, (Chapter 422) that apply in relation to a licensed commercial bank to which requirements the company as a licensed specialized bank, was not subject to :
 Provided that during the compliance period, the provisions of the Banking Act and the Monetary Law Act which contain the aforesaid requirements shall not apply to the company to the extent necessary to give effect to such rules.
- (2) Every rule made by the Monetary Board shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified therein.
9. (1) The Minister may make regulations for the purpose of facilitating the vesting of the business of the Bank in the company in accordance with the provisions of section 3.
- (2) Every regulation made by the Minister under subsection (1) shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.
- (3) Every regulation made under subsection (1) shall as soon as convenient be placed 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) Notice of the date on which the regulation is disapproved shall be published in the *Gazette*.

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

11. For purposes of this Act, unless the context otherwise requires —

“company” means the company referred to in the Order published under paragraph (b) of subsection (2) of section 3 ;

“business” includes —

- (a) the business carried on by the National Development Bank of Sri Lanka as a licensed specialised bank, as at the specified date;
- (b) all property immovable and movable of the National Development Bank of Sri Lanka as at the specified date (including cash balances, reserve funds, investments and deposits);
- (c) all liabilities, including deposits and contingent liabilities, of the National Development Bank of Sri Lanka as at the specified date;
- (d) all rights, powers, privileges, authorities, obligations, duties and interests arising in or out of the said business, such property and such liabilities as at the specified date including the license issued to the National Development Bank of Sri Lanka by the Monetary Board under subsection (3) of section 76A of the Banking Act;
- (e) all books, accounts and documents relating or appertaining to the National Development Bank of Sri Lanka or to any property of the Bank at the specified date;

“Banking Act” means the Banking Act, No. 30 of 1988 as amended from time to time;

“National Development Bank of Sri Lanka” means the National Development Bank established by the National Development Bank of Sri Lanka Act, No. 2 of 1979.

BANKING (AMENDMENT) ACT, NO. 2 OF 2005

[Certified on 10th February, 2005]

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

1. This Act may be cited as the Banking (Amendment) Act, No. 2 of 2005.
2. Section 2 of the Banking Act, No. 30 of 1988 (hereinafter referred to as the “principal enactment”) is hereby amended in subsection (3) of that section by the substitution for the words “provisions of this Act” of the words “provisions of this Part”.
3. Section 3 of the principal enactment is hereby amended by the repeal of subsections (2), (3), (4) and (5) of that section and the substitution therefor of the following subsections:—
 - “(2) Every application for a licence shall be accompanied by —
 - (a) in the case of a company to be formed for the purpose of carrying on banking business—
 - (i) a copy of the draft Memorandum of Association and the Articles of Association of the company to be formed or the draft Constitution or any other document associated with the formation of such company; and
 - (ii) a statement containing the names, addresses, occupations and qualifications of the persons proposed as Directors, and if a Chief Executive Officer has been identified, of such officer;

- (b) in the case of a company formed before the date of the application and which intends to commence banking business,—
- (i) a copy of the Memorandum of Association and the Articles of Association of such company or the Constitution or any other document associated with the formation of such company, together with the proposed amendments, if any, to such documents; and
 - (ii) a statement containing the names, addresses, occupations and qualifications of the Directors of the company and any Directors proposed to be nominated or appointed and of the Chief Executive Officer of such company;
 - (iii) a copy of the audited balance sheet and profit and loss account of the company for the preceding three years;
- (c) in the case of an application by a company or body corporate incorporated outside Sri Lanka, such company shall in addition to the documents specified in paragraph (b) submit—
- (i) a written undertaking supported by a resolution of the Board of Directors of such company or body corporate, stating that such company or body corporate, as the case may be, shall on demand by the Central Bank, provide such funds as may be necessary to meet all obligations incurred in or in connection with, its business in Sri Lanka; and
 - (ii) a report containing such information as may be determined by the Monetary Board, from the regulatory authority of the country in which such company or body corporate is incorporated.
- (3) On receipt of an application under subsection (1) by the Monetary Board, the Director of Bank Supervision may, where such Director considers it necessary, require the applicant to furnish to the Monetary Board such other documents, information or other particulars, in order to determine whether a licence should be issued or not.
- (4) Where on consideration of the documents, information and particulars submitted to the Monetary Board under subsections (1), (2) and (3) and on such further investigations as it may consider necessary, the Monetary Board is satisfied that the application may be approved in principle, it may issue a Letter of Provisional Approval to the applicant. On receipt of the Letter of Provisional Approval, the applicant shall take all preliminary measures as may be required in terms of such Letter, prior to the issue of a licence under section 5, and specified in such Letter.
- (5) The Letter of Provisional Approval issued under subsection (4) shall be valid for the period stated in such Letter. Such period shall however not exceed twelve months from the date of issue of such Letter and the period of validity may only be extended by the Monetary Board in writing, in exceptional circumstances.
- (6) The Monetary Board shall cause a copy of each Letter of Provisional Approval issued under subsection (4) and of any communication extending the period of validity of such Letter under subsection (5), or any withdrawal in terms of subsection (7), to be sent to the Registrar of Companies.
- (7) The issue of Letter of Provisional Approval under subsection (4) shall not bind the Monetary Board to issue a licence under section 5 to the company or the company to be formed for the purpose of carrying on banking business (hereinafter referred to as a “proposed company”), in respect of which the Letter of Provisional Approval has been issued, and the Monetary Board may, on the basis of investigations carried out by it under subsection (10) withdraw such Letter or refrain from issuing a licence under section 5 on any one or more of the following grounds :—
- (a) that the Monetary Board is not satisfied with the suitability of the company or the proposed company to be issued, with a licence;
 - (b) that the company or proposed company has not complied with the conditions stipulated in the Letter of Provisional Approval have not been complied with;
 - (c) that the company or proposed company has not complied with the requirements under this Act for the issue of a licence ;
 - (d) that any information contained in the application for a licence or any information submitted in connection therewith by the company or proposed company is found to be false or incorrect; or

- (e) that there has been, in the opinion of the Monetary Board, a sufficiently significant change in the economic and the banking environment of the country that warrants the suspension of the issue of licence under section 5:

Provided however, the Monetary Board shall before withdrawing a Letter of Provisional Approval issued in terms of the provisions of this subsection to an applicant in terms of subsection (4), or if a decision is taken by the Monetary Board under this subsection to refrain from issuing a licence, give sufficient notice in writing to the applicant stating the grounds for such withdrawal or decision to refrain from issuing a licence and shall afford him an opportunity of being heard.

- (8) A company or a proposed company in respect of which a Letter of Provisional Approval has been issued under subsection (4) shall not commence banking business before the issue of a licence under section 5. Every advertisement, prospectus, notice or other publication issued by the company or proposed company before the issue of the licence shall be required to specify that it has not been issued a licence to carry on banking business under the Act.
- (9) A licence shall not be issued under section 5 to a company formed and incorporated under the Companies Act, No.17 of 1982 unless —
 - (a) the company is a public company;
 - (b) the Memorandum of Association of the company sets out as its primary object, the carrying on of banking business as defined in this Act; and
 - (c) the Memorandum of Association of the Company restricts the other forms of business the company may carry on, if any, to any or all of the forms of business specified in Schedule II to this Act.
- (10) (a) The Monetary Board may, at any time prior to the issue of a licence under section 5, conduct such investigations as it may deem necessary to satisfy itself as to the suitability of the company or proposed company to be issued with a licence, having regard to the interests of the national economy, including the banking needs of Sri Lanka.
 - (b) At an investigation conducted under paragraph (a) the Monetary Board may require the applicant to satisfy the Board on any matter relevant to the suitability of the company or the proposed company and in particular —
 - (i) the validity and acceptability of the documents and particulars submitted by the applicant;
 - (ii) the financial status and history of the company or the proposed company;
 - (iii) the financial standing, experience and suitability of the Directors, Chief Executive Officer and such other officers of the company performing executive functions as may be determined by the Monetary Board or the persons proposed-to be appointed to such positions in the proposed company, as the case may be;
 - (iv) of the adequacy of the capital of the company or based on the information furnished by the applicant on behalf of the proposed company, the ability of the proposed company to raise adequate capital;
 - (v) of the ability of the company or the proposed company to cover all obligations and liabilities incurred in the conduct of business in Sri Lanka and to comply with the provisions of the Act;
 - (vi) the applicant's compliance with the provisions of the Act or any directions given under the Act in relation to the application for a licence under the Act.
- (11) Any person who submits information or particulars in an application for a licence or in any other document submitted in connection therewith or in the course of any inquiry or investigation conducted to ascertain the suitability of the company or the proposed company to be issued with a licence under this Act, which to the knowledge of the person is false or misleading in any material particular, shall be guilty of an offence under this Act.”

4. Section 5 of the principal enactment is hereby repealed and the following section substituted therefor :—

- "Issue of licence.
5. (1) Where the Monetary Board is satisfied that a licence may be issued to a company or a proposed company to carry on banking business, it may, with the approval of the Minister, issue a licence to the company or proposed company to carry on banking business in Sri Lanka subject to such terms and conditions as may be imposed by the Monetary Board.
 - (2) The licence issued under subsection (1) shall specify —
 - (a) whether it authorizes the company to carry on domestic banking business or off-shore banking business or both such businesses;
 - (b) the place or places or the area within which such banking business may be carried on; and
 - (c) the terms and conditions subject to which such licence is issued.
 - (3) Every licensed commercial bank shall display a copy of the licence issued to it under subsection (1) in a conspicuous place at its principal place of business in Sri Lanka and each of its branches.”.

5. Section 9 of the principal enactment is hereby repealed and the following section substituted therefor:—

- "Notice of cancellation of licence issued to a licensed commercial bank.
9. (1) Where the Monetary Board is satisfied that any licensed commercial bank has —
 - (a) failed to commence business within nine months of the issue of the licence under section 5; or
 - (b) failed to pay any debts incurred by it, on such debts becoming due; or
 - (c) had a petition or action for relief filed against such licensed commercial bank, and has had appointed in respect of such bank under any bankruptcy law or any other law which provides for relief of debtors or which relates to debtors, a liquidator or receiver; or
 - (d) ceased to carry on banking business; or
 - (e) contravened any provisions of this Act or any direction, order or other requirement imposed under the Act; or
 - (f) furnished false, misleading or inaccurate information or documents to the Monetary Board or in the case of a proposed company the applicant for the licence has furnished such information or documents in connection with its application for the licence; or
 - (g) carried on, or is carrying on, its business in a manner likely to be detrimental to the interests of its depositors,

the Monetary Board may give notice that it would cancel the licence issued to such bank and shall communicate such notice to such licensed commercial bank.
 - (2) A licensed commercial bank may tender objections in writing to the Monetary Board against the notice of intended cancellation under subsection (1), within fourteen days of the date of receipt of such notice, giving reasons why the licence issued to it under section 5 should not be so cancelled.
 - (3) The Monetary Board may, within thirty days from the last date for tendering objections under subsection (2), after considering the objections if any, tendered to it under that subsection and after hearing the licensed commercial bank in support of its objections, either withdraw the notice given under subsection (1) with or without conditions or cancel the licence issued to the licensed commercial bank, and shall notify the bank in writing accordingly.
 - (4) A licensed commercial bank aggrieved by a decision of the Monetary Board made under subsection (3) to impose conditions on the withdrawal of the notice given under subsection (1) or to cancel its licence, may within fourteen days of the date of receipt of the

notification given under that subsection, appeal against such decision to the Court of Appeal.

- (5) Until rules are made under Article 136 of the Constitution relating to appeals under this section, the rules made under that Article relating to the hearing of applications by way of revision to the Court of Appeal, shall apply to every appeal made under this section.
- (6) The Court of Appeal may on appeal made to it under subsection (4) confirm, reverse, modify or set aside the decision against which the appeal is made and may make any other order as the interests of justice may require.
- (7) Without prejudice to subsection (1), the Monetary Board may, where it is satisfied that any licensed commercial bank incorporated outside Sri Lanka has had its licence or authority to operate in the country in which such bank was incorporated cancelled or withdrawn by the appropriate authority or regulatory body of that country, cancel the licence issued to the bank under this Part and shall notify the bank accordingly.
- (8) (a) A cancellation of a licence of a licensed commercial bank under subsection (3) shall take effect—
 - (i) where the bank does not prefer an appeal against such cancellation under subsection (4), on the expiration of the period for tendering such appeal; or
 - (ii) where an appeal has been preferred against such cancellation, on the confirmation of the decision of the Monetary Board by the Court of Appeal or the Supreme Court, as the case may be;
- (b) A cancellation of a licence of a licensed commercial bank under subsection (7), shall take effect from the date of the receipt by the bank of the notification under that subsection.
- (9) Where a cancellation of a licence of a licensed commercial bank has taken effect under paragraph (a) or paragraph (b) of subsection (8), the Monetary Board shall, as soon as possible publish once in the *Gazette* in Sinhala, Tamil and English languages and once in a Sinhala, Tamil and English daily newspaper circulating in Sri Lanka, a notification of the cancellation of such licence.”.

6. Section 11 of the principal enactment is hereby amended by the repeal of subsections (2), (3) and (4) of that section and the substitution therefor of the following subsections :—

- “(2) Where the cancellation of a licence of a licensed commercial bank incorporated or established within Sri Lanka by or under any written law for the time being in force, has taken effect under paragraph (a) of subsection (8) of section 9, proceedings for the compulsory winding- up of the licensed commercial bank shall commence in accordance with the provisions of Part VIII of this Act.
- (3) Where the cancellation of a licence of a licensed commercial bank incorporated outside Sri Lanka has taken effect under paragraph (a) or paragraph (b) of subsection (8) of section 9, the Director of Bank Supervision shall forthwith inform the head office of such bank to honour the written undertaking submitted under paragraph (a) of subsection (2) of section 3 and take such steps as may be necessary to enforce such undertaking and to close down the business of the bank in and with respect to Sri Lanka, in accordance with the provisions of Part VIII of this Act.
- (4) Notwithstanding the provisions of section 9 or any other written law for the time being in force, the Monetary Board may, in any of the circumstances referred to in paragraphs (a) to (g) of subsection (1) of section 9 without proceeding to cancel the licence issued to a licensed commercial bank in terms of section 9, make order which may include any one or more of the following :—
 - (a) directing the licensed commercial bank to suspend its business in Sri Lanka, and in the case of a licensed commercial bank incorporated or established within Sri Lanka, to immediately suspend its business outside Sri Lanka for such period as is specified in such order subject to such conditions as the Monetary Board may stipulate:

Provided that prior to such suspension, written notice shall be served on the licensed commercial bank, of the decision of the Monetary Board along with its reasons therefor, to suspend the business of such bank. The bank shall also be afforded an opportunity of being heard on such matter either orally or in writing, within a period of time which shall not be less than three working days as shall be specified in such notice;

- (b) requiring the licensed commercial bank which has been required to suspend business under paragraph (a) to hand over all books, records and assets of that licensed commercial bank to the Director of Bank Supervision;
- (c) requiring the licensed commercial bank to forthwith take or refrain from taking any action or to do or refrain from doing any act or thing as the Board may consider necessary in relation to the business of such bank;
- (d) appointing a fit and proper person to advise such bank with regard to the proper conduct of the business of such bank;
- (e) restraining any director, manager or controller of the licensed commercial bank from carrying out any function in or in relation to the bank and appointing a fit and proper person to carry out such functions, in or in relation to, such bank;
- (f) for the assumption of control of, and for the carrying on of the business of such bank by the Monetary Board or for delegating the control so assumed to another person in order to carry on the business of the bank;
- (g) for the re-organization of such bank, by arranging for the increase of its capital or reconstituting its board of directors or both such measures;
- (h) providing for such arrangements as are necessary for the amalgamation of such bank with any other licensed commercial bank that consents to such amalgamation; and
- (i) vesting the business of the licensed commercial bank in another licensed commercial bank which consents to such vesting and for the provisions of Part VII A to apply to such vesting, as if the licensed commercial bank whose business is vested is a defaulting bank and the licensed commercial bank in which the business is vested, is an acquiring bank:

Provided, however that any measures taken under this section shall not preclude the Monetary Board from subsequently proceeding under section 9 where the Monetary Board is of the opinion that it is in the interest of the banking system to do so.

- (5) Notice in writing of any measures taken under subsection (4) shall be given to the licensed commercial bank and to any director, manager or controller referred to in paragraph (e) of subsection (4) and such measures shall become effective from the date of the receipt of such notification or such other date as may be specified in the notice.”

7. Section 12 of the principal enactment is hereby amended as follows :—

- (1) in subsection (1) of that section —
 - (i) by the repeal of paragraph (c) thereof, and the substitution therefor of the following paragraph:—
 - “(c) for a licensed commercial bank to acquire the business or part of the business of another licensed commercial bank or a licensed specialised bank or of any branch of another licensed commercial bank or of a branch of a licensed specialised bank;”;
 - (ii) by the repeal of paragraph (d) thereof and the re-lettering of paragraph (e) as paragraph (d) thereof ;
 - (iii) by the addition, immediately after the relettered paragraph (d) of that subsection, of the following paragraph:—
 - “(e) for the merger or consolidation of a licensed commercial bank or a branch thereof with any other licensed commercial bank or a licensed specialised bank.”;
- (2) by the insertion immediately after subsection (1) thereof, of the following new subsections:—

- “(1A). Application for approval of an acquisition under paragraph (c) of subsection (1) or a merger or consolidation under paragraph (e) of subsection (1) shall include —
- (a) a statement of the nature of the acquisition or merger or consolidation, as the case may be;
 - (b) a copy of the proposed agreement, if any, under which the acquisition or merger or consolidation, as the case may be, is to be effected; and
 - (c) such other particulars and documents as may be prescribed.
- (1B) An approval under paragraph (c) of subsection (1), or paragraph (e) of subsection (1), or subsection (1C) shall not be granted, unless the Monetary Board is satisfied that such acquisition or merger or consolidation is in the interest of promotion of a safe, sound and stable banking system, and the fair competition prevailing in the banking industry. When granting approval for an acquisition under subsection (1C), to an individual or a corporate body, the Monetary Board shall, in determining whether such individual or the directors of such corporate body as the case may be, are fit and proper persons, have regard to the criteria set out in subsection (2) of section 42.
- (1C) (a) An individual, partnership or corporate body shall not, either directly or indirectly or through a nominee or acting in concert with any other individual, partnership or corporate body, acquire a material interest in a licensed commercial bank incorporated or established within Sri Lanka by or under any written law without the prior written approval of the Monetary Board given with the concurrence of the Minister.
- (b) Without prejudice to the generality of subsection (2) of this section, approval under paragraph (a) of this subsection may be granted subject to terms and conditions as the Monetary Board may deem fit.
- (c) A licensed commercial bank shall not enter in the register of members of the bank as the holder of shares of the bank, the name of any individual, partnership, corporate body, or nominee who or which has contravened the provisions of paragraph (a).

For the purpose of this subsection—

“acting in concert” means acting pursuant to an understanding (whether formal or informal) to actively co-operate in acquiring a material interest in a licensed commercial bank so as to obtain or consolidate, control of that bank.

“material interest” means the holding of over ten *per centum* of the issued capital of a licensed commercial bank carrying voting rights.”.

8. Section 14 of the principal enactment is hereby amended by the repeal of subsection (1) thereof, and the substitution, therefor of the following subsection :—

- “(1) Where the Governor of the Central Bank has reasonable grounds to believe that any persons is carrying on banking business in contravention of the provisions of this Act, the Governor may direct the Director of Bank Supervision or any other officer of the Central Bank to examine the books, accounts and records of such person for the purpose of ascertaining whether such person has contravened, or is contravening, any of the provisions of this Act.”.

9. Section 16 of the principal enactment is hereby amended as follows :—

- (1) by the repeal of subsection (1) of that section and the substitution therefor of the following subsection:—
- “(1) No company other than a licensed commercial bank or a licensed specialised bank shall, except with the prior written approval of the Monetary Board, use as part of its name or its description any of the words “bank”, “banker” or “banking”, or any of its derivatives or its transliterations, or their equivalent in any other language and no licensed commercial bank or a licensed specialised bank shall carry on business in Sri Lanka unless it uses as part of its name at least one of such words :

Provided however, a licensed commercial bank or a licensed specialised bank incorporated outside Sri Lanka which does not have the word “bank”, “banker” or “banking” in any language in its name may carry on business in Sri Lanka notwithstanding the omission of these words in its name.”;

- (2) by the repeal of subsection (3) of that section and the substitution therefor of the following subsection :—
- “(3) Nothing in this section shall apply—
- (a) to a subsidiary of a licensed commercial bank or of a licensed specialised bank established in accordance with the provisions of this Act or any directions given hereunder;
 - (b) to any association of licensed commercial banks or licensed specialised banks formed for the protection of their interests;
 - (c) to a trade union registered under the Trade Union Ordinance (Chapter 138), which is an association or combination of workers who are employees of a banking institution within the meaning of section 127 of the Monetary Law Act, or of the Central Bank or of a licensed specialised bank;
 - (d) to an agency, institution, person or body of persons which is a banking institution in terms of paragraph (b) or paragraph (d) of the definition of the expression “banking institution” in section 127 of the Monetary Law Act;
 - (e) to the use of the words in the manner restricted under subsection (1) for the purpose of incorporating or changing the name of a company during the period of validity of a letter of Provisional Approval issued under section 3 or section 76B;
 - (f) to the representative office of a commercial bank incorporated or established outside Sri Lanka.”.

10. Section 17A of the principal enactment is hereby amended in subsection (2) of that section as follows :—

- (1) in paragraph (d) of that section, by the substitution for the words “financial sectors.” of the words “financial sectors;” and
 - (2) by the insertion immediately after paragraph (d) of that section, of the following new paragraph :—
- “(e) investments authorized by the Monetary Board.”.

11. Section 21 of the principal enactment is hereby amended in subsection (1) of that section, by the substitution for the words “and to the shareholders” wherever they occur in that subsection, of the words “and to the share holders, to the holders of non-redeemable debt instruments and its liabilities on repurchase agreements in relation to treasury bills or securities issued or guaranteed by the Government of Sri Lanka, or on such other assets as determined by the Monetary Board.”.

12. Section 23 of the principal enactment is hereby amended by the substitution for the words “No off-shore banking business” of the words “Unless authorized under section 76D, no off-shore banking business”.

13. Section 25 of the principal enactment is hereby amended by the repeal of paragraph (a) of that section, and substitution therefor of the following paragraph :—

- “(a) accept savings, time and demand deposits from any non-resident in any designated foreign currency provided that, in the case of time deposits the value of such deposits shall not be less than ten thousand United States dollars or its equivalent in any other designated foreign currency or such higher amount as may be determined by the Monetary Board : and provided that funds in any account maintained in an off shore unit shall not be withdrawable by cheque;”.

14. Section 36 of the principal enactment is hereby amended in subsection (2) of that section, by the repeal of paragraph (f) thereof and substitution therefor of the following paragraph :—

- “(f) cash flow statement;”.

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

- “Publication of balance sheet and profit and loss account. 38. (1) Every licensed commercial bank incorporated or established within Sri Lanka by or under any written law shall transmit within five months after the close of its financial year to the Director of Bank Supervision, and publish at least once within that period in a Sinhala, Tamil and English daily newspaper circulating in Sri Lanka, its audited balance sheet as at the close of the financial year, and its profit and loss account for such financial year in

respect of its business in and outside Sri Lanka including its off-shore banking business and exhibit them in a conspicuous place at each of its places of business until the balance sheet and profit and loss account for the succeeding financial year are prepared and exhibited.

- (2) Every licensed commercial bank incorporated outside Sri Lanka shall transmit to the Director of Bank Supervision, within five months after the close of its financial year, its audited balance sheet as at the close of the financial year and its profit and loss account for such financial year in respect of its business in Sri Lanka including its off-shore banking business and shall publish such balance sheet and its profit and loss account at least once in a Sinhala, Tamil and English daily newspaper circulating in Sri Lanka within such time as may be required by the Director and shall exhibit them in a conspicuous place at each of its places of business until the balance sheet and profit and loss account for the succeeding financial year are prepared and exhibited.
- (3) The Monetary Board may specify the form of the balance sheet and profit and loss account referred to in this Part including any disclosure requirements to be made and where such form is specified, the balance sheet and the profit and loss account of every licensed commercial bank shall be prepared in such form as may be specified.
- (4) Every licensed commercial bank shall within six months of the date of closure of its financial year, exhibit in a conspicuous place in each of its places of business the consolidated balance sheet as at the end of such financial year setting out the state of affairs of such commercial bank and of its subsidiary companies and associate companies until the consolidated balance sheet for the succeeding financial year is prepared and exhibited.
- (5) The provisions of subsection (3) and subsection (4) of section 17 and the provisions of paragraph (c) of subsection (1) of section 46, as the case may be, shall apply in determining for the purpose of subsection (4) of this section, whether a company is a subsidiary company or an associate company of a licensed commercial bank.”.

16. Section 42 of the principal enactment is hereby repealed and the following new section is substituted therefor :—

“Disqualification for appointment, election &c., as director.

42. (1) No person shall be appointed, elected or nominated as a director of a licensed commercial bank or continue as a director of such bank unless that person is a fit and proper person to hold office as a director of such bank and if he is not prevented from doing so by any provision of this Act or of any other written law.
- (2) In determining whether a person would, for the purposes of subsection (1) be considered to be a fit and proper person, the following matters shall be taken into consideration:—
 - (a) that such person possesses academic or professional qualifications or effective experience in banking, finance, business or administration or of any other relevant discipline;
 - (b) that there is no finding of any regulatory or supervisory authority, professional association, any Commission of Inquiry, tribunal or other body established by law in Sri Lanka or abroad, to the effect that such person has committed or has been connected with the commission of, any act which involves fraud, deceit, dishonesty or any other improper conduct;
 - (c) that such person is not subject to an investigation or inquiry consequent upon being served with notice of a charge involving fraud, deceit, dishonesty or other similar criminal activity, by any regulatory authority, supervisory authority, professional association, Commission of Inquiry, tribunal or other body established by law, in Sri Lanka or abroad ;
 - (d) that such person has not been convicted by any Court in Sri Lanka or abroad in respect of a crime committed in connection with financial management or of an offence involving moral turpitude;

- (e) that such person is not an undischarged insolvent nor has he been declared a bankrupt in Sri Lanka or abroad;
 - (f) that such person has not failed, to satisfy any judgement or order of any court whether in Sri Lanka or abroad, or to repay a debt;
 - (g) that such person has not been declared by a court of competent jurisdiction in Sri Lanka or abroad, to be of unsound mind;
 - (h) that such person has not been removed or suspended by an order of a regulatory or supervisory authority from serving as a director, Chief Executive Officer or other officer in any bank or financial institution or corporate body, in Sri Lanka or abroad;
 - (i) that such person has not been a director, Chief Executive Officer or held any other position of authority in any bank or financial institution—
 - (i) whose license has been suspended or cancelled; or
 - (ii) which has been wound up or is being wound up, or which is being compulsorily liquidated.
 whether in Sri Lanka or abroad.
- (3) (a) A director or an employee of a licensed commercial bank shall not be appointed, elected or nominated as a director of another licensed commercial bank or a licensed specialised bank except where such licensed commercial bank or such licensed specialised bank is a subsidiary company or an associate company of the first mentioned licensed commercial bank.
- (b) An employee of a licensed commercial bank may be appointed, elected or nominated as a director of that bank subject to the following conditions :—
- (i) the number of employees appointed, elected or nominated as directors (hereinafter referred to as “executive directors”) shall not exceed one-third of the number of members of the Board of Directors of the bank;
 - (ii) where employees are appointed, elected or nominated as executive directors one of them shall be the Chief Executive Officer of the bank and the others shall be such officers of the bank performing executive functions as may be determined for the purposes of section 44A;
 - (iii) a meeting of the Board of Directors of the bank shall not be duly constituted although the number of Directors required to constitute the quorum at such meeting is present unless more than one half of the number of directors present at such meeting are directors who are non-executive directors.
- (4) Every licensed commercial bank shall notify the Director of Bank Supervision in such form as may be determined by the Director, the name, address and occupation of—
- (a) each person proposed to be appointed, elected or nominated as a director of the bank, before such appointment, election or nomination as the case may be ;
 - (b) each person appointed, elected or nominated as a director of the bank, within fifteen days after such appointment, election or nomination as the case may be ;
 - (c) any director of the bank, if the bank is aware that such person is not a fit and proper person, or where such director becomes otherwise ineligible to hold office as such director, within fifteen days of its becoming aware of such facts.
- (5) The Director of Bank Supervision may, having regard to the matters specified in subsections (1), (2) and (3), approve or refuse to approve the proposed appointment, election or nomination as the case may be as a director of the licensed commercial bank of the person referred to in paragraph (a) of subsection (4) and shall, within thirty days after submission of the name of such person under that subsection, notify the bank of such

approval or refusal, giving reasons therefor. It shall be the duty of the bank to communicate such notification to the person to whom it relates.

- (6) A person aggrieved by the refusal of the Director of Bank Supervision under the provisions of subsection (5) to approve his proposed appointment, election or nomination as the case may be, as a director of the relevant bank, may within fourteen days of the date of receipt of the communication sent by the bank under subsection (5) tender written objections against such refusal to the Monetary Board. Upon receipt of such objections, the Monetary Board shall after considering the reasons given by the Director of Bank Supervision in his notification and the objections of the aggrieved party, and such other matters which in its opinion merit inquiry, decide either to confirm the refusal made by the Director of Bank Supervision or approve the proposed appointment, election or nomination as the case may be, of such person as a director of the bank.
- (7) A licensed commercial bank shall not appoint, elect or nominate as a director of the bank, a person whose appointment, election or nomination as the case may be has not been approved under subsection (5) or subsection (6) :
Provided that a person whose name has been submitted to the Director of Bank Supervision for approval under subsection (5) may be appointed, elected or nominated as the case may be as a director of the bank at any time before the notification of the decision of the Director under that subsection. Where however the Director refuses to grant such approval under that subsection and notifies the bank accordingly and the bank notifies such person accordingly, the person shall on the receipt of the notification by the bank, cease forthwith to hold office as a director of the bank subject to any decision made by the Monetary Board under subsection (6).
- (8) Where the Director of Bank Supervision, having regard to the matters specified in subsections (1), (2) and (3) is satisfied at any time that a person appointed, elected or nominated as the case may be as a director of a licensed commercial bank is not a fit and proper person or that he is otherwise ineligible for appointment, election or nomination as the case may be or that the election, appointment or nomination as the case may be of a person as a director of a licensed commercial bank contravenes the provisions of subsection (3) or subsection (7) the Director shall submit a report to the Monetary Board. The Board may, if it is satisfied on consideration of the report and such other matters which in its opinion merit inquiry, that the person is not a fit and proper person or the election, appointment or nomination as the case may be of the person contravenes the provisions of subsection (3) or subsection (7)—
 - (a) direct the bank in writing to remove such person from the office of director within such period as may be specified in such direction, giving the reasons for such direction; and
 - (b) notify in writing the person whose removal is required under such direction, of such direction, a copy of which shall be annexed to such notification,
 and the bank shall within the period specified in the direction remove such person from the office of the director and notify such person in writing of his removal from the office of director, and shall take such steps as are necessary to inform the shareholders of the bank and the Registrar of Companies of such removal. The removal of a director in accordance with the directions given under paragraph (a) shall take effect from the date of receipt by the director of the notification of removal given by the bank, notwithstanding the provisions of any other law or the Articles of Association of the bank.
- (9) A licensed commercial bank which fails to comply with any direction given under paragraph (a) of subsection (8) within the period specified in such direction and a director who has been served with a notice under paragraph (b) of section (8) who continues to

function as a director, shall each be guilty of an offence and shall be liable on conviction after trial before a Magistrate to a fine of rupees five hundred thousand and shall—

- (a) be liable in the case of the bank, to a further fine of rupees one hundred thousand, in respect of each day the bank fails to comply with such direction after such conviction; and
 - (b) be liable in the case of a director of the bank, to a further fine of rupees one hundred thousand in respect of each day such director continues as director after such conviction.
- (10) Any person who is aggrieved by the removal of such person from the office of director of a licensed commercial bank under subsection (8), may appeal in writing against such removal to the Monetary Board and the Monetary Board shall after considering the appeal, either confirm such removal or issue new directions to the bank to reappoint him to his former office as a director of such bank.
- (11) Where any written law, other than this Act, provides for the appointment of a person as a director of a licensed commercial bank by virtue of an office the person holds, the preceding provisions of this section shall not apply to the appointment of that person as a director of such bank.
- (12) The responsibilities of the Board of Directors shall include the overseeing of the management of the affairs of the Bank.”.

17. The following new section is hereby inserted immediately after section 44 of the principal enactment and shall have effect as section 44A of that enactment :—

“Chief Executive Officers and executive officers.

- 44A. (1) The Chief Executive Officer and such other officers of a licensed commercial bank performing executive functions as may be determined by the Monetary Board shall be fit and proper persons and the provisions of subsection (2) of section 42 shall, *mutatis mutandis*, apply in determining whether the Chief Executive Officer and such other officers performing executive functions are fit and proper persons.
- (2) The provisions of subsections (5) (6), (8), (9) and (10) of section 42 shall apply to the Chief Executive Officer and officers performing executive functions referred to in subsection (1) of this section and to the licensed commercial bank of which such person is a Chief Executive Officer or an officer performing executive functions as they apply to a director of a licensed commercial bank and to the licensed commercial bank of which such person is a director.”.

18. Section 45 of the principal enactment is hereby repealed and the following section substituted therefor :—

“Powers of the Director of Bank Supervision.

45. (1) Where the Director of Bank Supervision is satisfied that a licensed commercial bank—
- (a) is engaged in unsafe and unsound practices in the carrying on of its business which is likely to jeopardise its obligations to its depositors or is likely to result in such bank being unable to meet its obligations; or
 - (b) has contravened or failed to comply with the provisions of this Act or of any regulation, direction, order or other requirement made or given under this Act or has contravened or failed to comply with any other written law which in the opinion of the Director of Bank Supervision relates to banking or finance,

the Director of Bank Supervision may, subject to subsection (2) issue an order directing the licensed commercial bank,—

- (i) to cease and desist from any such practice, contravention or failure;
- (ii) to comply with the provisions of this Act or of such other written law, or of any regulation, direction, order or other requirement made or given under this Act;

- (iii) to take necessary action to correct the conditions resulting from such practice, contravention or failure,
- within such period as may be specified in the order.
- (2) An order issued under subsection (1) shall —
- (a) specify the unsafe and unsound practice engaged in or the provisions of this Act or other written law or the regulation, direction, order or other requirement made or given under this Act that are contravened or not complied with;
 - (b) be served personally on, or be sent by registered post to, the licensed commercial bank;
 - (c) take effect on the date of its service on the licensed commercial bank, notwithstanding an appeal made under subsection (3), unless the Monetary Board otherwise directs.
- (3) Any licensed commercial bank aggrieved by an order issued under subsection (1) may, before the expiration of thirty days of the date of service of the order, appeal to the Monetary Board and the Monetary Board shall, within thirty days of the date of receipt of the appeal confirm, vary or revoke such order.
- (4) Without prejudice to anything contained in section 9, and notwithstanding that an appeal has been tendered to the Monetary Board under subsection (3), a licensed commercial bank which fails to comply with an order under subsection (1) within the period specified in the order, shall be guilty of an offence under this Act and shall be liable on conviction upon trial by a Magistrate to a fine of one million rupees and to a further fine of one hundred thousand rupees for each day of non-compliance with the order after the conviction, provided that, where an appeal has been tendered under subsection (3), proceedings shall not be instituted before a Magistrate until the decision of the Monetary Board is conveyed to the licensed commercial bank.”.

19. Section 46 of the principal enactment is hereby amended as follows :—

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

“(1) In order to ensure the soundness of the banking system, the Monetary Board may issue directions to licensed commercial banks or for reasons to be stated in writing to any one or more of them regarding the manner in which any aspect of the business of such bank or banks is to be conducted and without prejudice to the foregoing, may, also issue directions specifying—

- (a) the class or classes of advances which may or may not be made by such bank;
- (b) the margins to be maintained in respect of secured advances;
- (c) the maximum amount of accommodation which having regard to the equity capital, reserves and deposits of such licensed commercial bank and other relevant considerations, as may be made by such bank—
 - (i) to any single company, public corporation, firm, association of persons or an individual; or
 - (ii) in the aggregate to—
 - (a) an individual, his close relations or to a company or firm in which he has a substantial interest;
 - (b) a company and one or more of the following :—
 - (aa) its subsidiaries;
 - (bb) its holding company;
 - (cc) its associate company;
 - (dd) a subsidiary of its holding company; or

- (ee) a company in which such company or its subsidiary, or its holding company, or a subsidiary of its holding company, has a substantial interest;
- (d) the maximum percentage of the share capital in a licensed commercial bank incorporated in Sri Lanka—
 - (i) held by a company, an incorporated body, or an individual;
 - (ii) held in the aggregate by—
 - (a) a company and one or more of the following :—
 - (aa) its subsidiaries;
 - (bb) its holding company;
 - (cc) a subsidiary of its holding company; or
 - (dd) a company in which such company or its subsidiary, or its holding company, or a subsidiary of its holding company has a substantial interest; or
 - (b) an individual and one or more of the following :—
 - (aa) his close relations;
 - (bb) a company in which he has a substantial interest or in which his close relation has a substantial interest;
 - (cc) the subsidiary of such company;
 - (dd) a holding company of such company;
 - (ee) a subsidiary of such company's holding company;
 - (ff) a company in which such company, or its subsidiary, or its holding company or a subsidiary of its holding company has a substantial interest; or
 - (gg) an incorporated body other than a company in which such individual or his close relation has a substantial interest; or
 - (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.

For the purposes of this Act a company is deemed to be an “associate company” of another company where not less than twenty *per centum* and not more than fifty *per centum* of its shares are held by that other company.”;

(2) by the repeal of subsection (4) of that section.

20. Section 47 of the principal enactment is hereby amended as follows :—

- (1) by the repeal of subsections (2), (3), (4) and (5) of that section and substitution therefor of the following subsections :—

“(2) A licensed commercial bank shall not grant accommodation for the purchase of its own shares nor grant accommodation against the security of—

 - (a) its own shares;
 - (b) shares of companies which have a substantial interest in it; or
 - (c) shares of companies in which the companies referred to in paragraph (b) have a substantial interest :

Provided that nothing in this section shall be taken to prohibit the provision by the licensed commercial bank, in accordance with any scheme for the time being in force, of money for the purchase of or subscription for fully paid shares in the licensed commercial bank being a purchase or subscription by Trustees of or for shares to be held by or for the benefit of employees of the licensed commercial bank:

Provided further that the amounts of money so provided and the aggregate principal amount of such accommodation outstanding at any one time, shall not exceed the equivalent of ten *per centum* of the total nominal amount of the subscribed and paid up share capital of the bank or ten *per centum* of the unimpaired capital funds of the bank, whichever is greater.

- (3) A licensed commercial bank shall not grant any accommodation to any of its directors or to a close relation of such director unless such accommodation is sanctioned at a meeting of its Board of Directors with not less than two-thirds of the number of directors constituting the Board of Directors (other than the director concerned) voting in favour of such accommodation and, except where such accommodation is provided by the issue of a credit card, such accommodation is secured by such security as may from time to time be approved by the Monetary Board.
 - (4) Accommodation granted by a licensed commercial bank to a director or to a close relation of such director shall not exceed such limit as may be approved by the Monetary Board from time to time by Order published in the *Gazette*.
 - (5) A licensed commercial bank shall not grant any accommodation to a concern in which any director of the licensed commercial bank has a substantial interest, being an interest acquired either before or after the appointment as the director, unless such security as may from time to time be approved by the Monetary Board is given and such accommodation is sanctioned at a meeting of the Board of Directors of the licensed commercial bank by the votes of not less than two thirds of the number of its directors other than the Director concerned.”.
- (2) by the repeal of subsections (11) and (11A) of that section and substitution therefor of the following subsections:—

- “ (11) No accommodation granted by a licensed commercial bank under subsection (3) or subsection (5) or any part of such accommodation or any interest due thereon shall be remitted without the prior approval of the Monetary Board and any remission without such approval shall be void and of no effect.
- (11A) Where any accommodation is granted by a licensed commercial bank under subsection (3) or subsection (5) during the course of any financial year, such accommodation shall be disclosed in the accounts for that financial year and for each subsequent financial year till such accommodation has been repaid or settled in full.”.

21. Section 49 of the principal enactment is hereby amended by the substitution for the words “Monetary Board” of the words “Director of Bank Supervision”.

22. Section 58 of the principal enactment is hereby amended as follows :—

- (1) by the renumbering of that section as subsection (1) of that section ;
- (2) by the addition immediately after the renumbered subsection (1), of the following new subsection :—
 - “ (2) The Director of Bank Supervision may, engage the services of any professionally qualified person to assist him in relation to the exercise of the functions of the liquidator in a compulsory winding up of a licensed commercial bank.”.

23. Section 66 of the principal enactment is hereby amended by the repeal of subsection (1) of that section and the substitution therefor of the following new subsection:—

- “ (1) The claims set out hereunder shall have priority as against the general assets of the licensed commercial bank in the order indicated below :—
 - (a) necessary and reasonable expenses incurred by the liquidator in winding up ;
 - (b) wages and salaries of officers and employees of the bank for the three month period immediately preceding the commencement of winding up proceedings ;
 - (c) taxes, rates and deposits owed to the Government and local authorities by the licensed commercial bank ;

- (d) fees and assessments due to the Central Bank ;
- (e) funds deposited in any account with the licensed commercial bank with interest accrued thereon, up to a limit of rupees twenty thousand in respect of any account; and
- (f) other deposits with interest if any, accrued thereon.”.

24. Section 76A of the principal enactment is hereby amended in subsection (5) of that section, by the substitution for the words “of section 19 of this Act.” in the definition of ‘equity capital’ of the following words :—

“of section 19 of this Act and for that purpose, the reference in that subsection to a licensed commercial bank shall be deemed to be a reference to a licensed specialised bank.”.

25. Section 76B of the principal enactment is hereby repealed and the following section substituted therefor :—

- “Application for licence. 76B. The provisions of section 3 shall, *mutatis mutandis*, apply in respect of an application made for a licence under this Part as they apply in respect of an application made under Part I and for that purpose any reference to “banking business” in that section shall be deemed to be a reference to the business of accepting deposits of money and investing and lending such money, and any reference to section 5 shall be deemed to be a reference to section 76C.”.

26. Section 76C of the principal enactment is hereby repealed and the following section substituted therefor:—

- “Issue of licence. 76C. The provisions of section 5 shall, *mutatis mutandis*, apply to the issue of a licence under this Part as they apply to the issue of a licence under Part I and for that purpose any reference to “banking business” in that section shall be deemed to be a reference to the business of accepting deposits of money and investing and lending such money.”.

27. Section 76D of the principal enactment is hereby repealed and the following section substituted therefor:—

- “Forms of business to be carried on by a licensed specialised bank and payment of annual licence fee. 76D. (1) Any company which has been issued with a licence under this Part shall be referred to as a “licensed specialised bank”.
(2) A licensed specialised bank may carry on such forms of business as are specified in Schedule IV of this Act subject to such restrictions expressly stipulated in the licence or as may be imposed by or under any written law.
(3) The Monetary Board may authorise a licensed specialised bank which satisfies the requirements prescribed by regulations made by the Minister under section 82 to carry on off shore banking business in accordance with such off shore banking scheme formulated for licensed specialised banks by the Monetary Board and where a licensed specialised bank is authorised to carry on offshore banking business the provisions of Part IV shall, *mutatis mutandis*, apply to such licensed specialised bank as they apply to a licensed commercial bank.
(4) A licensed specialised bank shall not carry on its business in any place other than that specified in the licence except with the prior written approval of the Monetary Board.
(5) A licensed specialised bank carrying on business under the authority of a licence issued under this Part shall be deemed not to act in contravention of section 2 of the Finance Companies Act, No. 78 of 1988.
(6) Every licensed specialised bank shall pay to the Central Bank an annual licence fee as may be determined by the Monetary Board and the Monetary Board may determine different licence fees for different categories of licensed specialised banks.”.

28. Section 76F of the principal enactment is hereby repealed and the following new section substituted therefor:-

- “Cancellation of licence of a licenced specialised bank. 76F. (1) The provisions of section 9 shall, *mutatis mutandis*, apply in respect of a licensed specialised bank as they apply in respect of a licensed commercial bank and for that purpose any reference therein to a licensed commercial bank shall be deemed to be a reference to a licensed specialised bank, and any reference therein to section 5 shall be deemed to be a reference to section 76C, and any reference therein to banking business

shall be deemed to be a reference to the business of accepting deposits of money and investing and lending such money.

- (2) Nothing contained in subsection (1) shall in any way affect the powers conferred on the Monetary Board or the Director of Bank Supervision by section 76M.”.

29. Section 76H of the principal enactment is hereby repealed and the following new section substituted therefor:—

“Part V and Part VI to apply to a licensed specialised bank.

76H. The provisions of Part V and Part VI of this Act shall, *mutatis mutandis*, apply to a licensed specialised bank as they apply to a licensed commercial bank.”.

30. Section 76J of the principal enactment is hereby amended in subsection (1) of that subsection, as follows :—

- (1) by the insertion immediately after sub-clause (q)(ii)(b)(gg) thereof, of the following sub-clause :—
 “(hh) companies in each of which an individual or a company as the case may be, has either directly or indirectly a substantial interest or a significant management interest.”;
- (2) by the insertion, immediately after paragraph (t) thereof, of the following paragraph :—
 “(u) the limit of foreign participation in the capital of a licensed specialised bank incorporated or established in Sri Lanka.”.

31. Section 76K of the principal enactment is hereby repealed and the following section substituted therefor :—

“Procedure where licensed specialised banks follow unsafe practices.

76K. The provisions of section 45 shall, *mutatis mutandis*, apply in respect of licensed specialised banks as they apply in respect of licensed commercial banks and for that purpose any reference therein to a licensed commercial bank shall be deemed to be a reference to a licensed specialised bank.”.

32. Section 76M of the principal enactment is hereby amended as follows :—

- (1) in subsection (3) of that section—
 (a) by the substitution for the words “period of sixty days” of the words “period of six months”;
 (b) by the repeal of paragraph (b) thereof and the substitution therefor of the following paragraph:
 “(b) to cancel the licence issued to such licensed specialised bank and —
 (i) where the bank is incorporated or established within Sri Lanka by or under any written law, proceedings for the compulsory winding up of the bank shall commence and the provisions of Part VIII shall, *mutatis mutandis*, apply to such winding up;
 (ii) where the bank is incorporated outside Sri Lanka, the business of the bank authorised under the licence issued under section 76A shall be compulsorily closed down and its affairs shall be wound up and the provisions of Part VIII shall, *mutatis mutandis*, apply to such compulsory closure;”;
- (2) by the repeal of subsection (4) of that section and the substitution therefor of the following subsections :—
 “(4) A licensed specialised bank incorporated or established within Sri Lanka may be voluntarily wound up and the provisions of Part VIII shall, *mutatis mutandis*, apply to such voluntary winding up.
 (5) A licensed specialised bank incorporated outside Sri Lanka may voluntarily close down its business authorised under the licence issued under section 76A and the provisions of Part VIII shall, *mutatis mutandis*, apply to such closure.”.

33. Section 76N of the principal enactment is hereby amended in subsection (1) of that section, by the substitution for all the words commencing from “where an order” and ending with “section 76M” of the following:—

“Where the business of a licensed specialised bank has been suspended under subsection (1) of section 76(M);”.

34. Section 77 of the principal enactment is hereby repealed and the following section substituted therefor:—

- “Declaration of secrecy.
77. (1) Every director, manager, officer or other person employed in the business of any licensed commercial bank or licensed specialised bank shall observe strict secrecy in respect of all transactions of the bank, its customers and the state of accounts of any person and all matters relating thereto and shall not reveal any such matter except—
- (a) when required to do so—
 - (i) by a court of law;
 - (ii) by the person to whom such matter relates;
 - (b) in the performance of the duties of the director, manager, officer or other person; or
 - (c) in order to comply with any of the provisions of this Act or any other written law.
- (2) Every director, manager, officer or person employed in the business of a licensed commercial bank or licensed specialised bank shall before entering upon the duties, sign a declaration pledging himself to observe strict secrecy in accordance with subsection (1).
- (3) The provisions of subsections (1) and (2) shall not prohibit a bank from providing in good faith to another bank on request an opinion or reference relating to a customer in accordance with customary banking practice.”.

35. Section 78 of the principal enactment is hereby amended by the substitution for the words, “against any member” of the words “against the Monetary Board or any member”.

36. Section 79 of the principal enactment is hereby repealed and the following section substituted therefor :—

- “Offences.
79. (1) Any person who commits an offence under subsection (5) of section 2, subsection (11) of section 3, subsection (3) of section 14, subsection (3) of section 33, subsection (3) of section 41 or subsection (12) of section 47 of this Act, shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding one million rupees or imprisonment of either description for a term not exceeding three years or to both such fine and imprisonment.
- (2) Any person who contravenes the provisions of subsections (1) and (2) of section 16, subsection (1) of section 17 or section 77 shall be guilty of an offence under this Act and shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding one million rupees or to imprisonment of either description for a term not exceeding three years or to both such fine and imprisonment.
- (3) Any person who commits an offence under this Act other than an offence referred to in subsection (1) or subsection (2) above, shall be liable on conviction after summary trial before a Magistrate, unless where the punishment is otherwise provided for in this Act, to a fine not exceeding five hundred thousand rupees or to imprisonment of either description for a term not exceeding eighteen months or to both such fine and imprisonment.
- (4) Any person who contravenes any provision of this Act or any order, direction, requirement, rule or regulation under this Act, other than those specified in subsection (2) or those that otherwise constitute an offence, shall be guilty of an offence under this Act, and shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding five hundred thousand rupees or to imprisonment of either description for a term not exceeding eighteen months or to both such fine and imprisonment.
- (5) In any proceedings against any person under subsection (2) for contravention of the provisions of section 77, it shall be a defence to prove that such person acted in good faith, believing himself to be acting in the performance of his duties or under a requirement of law.

- (6) In any proceedings against a director, manager, officer or an employee of a licensed commercial bank or a licensed specialised bank for an offence under this Act it shall be a defence for the director, manager, officer or employee to establish that the offence was committed without the knowledge of such director, manager, officer or employee or that such director, manager, officer or employee exercised all due diligence to avoid the commission of the offence.”.
37. Section 79A of the principal enactment is hereby amended in subsection (1) of that section by the substitution for the words “not exceeding two hundred and fifty thousand rupees” of the words “not exceeding one million rupees”.
38. The following new section is hereby inserted immediately after section 83B of the principal enactment and shall have effect as section 83C of that enactment:—

“Prohibition on conduct of certain Schemes. 83C. (1) No person shall directly or indirectly initiate, offer, promote, advertise, conduct, finance, manage or direct a Scheme where a participant is required to contribute or pay money or monetary value and the benefits earned by the participant are largely dependent on—

- (a) increase in the number of participants in the Scheme; or
- (b) increase in the contributions made by the participants in the Scheme.

For the purpose of this subsection —

“money” means a monetary unit or a medium of exchange that is issued, established, authorized or adopted by Sri Lanka or a foreign government ; and

“monetary value” means a medium of exchange whether or not redeemable in money, including in the form of stored value, payment instrument or credit to account and shall also include gold coin and gold bullion.”.

- (2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction after summary trial before a Magistrate to imprisonment of either description for a term not exceeding three years or to a fine not exceeding rupees one million or to both such imprisonment and fine. Where the offence is committed wilfully or knowingly, or with knowledge that the act will cause damage or harm to any other person, to rigorous imprisonment for a term not less than three years and not more than five years and to a fine of rupees two million or twice the aggregate amount in Sri Lanka currency revealed or divulged to have been received from the participants in the Scheme, whichever is higher.
- (3) An officer of the Central Bank authorized in that behalf by the Governor, may, where information has been received that there has been or is likely to be a contravention of the provisions of subsection (1), conduct an investigation into such matter. In carrying out his duties under this section the authorised officer may,—
 - (a) enter and search any premises where he has reason to believe that any acts relating to the commission of the offence specified in subsection (1) are being committed or any books or other records or documents relating to such acts are kept or maintained at such place;
 - (b) call for further information or documents ;
 - (c) examine any documents, books or records, including records maintained in electronic form or computer generated transcripts;
 - (d) obtain copies of any documents, books or records or computer generated transcripts or any part thereof,

for the purpose of ascertaining whether any person has contravened or is likely to contravene the provisions of subsection (1).

- (4) Any person who obstructs or resists the authorised officer in the exercise of his powers under this section, shall be guilty of an offence under this Act.
- (5) any person who fails to furnish any information within his knowledge, or any book or other record or documents or computer generated transcripts relating to such acts which are in his custody or possession, shall be guilty of an offence under this Act.
- (6) In any prosecution for an offence under this section, the extracts from any books or other record or documents or computer generated transcripts relating to such acts shall be admissible in evidence and shall be *prima facie* evidence of the facts stated therein.
- (7) The Central Bank shall provide any information, documents, books, records or computer generated transcripts obtained in the course of an investigation conducted under subsection (3) to the law enforcement authorities and shall co-operate with such authorities in the prosecution of a person for violation of the provisions of subsection (1).
- (8) Upon an application made to it by an officer of the Police above the rank of an Inspector of Police and upon satisfying itself that a *prima facie* case exists against a person for the violation of the provisions of subsection (1), the High Court of the Western Province established under Article 154P of the Constitution holder in Colombo shall issue an *ex parte* Order against the offender prohibiting him from engaging in any act specified in subsection (1).
- (9) The High Court may, upon application made in that behalf by the person on whom an order under subsection (8) has been made or by any other person adversely affected by such order, and upon hearing all parties as it may consider necessary, make order revoking the order made by it under subsection (8), or permit any act prohibited under subsection (8) conditionally or unconditionally, if it is satisfied that such revocation or permission is necessary to avoid undue damage to legitimate business or the legitimate interests of the applicant.”

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

40. Section 86 of the principal enactment is hereby amended as follows :—

- (a) by the repeal of the definition of the expression “accommodation” and the substitution therefor of the following definition :—
“accommodation” means any loan, overdraft or advance or such other facility as may be determined by the Monetary Board or any commitment to grant any loan, overdraft or advance or such other facility as may be determined by the Monetary Board, including a commitment to accept a contingent liability;’;
- (b) in the definition of the expression “capital funds” by the repeal of paragraph (b) thereof, and the substitution therefor of the following :—
“(b) in the case of a licensed specialised bank, the equity capital and the reserve fund maintained pursuant to directions under subsection (1) of section 76J and includes reserves other than funds reserved for specified purposes;”;
- (c) by the repeal of the definition of the expression “company ” and the substitution therefor of the following definition :—
“company” means a company formed and registered under the Companies Act, No. 17 of 1982 and any other body incorporated within or outside Sri Lanka;’;
- (d) by the insertion immediately after the definition of the expression "Director of Bank Supervision" of the following definition :—
“deposit” includes a sum of money accepted from any person as a business on terms under which it will be repaid with or without interest or a premium, and either on demand or at a future time or in circumstances agreed to by or on behalf of the person making the payment and the person accepting it, provided that the persons accepting the money is a person who in the usual course of business, lends

money or makes available the use or the benefit of the money so accepted to third parties and, also includes any sum of money accepted as provided in paragraph (y) of Schedule II and paragraph (*nn*) of Schedule IV; ;

- (e) by the repeal of the definition of the expression “substantial interest” and substitution therefor of the following definition:—

“substantial interest” means—

- (a) in relation to a company, the holding of a beneficial interest by another company or an individual or his close relation, whether singly or taken together, in the shares thereof, the paid up value of which exceeds ten *per centum* of the paid up capital of the company or the existence of a guarantee or indemnity for a sum not less than ten *per cent* of the paid up capital given by an individual or his close relation or by another company on behalf of such company;
- (b) in relation to a firm, the beneficial interest held therein by an individual or his close relation, whether singly or taken together, which represents more than ten *per centum* of the total capital subscribed by all partners of the firm or the existence of a guarantee or indemnity for a sum not less than ten *per centum* of that capital given by an individual or the spouse, parent or child of the individual on behalf of such firm.”.

41. Schedule II of the principal enactment is hereby amended by the insertion immediately after paragraph (x) thereof, of the following new paragraphs :—

- “(y) the acceptance of a sum of money in any manner or form from any person for a fixed period of time for investment in a business venture of the bank on the basis that profits or losses of the venture will be shared with the person from whom such money is accepted in a manner determined at the time the money is accepted;
- “(z) the purchase of goods, to be sold immediately upon purchase to a buyer on deferred payment terms provided that the goods and their suppliers are specified by such buyer and the price at which such goods are sold to the buyer and the deferred payment terms are determined at the time the bank agrees with the buyer to purchase the said goods for sale to the buyer.”.

42. The Schedule IV of the principal enactment is hereby amended as follows :—

- (a) by the repeal of paragraph (*nn*) of that Schedule, and the substitution therefor of the following paragraph :—
“(nn) the acceptance of a sum of money in any manner or form from any person for a fixed period of time for investment in a business venture of the bank on the basis that profits or losses of the venture will be shared with the person from whom such money is accepted in a manner determined at the time the money is accepted;” and;
- (b) by the addition, at the end of that Schedule, of the following paragraphs :—
“(oo) the purchase of goods, to be sold immediately upon purchase to a buyer on deferred payment terms provided that the goods and their suppliers are specified by such buyer and the price at which such goods are sold to the buyer and the deferred payment terms are determined at the time the bank agrees with the buyer to purchase the said goods for sale to the buyer;
“(pp) any other business which the Monetary Board may authorise a licensed specialised bank to engage in.”.

43. Notwithstanding a conflict between the provisions of the principal enactment as amended by Act, No. 33 of 1995 and this Act and the provisions of any written law by or under which any authority which is required to obtain a license under such principal enactment was established, all acts, decisions or things commenced under such written law and pending and incomplete on the date of the coming into operation of this Act, may be carried on and completed as if there had been no such amendment to the principal enactment.

FINANCE ACT, NO. 5 OF 2005

[Certified on 30th March, 2005]

AN ACT TO MAKE PROVISION FOR THE IMPOSITION OF CERTAIN LEVIES CONSEQUENTIAL TO THE 2005 BUDGET PROPOSALS ; AND TO MAKE PROVISION FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

1. This Act may be cited as the Finance Act, No. 5 of 2005.

PART I

IMPOSITION OF SOCIAL RESPONSIBILITY LEVY

2. A levy to be called the Social Responsibility Levy shall, subject to the provisions of this Act, be imposed with effect from the year commencing on January 1, 2005 and for every year thereafter, at the rate of 0.25 *per centum* on all taxes and levies chargeable in terms of the provisions of the enactments specified in the First Schedule to this Act. The funds so collected by way of the Social Responsibility Levy shall be disbursed for meeting any expenditure incurred for the implementation of activities connected with the National Action Plan for Children, approved by the Government :

Provided that the imposition of the Social Responsibility Levy in terms of the provisions of this Part of this Act, on income tax chargeable under the provisions of the Inland Revenue Act, No. 38 of 2000, shall be effective from April 1, 2005.

3. The Social Responsibility Levy collectable in terms of section 2 shall be collected at the time of payment of such taxes or levies, by the relevant authorities administering such enactments as are specified in the First Schedule to this Act and shall be credited to a special account operated for such purpose. The money so collected shall be remitted to the Consolidated Fund within fifteen days from the date of the collection of such money by the relevant authorities.
4. Every relevant authority administering the enactments specified in the First Schedule shall maintain records of all amounts collected by such authorities in relation to the Social Responsibility Levy chargeable by such authorities in terms of the provisions of the respective enactments specified in the Schedule to this Act.
5. (1) Any person to whom the provisions of this Part of this Act applies, who fails to pay the total amount of the Social Responsibility Levy in terms of section 2, shall be deemed to be a defaulter and where such defaulter is a body corporate, the Chairman of the Board of Directors, any director or principal officer of such body corporate shall be deemed to be a defaulter for the purposes of this Part of this Act, and such Levy as is not paid on or before the due date shall be deemed to be a Levy in default.
- (2) The defaulter shall be liable to pay a surcharge in addition to the Social Responsibility Levy in default, calculated—
 - (a) at the rate of ten *per centum* of the amount of such levy as is in default for the subsequent period of one month or part thereof, from the due date for the payment of the Levy under section 2 ; and
 - (b) at the rate two *per centum* of the amount of such Levy as is in default for each subsequent period of one month or part thereof, from the due date for the payment specified in paragraph (a),

which surcharge shall be collected by the relevant authorities administering the enactments specified in the First Schedule to this Act.
- (3) The relevant authorities administering the enactments specified in the First Schedule shall take action to recover the Social Responsibility 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 relevant authorities administering the enactments specified in the First Schedule shall cause to be issued on the defaulter, three weeks prior to the taking of any steps for the recovery of the Social Responsibility

Levy in default along with the amount of the surcharge accrued thereon, a Notice, informing the defaulter of the intention of the relevant authorities administering the enactments specified in the First Schedule to institute proceedings for the recovery of the amount of the Social Responsibility Levy in default and the amount of the surcharge accrued thereon, in terms of the provisions of this section.

- (5) Where the relevant authorities administering the enactments specified in the First Schedule issues Notice on the defaulter in terms of subsection (4) but the amount of the Social Responsibility 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 relevant authorities administering the enactments specified in the First Schedule 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, - the Board of Directors and of every Director 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 the recovery of the amount of the Social Responsibility Levy or such part of the Levy which is in default and the amount of 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 Social Responsibility Levy in default and the amount of the surcharge accrued thereon, from the defaulter as if it were a fine imposed by the Magistrate. The money so recovered shall be remitted to the respective relevant authorities administering the enactments specified in the First Schedule who shall credit the same to the Consolidated Fund.
6. (1) The provisions of this Part of the Act shall be deemed for all purposes to have come into operation on January 1, 2005.
- (2) Where any amount has been collected by the relevant authorities administering the enactments specified in the First Schedule, as Social Responsibility Levy in terms of this Part of the Act during the period commencing on January 1, 2005 and ending on the date of the commencement of this Act, the Social Responsibility Levy so collected shall be deemed to have been validly collected and the respective relevant authorities are hereby indemnified from any action civil or criminal in respect of the collection of the aforesaid Levy.

PART II

IMPOSITION OF SHARE TRANSACTION LEVY

- 7. There shall be imposed with effect from the year commencing on January 1, 2005 and for every year thereafter, a levy to be called the Share Transaction Levy at the rate of 0.2 *per centum* from every buyer and seller, on the turnover of every share trading transaction, which is conducted through a Stock Exchange.
- 8. The Share Transaction Levy so imposed shall be collected by the relevant stockbroker, stock dealer or custodian bank as the case may be, who is responsible for the settlement of such share transaction. The Share Transaction Levy so collected in terms of section 7 shall be paid to the stock exchange through which the share transaction took place, at the time of making settlement of such share transaction by the respective stockbroker, stock dealer or custodian bank, as the case may be. The Stock Exchange shall remit the levy so collected to the Commissioner-General within three working days from the date of such settlement.
- 9. The Stock Exchange shall furnish to the Commissioner-General, a monthly statement giving the total turnover in respect of which the Share Transaction Levy has been remitted to the Commissioner-General within fifteen days from the last day of each month.
- 10. (1) Any stockbroker, stock dealer or custodian bank as the case may be, to whom the provisions of this part of this Act applies, who fails to pay the total amount of the Share Transaction Levy in terms of sections 7 and 8,

shall be deemed to be a defaulter, and where such defaulter is a body corporate, the Chairman of the Board of Directors and every Director or principal officer of such body corporate shall be deemed to be a defaulter for the purposes of this Part of this Act, and such Levy as is not paid on or before the due date shall be deemed to be a Levy in default.

- (2) The defaulter shall be liable to pay a surcharge in addition to the Share Transaction Levy in default, calculated—
 - (a) at the rate of ten *per centum* of the amount of such levy as is in default for the subsequent period of one month or part thereof, from the due date for the payment of the Levy under section 8 ; and
 - (b) at the rate of two *per centum* of the amount of such Levy as is in default for each subsequent period of one month or part thereof, from the due date for the payment specified in paragraph (a),

which surcharge shall be collected by the Commissioner-General.
- (3) The Commissioner-General shall take action to recover the Share Transaction 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 Commissioner-General shall cause to be issued on the defaulter, three weeks prior to the taking of any steps for the recovery of the Share Transaction Levy in default along with the amount of the surcharge accrued thereon, a Notice, informing the defaulter of the intention of the Commissioner-General to institute proceedings for the recovery of the amount of the Share Transaction Levy in default and the amount of the surcharge accrued thereon in terms of the provisions of this section.
- (5) Where the Commissioner-General issues Notice on the defaulter in terms of subsection (4) but the amount of the Share Transaction 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 Commissioner-General 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 the recovery of the amount of the Share Transaction 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 Share Transaction Levy in default and the amount of the surcharge accrued thereon, from the defaulter as if it were a fine imposed by the Magistrate. The money so recovered shall be remitted to the Commissioner-General, who shall credit the same to the Consolidated Fund.

11. In this Part of the Act, unless the context otherwise requires,—

“Commissioner-General” means the Commissioner-General of Inland Revenue appointed in terms of the Inland Revenue Act, No. 38 of 2000 ;

“custodian bank” means any Bank licensed by the Central Bank of Sri Lanka providing custody services in respect of share transactions ;

“stockbroker” means any individual or body corporate engaged in the business of buying or selling of securities on behalf of investors in return for a commission ;

“stock dealer” means any individual or body corporate engaged in the business of buying or selling of securities or in the dealing or jobbing or trading of securities, or the underwriting or retailing of securities ; and

“stock exchange” means a market, exchange, or other place at which securities are regularly offered for sale, purchase or exchange, including any services connected with such business.

- 12.** (1) The provisions of this Part of the Act shall be deemed for all purposes to have come into operation on January 1, 2005.
- (2) Where any amount has been collected by the Commissioner-General as Share Transaction Levy in terms of this Part of the Act during the period commencing on January 1, 2005 and ending on the date of the commencement of this Act, the Share Transaction Levy so collected shall be deemed to have been validly collected and the Commissioner-General is hereby indemnified from any action civil or criminal in respect of the collection of the aforesaid Levy.

PART III

CONSTRUCTION INDUSTRY GUARANTEE FUND LEVY

- 13.** There shall be imposed with effect from the year commencing on January 1, 2005 and for every year thereafter, a levy to be called the Construction Industry Guarantee Fund Levy on every construction contract enforced in Sri Lanka by every construction contractor on their contract value arising from any contract entered into on or after that date, calculated at the rates set out in the Second Schedule to this Act. The percentage of the Construction Industry Guarantee Fund Levy so calculated shall be based on the total cost which shall be payable by each contractor or sub-contractor as the case may be, even if the individual sub-contract value is lower than the amounts specified in the Second Schedule to this Act.
- 14.** The Construction Industry Guarantee Fund Levy payable under section 13 shall be remitted by the construction contractor to the Institute for Construction Training and Development (hereinafter referred to as "ICTAD") at the time that the contractor receives each contract payment.
- 15.** The Construction Industry Guarantee Fund Levy, collected by ICTAD on behalf of the Government in respect of each contract in terms of section 13, shall be credited within fifteen days from the end of every month as provided for in section 13 to the Consolidated Fund along with a monthly statement setting out the basis of the calculation of the amount payable as the Construction Industry Guarantee Fund Levy.
- 16.** The Secretary to the Treasury may from time to time issue guidelines in relation to the collection and remittance of the Construction Industry Guarantee Fund Levy on behalf of the Government.
- 17.** ICTAD shall furnish within thirty days after the last day of the year to which the collection of the Construction Industry Guarantee Fund Levy relates, a statement containing such information as may be specified by the Secretary to the Treasury.
- 18.** ICTAD shall maintain a record of all amounts collected by it in relation to the turnover on every contract entered into on or after January 1, 2005, by the relevant contractors and the reconciliation of the statement relating to the collection of the Construction Industry Guarantee Fund Levy.
- 19.** (1) Any construction contractor to whom the provisions of this Part of this Act applies, who fails to pay the total amount of the Construction Industry Guarantee Fund Levy in terms of section 13, shall be deemed to be a defaulter and where such defaulter is a body corporate, the Chairman of the Board of Directors, any director or principal officer of such body corporate shall be deemed to be a defaulter for the purposes of this Part of this Act, and such Levy as is not paid on or before the due date shall be deemed to be a Levy in default.
- (2) The defaulter shall be liable to pay a surcharge in addition to the Construction Industry Guarantee Fund Levy in default, calculated—
- (a) at the rate of ten *per centum* of the amount of such levy as is in default for the subsequent period of one month or part thereof, from the due date for the payment of the Levy under section 16 ; and
 - (b) at the rate of two *per centum* of such Levy as is in default for each subsequent period of one month or part thereof, from the due date for the payment specified in paragraph (a),
- which surcharge shall be collected by ICTAD.
- (3) ICTAD shall take action to recover the Construction Industry Guarantee Fund 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) ICTAD shall cause to be issued on the defaulter, three weeks prior to the taking of any steps for the recovery of the Construction Industry Guarantee Fund Levy in default and the amount of the surcharge accrued thereon, a Notice, informing the defaulter of the intention of ICTAD to institute proceedings for the recovery of the amount of the Construction Industry Guarantee Fund Levy in default and the amount of the surcharge accrued thereon in terms of the provisions of this section.
- (5) Where ICTAD issues Notice on the defaulter in terms of subsection (4) but the amount of the Construction Industry Guarantee Fund Levy in default and the surcharge thereon remains unpaid even though the period of three weeks specified in such Notice has elapsed, ICTAD 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 the 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 the recovery of the amount of the Construction Industry Guarantee Fund Levy or such part of the Levy which is in default and the amount of 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 Construction Industry Guarantee Fund Levy in default and the amount of the surcharge accrued thereon, from the defaulter as if it were a fine imposed by the Magistrate. The money so recovered shall be remitted to ICTAD who shall credit the same to the Consolidated Fund.

20. In this Part of this Act, unless the context otherwise requires—

“construction contractor” means the person or persons or organization or organizations named as the contractor in a bid or who is otherwise accepted by the employer as the person or organisation responsible for the implementation, completion and maintenance of the construction works being carried out under the terms of such contract ;

“contract value” means the amount or the amounts stated in the letters of acceptance and which are thereafter adjusted in accordance with the provisions of the contract. The said contract value shall be the sum total of individual contracts or of several contracts which have been entered into in respect of the carrying out of the construction of the project and shall include sub-contract values, supply contract values and such other construction costs that may be incurred in carrying out the works ; and

“The Institution for Construction, Training and Development (ICTAD)” means the industrial undertaking constituted and established by Order made under section 3 of the State Industrial Corporations Act, No. 49 of 1957 and published in *Gazette Extraordinary* No. 718/15 of June 10, 1992.

21. The provisions of this Part of this Act shall be deemed for all purposes to have come into operation with effect from January 1, 2005.

22. The amount charged and collected by ICTAD as Construction Industry Guarantee Fund Levy in terms of this Part of the Act, during the period commencing from January 1, 2005 and ending on the date of commencement of this Act, shall be deemed to have been so validly charged and levied and ICTAD is hereby indemnified from any action civil or criminal in respect of the collection of such levy

PART IV

AMENDMENT OF FINANCE ACT, NO. 11 OF 2002

23. The Finance Act, No. 11 of 2002 is hereby amended in section 2 of Part I of that Act, (Port and Airport Development Levy) by the repeal of the proviso to that section and the substitution therefor of the following :—

“Provided that, in respect of the cost, insurance and freight value of any article referred to above, there shall, with effect from November 19, 2004, be charged and levied a levy at the rate of 1.5 per centum :

Provided further, that in the case of an article imported into Sri Lanka for the purpose of processing and re-export, the levy on the cost, insurance and freight value of that article—

- (a) for the period Commencing on January 1, 2003 and ending on December 31, 2004 shall be charged and levied at the rate of 0.5 *per centum*; and
- (b) for the period commencing on January 1, 2005, shall be charged and levied at the rate of 0.25 *per centum*".

24. Where an amount equal to one *per centum* on the cost, insurance and freight value of such 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 November 19, 2004 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.

PART V

GENERAL

- 25.** (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*.

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

FIRST SCHEDULE

(Section 2)

1. The Excise Ordinance (Chapter 52).
2. The Customs Ordinance (Chapter 235).
3. The Excise (Special Provisions) Act, No. 13 of 1989.
4. The Inland Revenue Act, No. 38 of 2000. (Other than the provisions of Chapter XV, XVI, XVII and Section 33 and Section 61).

SECOND SCHEDULE

(Section 13)

Value of Construction Contract

Rates applicable for the
calculation of the Levy

- | | |
|--|------------------------|
| 1. Where the value of the construction contract is less than rupees fifteen million | Nil |
| 2. Where the value of the construction contract is not less than rupees fifteen million and not exceeding rupees fifty million | 0.25 <i>per centum</i> |
| 3. Where the value of the construction contract is not less than rupees fifty million and not exceeding rupees one hundred and fifty million | 0.5 <i>per centum</i> |
| 4. Where the value of the construction contract is rupees one hundred and fifty million or above | 1 <i>per centum</i> |

VALUE ADDED TAX (AMENDMENT) ACT, NO. 6 OF 2005

[Certified on 30th March, 2005]

AN ACT TO AMEND THE VALUE ADDED TAX ACT, NO. 14 OF 2002

1. This Act may be cited as the Value Added Tax (Amendment) Act, No. 6 of 2005.
2. Section 2 of the Value Added Tax Act, No. 14 of 2002 (hereinafter referred to as the “principal enactment”) is hereby amended as follows :—
 - (1) in subsection (1) of that section—
 - (a) by the substitution for the words “as the case may be-” of the words “as the case may be, subject to the provisions of section 2A, at the following rates :—”;
 - (b) in subparagraph (ii) of that subsection—
 - (1) by the substitution for the words “for any taxable period commencing on or after January 1, 2004” of the words “for any taxable period commencing on or after January 1, 2004 and ending on or before—
 - (a) November 18, 2004 in respect of goods specified in the Third Schedule ; and
 - (b) December 31, 2004 in respect of goods for which the Third Schedule does not apply.”.
 - (2) by the substitution for the words “at zero *per centum*.” of the words “at zero *per centum*;”;
 - (c) by the addition immediately after sub-paragraph (ii) of that subsection of the following new sub-paragraphs :—
 - “(iii) for the period commencing on November 19, 2004 and ending on or before December 31, 2004 and for any taxable period commencing on or after January 1, 2005 at the rate of five *per centum* (Basic Rate) (of which tax fraction is 1/21) on the value of such goods supplied or imported as referred to in the Third Schedule other than such goods chargeable with tax at zero *per centum* ;
 - “(iv) for any taxable period commencing on or after January 1, 2005 at the rate of eighteen *per centum* (Luxury Rate) (of which Tax Fraction is 9/59, on the value of such goods or services supplied or goods imported as referred to in the Fourth Schedule other than such goods or services chargeable with tax at zero *per centum* ; and
 - “(v) for any taxable period commencing on or after January 1, 2005 at the rate of fifteen *per centum* (Standard Rate) (of which the Tax Fraction is 3/23) on the value of such goods or services supplied or goods imported other than in respect of the following :—
 - (a) goods or services chargeable with tax at zero *per centum*; and
 - (b) goods or services specified in the Third Schedule or the Fourth Schedule of this Act.
 - (2) in subsection (2) of that section —
 - (a) in paragraph (a) of that subsection by the substitution for the words “on any tea supplied by” of the words “on any tea supplied prior to January 1, 2005 by”;
 - (b) in paragraph (b) of that subsection by the substitution for the word “supplies.” of the words “supplies ;”;
 - (c) by the addition immediately after paragraph (b) of that subsection of the following new paragraphs :—
 - “(c) (i) on the supply with the approval of the Textile Quota Board established by the Textile Quota Board Act, No. 33 of 1996, of any goods manufactured in Sri Lanka by such supplier to be utilized for the purpose of manufacture of garments for export either by manufacturers who are registered with the Textile Quota Board or through Export Trading Houses registered with the Board of Investment of Sri Lanka; or

(ii) on the supply of finished garments manufactured in Sri Lanka by such supplier with the approval of the Textile Quota Board established by the Textile Quota Board Act, No. 33 of 1996, to be exported through Export Trading Houses registered with the Board of Investment of Sri Lanka under section 17 of the Board of Investment of Sri Lanka Law No. 4 of 1978,

until such time as the activities of such garment manufacturers are monitored by the Textile Quota Board and the Textile Quota Board furnishes the reconciliation on the disposal of such goods on a quarterly basis as stipulated by the Commissioner-General to the satisfaction of the Commissioner-General, that such finished goods are in fact exported by the recipient of the supplies.

(d) on the supply with the approval of the Export Development Board, established by the Sri Lanka Export Development Act, No. 40 of 1979 with the concurrence of the Ministry of the Minister in charge of the subject of Finance of any goods manufactured in Sri Lanka by such suppliers to be utilized for the purpose of manufacture of goods other than the goods referred to in paragraph (c) of this subsection by manufacturers who are registered with the Export Development Board as exporters, until such time as the activities of such manufacturers are monitored by the Export Development Board with the approval of the Ministry of the Minister in charge of the subject of Finance and the Export Development Board, furnishes the reconciliation on the disposal of such goods on a quarterly basis as stipulated by the Commissioner-General to the satisfaction of the Commissioner-General, that such furnished goods are in fact exported by the recipient of the supplies.

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

- (a) in paragraph (e) thereof, by the substitution for the words “on or before December 31, 2002;” of the following words “on or before December 31, 2002;”; and
 - (b) by the addition immediately after paragraph (e) of that subsection of the following new paragraph :—
- (f) any fabric or accessories imported by any person for the purpose of manufacture of garments for export, who has registered with the Textile Quota Board established under the Textile Quota Board Act, No. 33 of 1996, with the approval of the Textile Quota Board and under the supervision of the Director-General of Customs or the Board of Investment as the case may be.”.

3. The following new section is hereby inserted immediately after section 2 of the principal enactment and shall have effect as section 2A of that enactment :—

“Minister
may vary the
rates by
Order.

- 2A. (1) The Minister may by Order vary the rates specified in section 2 insofar as the same relates to the increasing or reducing of the rates previously specified, and to such extent as it relates to the imposition of Value Added Tax specified under the aforesaid section.
- (2) The Order made by the Minister under subsection (1) shall be in operation immediately upon the Minister affixing his signature thereto.
- (3) Every such Order shall as soon as convenient be published in the *Gazette*.
- (4) Every such Order shall as soon as convenient thereafter be approved by a Resolution of Parliament.
- (5) Where any such Order is not approved by Parliament it shall be deemed to be rescinded with effect from the date of such Resolution.”.

4. Section 3 of the principal enactment is hereby amended in paragraph (d) of that section by the substitution for the words “August 1, 2002,” of the words “August 1, 2002 but prior to January 1, 2005,”.

5. Section 6 of the principal enactment is hereby repealed and the following section substituted therefor :—

“The value
of the goods
imported.

6. The value of goods imported shall be the aggregate of—
- (a) the value of the goods determined for the purpose of custom duty increased by five *per centum*; and

- (b) the amount of any custom duty payable in respect of such goods with the addition of any surcharge, cess, any Port and Airport Development Levy payable under the Finance Act, No. 11 of 2002, and any excise duty payable under the Excise (Special Provisions) Act, No. 13 of 1989 on such goods.”.
6. Section 7 of the principal enactment is hereby amended in paragraph (b) of subsection (1) of that section by the addition immediately after sub-paragraph (vi), the following new sub-paragraph :—
- “(vii) the provision of services to overseas buyers by a garment buying office registered with the Ministry of Industries under the supervision of the Textile Quota Board established under the Textile Quota Board Act, No. 33 of 1996, where payment for such service is received in foreign currency, through a Bank in Sri Lanka insofar as such services are identified by the Commissioner-General as being services essential for facilitating the export of garments to such overseas buyers.”.
7. Section 20 of the principal enactment is hereby amended in subsection (6) of that section as follows :—
- (1) by the re-numbering of that subsection as paragraph (a) of that subsection ;
 - (2) in the re-numbered paragraph (a) by the substitution for the words “under this subsection” of the words “under this paragraph;”;
 - (3) by the addition, immediately after the re-numbered subsection (6) (a) of that subsection of the following new paragraph :—
- “(b) Notwithstanding the provisions of subsection (2), though Value Added Tax is deferred, there shall be issued by every registered person, on supplies made under paragraphs (a) or (c) of subsection (2) of section 2, a tax invoice along with the Value Added Tax component shown as ‘Suspended Value Added Tax’. An invoice issued under this paragraph shall not be considered as a tax invoice for the purposes of this Act.”.
8. Section 21 of the principal enactment is hereby amended in subsection (1) of that section by the substitution for the words “before the expiry” of the words “not later than the twentieth day of the month after the expiry of each taxable period”.
9. Section 22 of the principal enactment is hereby amended in subsection (3) of that section by the addition immediately after the second proviso to that subsection of the following :—
- “Provided further, that any person who accounts for the output tax at the rate of five *per centum* shall not be entitled to deduct any input tax in relation to such supply other than in the case of a motor vehicle used for purposes of transportation of machinery for production :
- Provided further, any input tax paid at the rate of eighteen *per centum* by any person which is allowable under this Act shall be restricted to fifteen *per centum*. ”.
10. Section 25C of the principal enactment is hereby amended in subsection (5) of that section as follows :—
- (1) in sub-paragraph (ii) of paragraph (g) of that subsection, by the substitution for the words and figures “on or after January 1, 2004” of the words and figures “on or after January 1, 2004 and ending prior to January 1, 2005”;
 - (2) by the insertion immediately after paragraph (g) thereof of the following new paragraph :—
- “(gg) for the taxable period commencing on or after January 1, 2005, the profits or income arising to any person from the sale of company shares owned by such person or to any person who is instrumental in the purchase and sale of such shares by other persons, other than such profits and income arising to any “specified institution” within the meaning of this Chapter or a person not registered with the Central Bank of Sri Lanka, but providing services similar to such services provided by a finance company ;”.
11. Section 26 of the principal enactment is hereby amended in subsection (1) of that section by the substitution for the words “fifteenth day of the month” of the words “twentieth day of the month”.

12. Section 76 of the principal enactment is hereby amended in subsection (1) of that section as follows :—

- (1) in the second proviso to that subsection by the substitution for the words “wholly and exhaustively in making exempt supplies,” of the words “wholly and exclusively in making exempt supplies,”;
- (2) by the substitution for the words “taxable supplies.” of the following :—
“taxable supplies :

Provided further that where any goods or services that are acquired have been used in making a taxable supply and any input tax has been claimed and allowed, then any portion of such input tax allowed, which is attributable to an exempt supply at the point if any, if such supply subsequently becomes an exempt supply, except in the case of providing leasing facilities for three wheelers, then notwithstanding the provisions of section 22, be disallowed within the taxable period in which such taxable supply becomes an exempt supply.”.

13. The First Schedule of the principal enactment is hereby amended in Part II thereof as follows :—

- (1) in item (i), of Part II (a), by the substitution for the words “fresh coconut, green leaf,” of the words “fresh coconut, tea including green leaf,”;
- (2) in item (iv), of Part II (a), by the substitution for the words “aircrafts, helicopters, pearls, diamonds, natural or synthetic, precious or semi precious stones, diamond powder, precious metal, metals clad with precious metals, gold coins and” of the words “aircrafts, helicopters and”;
- (3) in item (x), of Part II (a), by the substitution for the words and figures “(effective from 01.07.2004).” of the words and figures “(effective from 01.07.2004);”;
- (4) by the addition immediately after item (x) of Part II (a), of the following new item :—
“(xi) agricultural seeds, agricultural plants, shrimp feed inclusive of prawn feed and animal feed but excluding poultry feed”;
- (5) in item (ii) of Part II (b), by the substitution for the words and figures “prior to January 1, 2004;” of the words and figures “prior to January 1, 2004 and the provision of leasing facilities for three wheelers on any lease rental payable on the leasing facility for three wheelers on or after January 1, 2005;”;
- (6) in item (iii) of Part II (b), by the substitution for the words and figures “(Chapter 2005) per month;” of the words and figures “(Chapter 2005) per month and electricity through alternate energy projects other than energy through hydro-power or thermal power;”;
- (7) by the addition immediately after item (viii) of Part II (c), of the following new items:—
“(ix) goods to any project approved by the Commissioner-General, as having a capital investment of not less than rupees one hundred million which are considered as project related capital goods, other than the goods in the negative list published by the Secretary to the Treasury, during the project implementation period which shall not exceed three years from the commencement of the project, provided that such project makes taxable supplies upon the completion of the project (effective from 1.1.2005);
(x) samples of garments for business purposes by any garment buying office in Sri Lanka registered with the Textile Quota Board established under the Textile Quota Board Act, No. 33 of 1996, so long as such item is not sold;”;
- (8) by the addition immediately after Part II (d) of the following :—
“(e) the supply of locally manufactured goods to duty free shops for payment in foreign currency.”

14. The following new Schedules are hereby inserted immediately after the Second Schedule of the principal enactment and shall have effect as the Third Schedule and the Fourth Schedule of that enactment :—

“THIRD SCHEDULE

(Section 2)

BASIC RATE

The supply or import of—

- (i) sugar;
- (ii) dhal;
- (iii) potatoes;
- (iv) onions;
- (v) dried fish;
- (vi) milk powder other than infant milk powder;
- (vii) chillies.

The import or supply of goods referred to in items (i) and (ii) of this Schedule shall be deemed for all purposes to have been exempt from Value Added Tax from October 1, 2004 to November 18, 2004.

FOURTH SCHEDULE

(Section 2)

LUXURY RATE

(a) The supply and import of—

- (i) air conditioning machines;
 - (ii) refrigerators;
 - (iii) dishwashing machines;
 - (iv) washing machines;
 - (v) vacuum cleaners/floor polishers;
 - (vi) kitchen waste disposers;
 - (vii) food grinders and mixers;
 - (viii) ovens and cookers;
 - (ix) hair dryers/hair dressing equipment;
 - (x) video player (VCD, DVD);
 - (xi) cameras;
 - (xii) radio, cassette and Music systems;
 - (xiii) television;
 - (xiv) motor vehicles, other than motor cycles, bicycles, three wheelers and passenger transport buses, lorries, trucks and any other vehicle used for the transport of goods ;
 - (xv) watches/clocks;
 - (xvi) musical instruments;
 - (xvii) equipment for games;
 - (xviii) jewellery;
 - (xix) aerated water;
 - (xx) liquor;
- (b) the supply of services by hotels, guest houses, restaurants or similar institution so far as such services are provided for wedding receptions and other receptions, other than professional conferences, seminars or similar events and also including the hiring of halls for such receptions.

15. The amendment made to—

- (a) section 2(3) (f) of the principal enactment by section 2 of this Act shall for all purposes be deemed to have come into force on January 1, 2005;
- (b) section 6 of the principal enactment by section 5 of this Act shall be deemed for all purposes to have come into force on January 1, 2005;
- (c) section 21 of the principal enactment by section 8 of this Act shall be deemed for all purposes to have come into force on January 1, 2005;
- (d) section 22 of the principal enactment —
 - (i) by the first proviso to section 9 of this Act shall for all purposes be deemed to have come into force on November 18, 2004;
 - (ii) by the second proviso to section 9 of this Act shall for all purposes be deemed to have come into force on January 1, 2005 ;
- (e) section 26 of the principal enactment by section 11 of this Act shall be deemed for all purposes to have come into force on January 1, 2005 ;
- (f) the third proviso to section 76 of the principal enactment by section 11 of this Act shall be deemed for all purposes to have come into force on January 1, 2005.

16 Section 22 of Act, No. 13 of 2004 is hereby amended in paragraph (v) of item (1) thereof by the substitution for the words and figures “October 17, 2003” of the words and figures “September 17, 2003”.

17. Any person who collects the value added tax as provided for in this Act, during the period commencing November 19, 2004 and ending on December 31, 2004, and for the period commencing on January 1, 2005 and ending on the date of the coming into operation of this Act, shall be deemed to have acted with due authority and such collection shall be deemed for all purposes to have been, and to be, validly made and such person is hereby indemnified against all actions civil or criminal, in respect of such collection.

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

FINANCE (AMENDMENT) ACT, NO. 7 OF 2005

[Certified on 31st March, 2005]

AN ACT TO AMEND THE FINANCE ACT, NO.11 OF 2004; TO PROVIDE FOR THE IMPOSITION OF A WITHHOLDING TAX ON THE REGISTRATION OF MOTOR VEHICLES; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH AND INCIDENTAL THERETO.

1. This Act may be cited as the Finance (Amendment) Act, No. 7 of 2005.

PART I

AMENDMENT OF PART I OF THE FINANCE ACT, NO. 11 OF 2004

2. The Finance Act, No. 11 of 2004 (in this Part referred to as the “principal enactment”) is hereby amended in subsection (3) of section 2 of Part I (Imposition of an Economic Service Charge) of that Act, as follows :—

- (1) in the definition of the expression of “liable turnover” by the substitution for the words “other than any trade, business, profession or vocation” of the words “other than any trade, business (not being any trade or business which deals in the wholesale or retail of such goods, not manufactured or produced by such person or partnership), or profession or vocation”; and

- (2) in the definition of the expression of "turnover" by the repeal of paragraph (ii) thereof and the substitution therefor of the following paragraph :—
 “(ii) the total proceeds from the disposal of any capital assets ; and”.

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

- (1) in subsection (1) of that section by the substitution for the words “any person or partnership for any relevant year of assessment may be deducted from the relevant income tax payable by that person or partnership for that relevant year” of the words “any person for any relevant year of assessment, shall be deducted from the relevant income tax if any, payable by that person for that relevant year” ;
- (2) by the insertion immediately after subsection (1) of that section, of the following new subsection, which shall have effect as subsection (1A) thereof :—
 “(1A) The amount of any service charge paid by any partnership for any relevant year of assessment shall be apportioned among the partners of such partnership in the ratio in which such partners share the profits or losses of such partnership for that relevant year of assessment : the amount of the service charge so apportioned to any partner, shall be deducted from the relevant income tax payable by such partner for such relevant year of assessment (hereinafter referred to as the “first - mentioned relevant year of assessment”).”;
- (3) in subsection (2) of that section by the substitution for the words “The balance, if any, of such service charge after its deduction in accordance with subsection (1) shall be deducted from the relevant income tax payable by such person or partnership for the relevant year” of the words “The balance, if any, of such service charge paid by any person after its deduction in accordance with subsection (1) shall be deducted from the relevant income tax payable by such person for that relevant year”.;
- (4) by the insertion immediately after subsection (2) of that section, of the following new subsection, which shall have effect as subsection (2A) thereof :—
 “(2A) The balance, if any, of any service charge apportioned to any partner in accordance with subsection (1A), after its deduction in accordance with subsection (1A) shall be deducted from the relevant income tax payable by such partner for the relevant year of assessment immediately succeeding the first - mentioned relevant year of assessment (hereinafter referred to as the “first succeeding relevant year of assessment”).”;
- (5) in subsection (3) of that section by the substitution for the words “The residue, if any, of the balance of such service charge after its deduction in accordance with subsection (2), shall be deducted from the relevant income tax payable for the relevant year” of the words “The residue, if any, of the balance of such service charge or of the portion of such service charge, as the case may be, after its deduction in accordance with the provisions of either subsection (2) or subsection (2A), shall be deducted from the relevant income tax payable by such person or such partner of such partnership as the case may be, for the relevant year” ;
- (6) by the repeal of subsection (5) of the principal enactment and the substitution therefor of the following subsection :—
 “(5) For the purposes of this section and in relation to any relevant year of assessment, the expression—
 “attributable to the liable turnover” in relation to any part of the share of the divisible profits of any partner of any partnership means the sum which bears to the share of the divisible profits of such partner from such partnership for such relevant year of assessment the same proportion as the liable turnover of such partnership for such relevant year of assessment bears to the turnover of such partnership for such relevant year of assessment ;
 “relevant income tax payable” in relation to—
 (a) any person in so far as such person is not a partner of any partnership, means the sum which bears to the aggregate statutory income of that person for that relevant year of assessment, from every trade, business, profession or vocation carried on or exercised by that person, other than any trade, business, (not being any trade or business which deals in the wholesale

or retail of such goods, not manufactured or produced by such person), profession or vocation, the commercial operations of which has commenced, whether by such person or by any other person or partnership, on a date which falls within the period of thirty six months immediately preceding the first day of that relevant year of assessment, the same proportion as the total income tax payable by such person for that relevant year of assessment bears to the total statutory income of that person for that relevant year of assessment; and

- (b) any person, in so far as such person is a partner of any partnership, means the sum which bears to such part of the share of the divisible profits of such person from such partnership as is attributable to the liable turnover of every trade, business, profession or vocation carried on or exercised by such partnership, the same proportion as the total income tax payable by such person for that relevant year of assessment bears to the total statutory income of that person for that relevant year of assessment;

“total income tax payable” in relation to any person means the sum ascertained by the application of the income tax rate as is specified in the appropriate Schedule to the Inland Revenue Act, to the taxable income of such person for that relevant year of assessment”; and

- (7) by the substitution for the marginal note to that section of the following :—

“Service Charge to be deducted from the relevant income tax”.

4. Section 11 of the principal enactment is hereby amended by the substitution for the words and figures “Chapters XIX, XX, XXI” of the words and figures “Chapters XII, XIX, XX, XXI”.
5. The following new section is hereby inserted immediately after section 11 of the principal enactment and shall have effect as section 11A of that enactment :—

“Regulations. 11A. (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) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations specifying the guidelines relating to the meaning of the expression “turnover” as is used in subsection (3) of section 2 is to be ascertained in its application to cases where the proviso to the definition of the expression “turnover” in that subsection does not apply.
- (3) 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.
- (4) 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.
- (5) Notification of the date on which any regulation is deemed to be so rescinded shall be published in the *Gazette*. ”.

6. Section 12 of the principal enactment is hereby amended as follows :—

(1) by the substitution in the definition of the expressions “agent”, “allowance for depreciation”, and “Assessor”, the expressions “agent”, “allowance for depreciation”, “Assessor” and “Company” ;

(2) by the repeal of the definition of the expression “BOI enterprise” and the substitution therefor of the following :—

“BOI enterprise” in relation to any relevant year of assessment means any enterprise in relation to which the exemption of its profits and income from income tax, in terms of any agreement entered into by the Board of Investment of Sri Lanka with such enterprise under section 17 of the Board of Investment of

Sri Lanka Law, No. 4 of 1978, subsists during the whole or any part thereof of that relevant year of assessment ;;

- (3) by the repeal of the definition of the expression “person” and the substitution therefor of the following :—
“person” includes a company or a body of persons, but does not include—

- (a) any registered society, within the meaning of the Co-operative Societies Law, No. 5 of 1972 ;
- (b) any non-resident person carrying on business as an owner or charterer of an aircraft or ship ;”.

7. (1) The provisions of Part 1 of this Act shall subject to subsection (2) be deemed for all purposes to have come into effect on April 1, 2005.

(2) The following provisions shall be deemed for all purposes to have come into operation from April 1, 2004 :—

- (a) the amendment made to section 3 of the principal enactment by items (1), (2), (3), (4), (5) and (6) of section 3 of this Act ; and
- (b) the amendment made to section 12 of the principal enactment by item (2) of section 6 of this Act.

PART II

AMENDMENT OF FINANCE ACT, NO. 11 OF 2004 TO INCLUDE NEW PART IIIA.

8. The following new Part is hereby inserted immediately after section 28 of the Finance Act, No. 11 of 2004 and shall have effect as Part IIIA (sections 28A, 28B, 28C, and 28D) of that enactment :—

“PART IIIA

IMPOSITION OF WITHHOLDING TAX ON THE REGISTRATION OF MOTOR VEHICLES

Imposition of withholding tax on motor vehicles. 28A. (1) There shall be levied in accordance with the rates as are specified in section 28B, with effect from April 1, 2005, a withholding tax, on every applicant seeking to register a motor vehicle, in respect of every motor vehicle registered by the Commissioner of Motor Traffic in accordance with the provisions of the Motor Traffic Act, (Chapter 203) other than on three-wheelers, lorries and buses used solely for the purpose of providing public transport.

For the purpose of this section “motor vehicle” shall have the same meaning as in the Motor Traffic Act (Chapter 203).

(2) The Commissioner of Motor Traffic shall not issue in respect of any motor vehicle a Certificate of Registration unless the withholding tax payable in terms of this section has been paid by the applicant. Any tax paid under this section shall be duly acknowledged by the issue of a Certificate to the applicant.

Rate at which the tax is to be calculated. 28B. The collection of the withholding tax imposed under section 28A shall be at the following rates :—

- (a) for a first registration of a motor vehicle, a sum of rupees five thousand ; and
- (b) for every other registration a sum of rupees one thousand.

Amount collected to be remitted to the Secretary to the Treasury. 28C. The Commissioner of Motor Traffic shall remit the amount collected by him as withholding tax in terms of this Part to the Commissioner-General on or before the fifteenth day of the month following the month in which the tax was collected along with a return of the moneys collected by him.

Withholding tax to be deducted from income tax. 28D. Any person who has paid the withholding tax in terms of this part of the Act, shall be entitled to deduct such withholding tax from the income tax payable by such person under the Inland Revenue Act.”.

PART III

AMENDMENT OF SCHEDULE TO THE FINANCE ACT, NO. 11 OF 2004

9. The Schedule to the Finance Act, No. 11 of 2004, (relating to the rate of Service Charge chargeable under Part I) is hereby amended as follows :—
 - (1) by the substitution in item 2 that Schedule for the words and figures “any BOI enterprise which had entered into an agreement under section 17 of the Board of Investment of Sri Lanka Law, No. 4 of 1978.” of the words “any BOI enterprise.”;
 - (2) by the substitution in item 4 of that Schedule for the words “any trade, business, profession or vocation” of the words “any trade or business (not being any trade or business which deals in the wholesale or retail of such goods, not manufactured or produced by the dealer) or profession or vocation” ; and
 - (3) by the addition immediately after item 4 of that Schedule, of the following new item :—

“ 5. Such part of the liable turnover as consists of the turnover from any trade or business which deals in the wholesale or retail of such goods, not manufactured or produced by the dealer. *0.5 per centum*”
10. In the event of an inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

INLAND REVENUE (AMENDMENT) ACT, NO. 8 OF 2005

[Certified on 31st March, 2005]

AN ACT TO AMEND THE INLAND REVENUE ACT, NO. 38 OF 2000

1. This Act may be cited as the Inland Revenue (Amendment) Act, No. 8 of 2005.
2. Section 3 of the Inland Revenue Act, No. 38 of 2000 (hereinafter referred to as the “principal enactment”) as last amended by Act, No. 12 of 2004 is hereby further amended as follows :—
 - (1) in paragraph (hh) of that section, by the substitution for the words “gambling; and” of the words “gambling,” ; and
 - (2) by the insertion, immediately after paragraph (hh) of that section, of the following new paragraph :—

“(hhh) in the case of a non-governmental organization, any sum received by such organization by way of grants, donations or contributions or any other manner on or after April 1, 2005 ; and”.
3. Section 4 of the principal enactment as amended by Act, No. 37 of 2003, is hereby further amended in subsection (1) of that section as follows :—
 - (1) in the proviso to paragraph (d) of subsection (1) of that section, by the substitution for all the words from “Provided that”, to the end of that proviso, and the substitution therefor of the following :—

“Provided that,

(a) on or before March 31, 2005, any excess of the rental value over one hundred and twenty thousand rupees, where the aggregate of the profits referred to in paragraph (a), does not exceed one hundred and fifty thousand rupees ; and

- (b) for any year of assessment commencing on or after April 1, 2005, any excess of the rental value over one hundred and eighty thousand rupees, where the aggregate of the profits referred to in paragraph (a), exceeds one hundred and fifty thousand rupees,
shall be disregarded ; and” ;
- (2) in paragraph (e) of that subsection in the paragraph immediately after the first proviso to that paragraph, by the substitution for the words “profits from the sole taxable income”, of the words “profits form the sole taxable income.” ;
4. Section 8 of the principal enactment as last amended by Act, No. 12 of 2004, is hereby further amended in paragraph (a) of that section as follows :—
- (1) in sub-paragraph (LXXVII) of that paragraph, by the substitution for the words and figures “Act, No. 21 of 2000 :”, of the words and figures “Act, No. 21 of 2000;” ; and
 - (2) by the addition, immediately after sub-paragraph (LXXVII) of that paragraph, of the following new paragraph :—
“ (LXXVIII) The Nordic Investment Bank:”.
5. Section 9 of the principal enactment as last amended by Act, No. 37 of 2003, is hereby further amended in subsection (1) of that section, as follows :—
- (1) in paragraph (b) of that subsection, by the substitution for the words “the official emoluments paid to—” of the words and figures “the official emoluments for any year of assessment commencing on or before April 1, 2005, paid to—” ;
 - (2) by the insertion, immediately after paragraph (b), of that subsection, of the following new paragraph :—
“(bb) one half of the official emoluments for any year of assessment commencing on or after April 1, 2005, paid to —
(i) any individual who holds any paid office under the Republic, out of the Consolidated Fund ;
(ii) any employee of any public corporation, being a public corporation which pays such emoluments or such pension or such profits, from emoluments wholly or partly out of the sums voted annually by Parliament to such corporation from the Consolidated Fund ;
(iii) the Governor of any Province appointed under the Article 154B of the Constitution ;
(iv) any member of any Provincial Council ;
(v) any employee of any Provincial Council or to any officer of any Provincial Public Service ;
(vi) any member of any local authority ;
(vii) any employee of any local authority ;
(viii) any employee of any University which is established or deemed to be established by the Universities Act, No. 16 of 1978 ;
(ix) any employee of the Institute of Policy Studies of Sri Lanka, established by the Institute of Policy Studies of Sri Lanka Act, No. 53 of 1988 ;
(x) a member or employee of any board or commission of inquiry established by or under any law being a board or commission, all the members of which are appointed by the President or by a Minister,
and any such pension or any profit from employment referred to in paragraph (c) of subsection (1) of section 4 as are received by any individual in respect of past services performed by such individual or by any other person whether before or after the commencement of this Act, as an individual, an employee, the Governor or a member as referred to in items (i), (ii), (iii), (iv), (v), (vi), (vii), (viii) or (ix);” ;

- (3) in paragraph (p) of that subsection, by the substitution for the words “any sum paid to any employee”, of the words “for any year of assessment commencing on or before April 1, 2005, any sum paid to any employee”; and
- (4) by the insertion immediately after paragraph (p) of that subsection, of the following new paragraph :—
- “(pp) for any year of assessment commencing on or after April 1, 2005, such part of any sum paid to any employee being a sum paid as compensation for loss of any office or employment consequent to—
- (i) the voluntary retirement by such employee in accordance with a scheme, which in the opinion of the Commissioner-General is uniformly applicable to all employees employed by such employer ; or
 - (ii) the retrenchment of such employee in accordance with a scheme approved by the Commissioner-General of Labour,
- as does not exceed two million rupees.”.
6. Section 10 of the principal enactment as last amended by Act, No. 12 of 2004 is hereby further amended as follows :—
- (1) in paragraph (e) of that section, by the substitution for the words “in any Commercial Bank with the approval of the Central Bank of Sri Lanka ;” of the words “in any Commercial Bank or any specialised Bank with the approval of the Central Bank of Sri Lanka ;”;
 - (2) by the addition, immediately after paragraph (h) of that section, of the following new paragraph :—
- “(i) such part of any interest as does not exceed one hundred thousand rupees, accruing in any year of assessment commencing on or after April 1, 2005 to any individual who is a citizen of Sri Lanka and resident in Sri Lanka, and who is more than sixty years of age on the first day of that year of assessment, from any special deposit scheme for age on the first day of that year of assessment, from any special deposit scheme for senior citizens operated by the National Savings Bank established by the National Saving Bank Act, No. 30 of 1971, or by the Bank of Ceylon established by the Bank of Ceylon Ordinance (Chapter 397), or the People’s Bank established by the People’s Bank Act, No. 29 of 1971.”.
7. Section 11 of the principal enactment as last amended by Act, No. 12 of 2004, is hereby further amended in subsection (1) of that section by the substitution in paragraph (i) of that subsection, for the words “paid to a share holder”, of the words “paid to an unit holder”.
8. Section 12 of the principal enactment as amended by Act, No. 37 of 2003, is hereby further amended by the repeal of subsection (1A) of that section and the substitution therefor of the following subsection :—
- “(1A) There shall be exempt from income tax, the income accruing to the owner of any house from such house, where such house is constructed on or after April 1, 2003, for the year of assessment, in which the construction of such house was completed and for the four years of assessments immediately succeeding that year of assessment, if such house is used solely for residential purposes :
Provided that where the floor area of the house is one thousand and five hundred square feet or less the income accruing to the owner on or after April 1, 2005 shall be exempt from income tax for the year of assessment in which the construction of that house is completed and for the six years of assessment immediately succeeding that year of assessment.”.
9. Section 15 of the principal enactment as last amended by Act, No. 12 of 2004 is hereby further amended as follows :—
- (1) by the substitution for paragraph (i) of that section, of the following paragraph :—
- “(i) the profits and income within the meaning of paragraph (a) of section 3 arising to any person from—
- (i) the sale of gold, gems or jewellery, for any year of assessment commencing prior to April 1, 2005 ;
 - (ii) export of gold, gems or jewellery, for any year of assessment commencing on or after April 1, 2005;” ;

(2) by the substitution for paragraph (vv) of that section, of the following paragraph :—

“(vv) for the period commencing on April 1, 2004 and ending on December 1, 2004, any profits derived by or accruing to any person, other than a unit trust or a mutual fund, from the sale of any share including a right to any share or a bonus share or a warrant where such disposal has taken place two years after the acquisition ;” ; and

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

“(vvv) for the period commencing on January 1, 2005 and ending on March 31, 2005 and for any year of assessment commencing on or after April 1, 2005, any profits derived by or accruing to any person or partnership other than any unit trust or mutual fund or any venture capital company, from the sale of any share, a right to any share, a bonus share or a share warrant in respect of which the Share Transaction Levy under section 7 of the Finance Act, No. 5 of 2005 has been charged, or where such disposal has taken place after two years from the date of acquisition ;”.

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

“**Exemption of 16A.** Notwithstanding anything to the contrary in any other provision of this Act, the profits and income derived from outside Sri Lanka by any individual who has been a non-resident of Sri Lanka and who arrives and stays in Sri Lanka, shall be exempt from income tax, if such individual is a citizen of both Sri Lanka and any other country at the time of such arrival and during the whole of such stay.”.

11. The following new section is hereby inserted immediately after section 17 of the principal enactment and shall have effect as section 17A of that enactment :—

“**Exemption from income tax of profits and income from agricultural undertakings.** 17A. (1) The profits and income from any agricultural undertaking (other than any profits and income from the sale of capital assets) shall be exempt from income tax for a period of five years reckoned from the commencement of the year of assessment commencing April 1, 2005.

(2) For the purposes of subsection (1) “profits and income from any agricultural undertaking” means the profits and income from the cultivation of land and the sale of the produce therefrom :

Provided that where the produce from the cultivation of land is subject to any process of production or manufacture in the course of one undertaking, such produce shall be deemed to have been sold for production or manufacture at the open market price prevailing at the time of such sale and profits and income from cultivation of land and sale of the produce therefrom shall be deemed to be the profit and income arising from such deemed sales.”.

12. Section 21 of the principal enactment as amended by Act, No. 12 of 2004 is hereby further amended by the substitution for the words and figures from “the government sells any house or flat”, to the end of that section of the words and figures “the government sells on or before March 31, 2005 any house or flat, the floor area of which does not exceed two thousand square feet and the construction of which was commenced by such person on or after January 1, 1977 such sale being the first sale of that house or flat, seventy five *per centum* of the profits and income arising from such sale shall be exempt from income tax.”.

13. Section 21A of the principal enactment as last amended by Act, No. 12 of 2004 is hereby further amended in subsection (4) of that section, by the substitution in paragraph (iii) of that subsection, for the words “non-transitional products”, of the words “non-traditional products”.

14. Section 23 of the principal enactment as last amended by Act, No. 12 of 2004 is hereby amended as follows :—

(1) in paragraph (bb) of subsection (1) of that section:—

i) by the substitution in sub-paragraph (i) of that paragraph, for the words “such equipments, as the case may be ;”, of the following words and figures :—

“such equipments, as the case may be :

Provided that in the case of software acquired on or after April 1, 2005—

(A) where such software is a software developed in Sri Lanka, the rate shall be one hundred *per centum* ; and

(B) where such software is other than software developed in Sri Lanka the rate shall be twenty five *per centum* ;”;

(b) by the substitution in sub-paragraph (vi) of that paragraph, for all the words from “any qualified building or any unit” to the words “acquisition as the case may be :”, of the following words :—

“ any qualified building, any unit of a condominium property acquired which is approved by the Urban Development Authority established by the Urban Development Authority Law, No. 41 of 1978, and constructed to be used as a commercial unit or any hotel building (including a hotel building complex) or any industrial building (including a industrial building complex) acquired from a person who has used such buildings in any trade or business, at the rate of six and two third *per centum per annum*, on the cost of construction or cost of acquisition, as the case may be :” ; and

(c) by the substitution in the proviso to that paragraph, for the words and figures “(v) of this paragraph”, of the words and figures “(v) or (vi) of this paragraph.” ;

(2) in the paragraph appearing immediately after sub-paragraph (id) of the proviso to paragraph (m) of subsection (1) of that section, by the substitution for the words and figures “sub-paragraphs (ia), (ib) and (ic)”, of the words and figures “sub-paragraphs (ia), (ib), (ic) and this sub-paragraph” ; and

(3) by the renumbering subsection (3a) of that section as subsection (3A).

15. Section 24 of the principal enactment is hereby amended in subsection (1) of that section, as follows :—

(1) in paragraph (c) of that subsection :—

(a) by the substitution in sub-paragraph (iii) of that paragraph, for the words “training referred to”, of the words and figures “prior to March 31, 2004, training referred to” ; and

(b) in the proviso to that paragraph, by the substitution for the words and figures “any year of assessment commencing on or after April 1, 2002”, of the words and figures “any year of assessment commencing on or after April 1, 2002, but prior to April 1, 2005.” ;

(2) in paragraph (d) of that subsection :—

(a) by the substitution for the words “subsection (1) of section 23”, of the words “subsection (1) of section 23 prior to April 1, 2005.” ; and

(b) in the proviso to that paragraph, by the substitution for the words and figures “any year of assessment commencing on or after April 1, 2002, of the words and figures “any year of assessment commencing on or after April 1, 2002 but prior to April 1, 2005.” ;

(3) in the proviso to paragraph (e) of that subsection, by the substitution for the words and figures “on or after April 1, 2002 if the expenses” of the words and figures “on or after April 1, 2002, but prior to April 1, 2005, if such expenses” ;

(4) in paragraph (f) of that subsection, by the substitution for the words and figures “in any year of assessment commencing prior to April 1, 2002;”, of the words and figures “in any year of assessment commencing prior to April 1, 2002 and in any year of assessment commencing on or after April 1, 2005.” ;

(5) in paragraph (l) of that subsection, by the insertion immediately after sub-paragraph (iv) of that paragraph, of the following new sub-paragraphs :—

“(v) any Economic Service Charge levied under Finance Act, No. 11 of 2004 on or after April 1, 2004 ;

(vi) any Value Added Tax on Financial Services levied under Chapter IIIA of the Value Added Tax Act, No. 14 of 2002, (inserted by amendment Act, No. 13 of 2004) on or after April 1, 2005 ;

- (vii) any Social Responsibility Levy chargeable under the Finance Act, No. 5 of 2005 as is referred to in item (4) of the First Schedule to the said Act, levied on or after April 1, 2005 ;"; and
- (6) by the addition at the end of that subsection, of the following new paragraphs :—
- "(v) one half of such person's cost of advertisement in connection with any trade, business, profession or vocation carried on or exercised by him in any year of assessment commencing on or after April 1, 2005, other than the cost of advertisement outside Sri Lanka incurred solely in connection with the export trade of any articles or goods or the provision of any services for payment in foreign currency ;
 - (w) any expenditure incurred in any trade or business carried on in Sri Lanka by any non-resident company, being expenditure in the nature of head office expenditure incurred in any period by reference to the profits and income of which the statutory income from such trade or business for any year of assessment commencing on or after April 1, 2005 is computed.

For the purpose of this paragraph the expression "head-office expenditure" shall have the same meaning as given in section 24A of this Act.".

16. The following new section is hereby inserted immediately after section 24 of the principal enactment and shall have effect as section 24A of that enactment :—

"Deduction of head office expenses incurred by any non-resident company. 24A. (1) Where any non-resident company carrying on in Sri Lanka any trade or business incurs in any year of assessment commencing on or after April 1, 2005 any expenditure in the nature of head office expenditure, there shall be deducted from the profits and income of such company for such year of assessment from such trade or business, a sum equal to the lesser of—

- (a) the amount of such expenditure ; or
- (b) the amount equal to ten *per centum* of such profits or income.

(2) For the purpose of this section "head office expenditure" in relation to non-resident company and to any year of assessment means, the executive and general administration expenditure incurred by or on behalf of such company outside Sri Lanka, including expenditure—

- (a) comprising the aggregate of the total profits from employment of and the total cost of travelling undertaken by every employee and every other person employed in, or managing the affairs of, any office of such company outside Sri Lanka ; and
- (b) in respect of—
 - (i) any premises outside Sri Lanka ; and
 - (ii) such other matters connected with the executive and general administration as may be determined by the Commissioner-General having regard to all the circumstances of the case, as being reasonable and commercially justifiable.".

17. Section 29 of the principal enactment as amended by Act, No. 12 of 2004, is hereby further amended as follows :—

- (1) in subsection (1A) of that section :—
- (a) by the substitution in paragraph (a) of that subsection, for the words and figures "section 122A and section 122B ; and", of the words and figures "section 122A and section 122B;" ;
 - (b) by the substitution in paragraph (b) of that subsection, for the words "through any other company,", of the words "through any other company ; and" ; and
 - (c) by the insertion immediately after paragraph (b) of that subsection, of the following new paragraph :—
 - "(c) statutory income from interest arising or accruing to any individual in respect of a secondary market transaction on any Security or Treasury Bond issued under the Registered Stock and Securities Ordinance (Chapter 420), or Treasury Bill issued under Treasury Bills Ordinance (Chapter 417), or Central Bank Securities issued under the Monetary Law Act (Chapter 422) and from the interest on which tax under section 122A has been deducted from a primary dealer," ;

- (2) in subsection (1B) of that section, by the substitution for all the words and figures from “for the purposes of subsections (1A) and (1B)”, to the end of that paragraph, of the following words and figures :—
- “ for the purposes of subsection (1A) and (1B) of this section —
- “interest income” means the proportionate amount of interest or discount allowed by the issuer of any security or instrument referred to in sub-paragraph (b) of subsection (1B) of this section, in proportion to the holding period of such security or other instrument by any holder over the period of maturity of such security or other instrument ;
- “primary market transaction” means the purchase of any Security or Treasury Bond issued under the Registered Stock and Securities Ordinance (Chapter 420), or Treasury Bill issued under the Local Treasury Bills Ordinance (Chapter 417), or Central Bank Security issued under the Monetary Law Act, (Chapter 422) at the time of the original issue of such Security, Bill or Bond or by any primary dealer subject to any discount or payment of interest by the issuer ; and
- “secondary market transaction” means the sale of a security or other instruments referred to in sub-paragraph (b) of subsection (1B) of this section or re-purchase or reverse re-purchase of such security or other instruments after the original issue of such security or holding of any such security or instrument for a period longer than one day from the date of acquisition, by any primary dealer who has acquired such security or other instruments.” ;
- (3) in subsection (2) of that section :—
- (a) by the repeal of paragraph (i) of the definition of “interest” appearing in sub-paragraph (iv) of paragraph (aaa) of that subsection and the substitution therefor of the following paragraph :—
- “(i) for the construction or purchase of any building or for the purchase of any site for the construction of any building on or after April 1, 2004 ;”;
- (b) in paragraph (f) of that subsection :—
- (i) by the substitution for all the words from “of thirty five *per centum* of the total statutory income” to the words “and so on :”, of the following words and figures :—
- “of thirty five *per centum* of the excess of the total statutory income for that year over the aggregate of —
- (a) statutory income from interest and dividends referred to in subsection (1A) ;
- (b) any interest income referred to in subsection (1B) ; and
- (c) any reward, a share of fine, any lottery winning and any interest on compensation payable referred to in subsection (1C),
- for that year and any loss which cannot be deducted may be carried forward to the next year of assessment and so on.” ;
- (ii) in item (iii) of the proviso to that paragraph, by the substitution for the words “deducted from income arising ;”; of the words “deducted from income arising subsequent to such declaration of insolvency ;” ; and
- (4) in subsection (2A) of that section, by the substitution for the words and figures “The provisions of paragraphs (b), (c), (d) and (e) of subsection (2), shall”, of the words and figures, “The provisions of paragraphs (b), (c), (d) and (e) of subsection (2), or subsection (4), or sub-paragraphs (i) and (iii) of paragraph (d) of subsection (5), or subsection (6), (7) and (8) shall”.

18. Section 31 of the principal enactment as, last amended by Act, No. 12 of 2004, is hereby further amended as follows :—

- (1) in the proviso to subsection (2) of that section by the substitution for the words and figures “otherwise than in money, made on or after April 1, 2004 as in excess of two million rupees”, of the words and figures “otherwise than in money, made on or after April 1, 2004, but prior to January 1, 2005, as in excess of two million rupees” ;

- (2) in paragraph (a) of subsection (4) of that section :—
- (a) by the substitution for sub-paragraph (i) of that paragraph, of the following sub-paragraph :—
 - “ (i) in respect of all qualifying payments other than those referred to in —
 - (a) paragraphs (b), (c), (g), (h), (i), (j) and (k) of subsection (2) made by him or deemed to have been made by him in any year of assessment ending on or before March 31, 2004 ; and
 - (b) paragraphs (a), (b), (c), (e), (g), (h), (i), (j) and (k) of subsection (2) made by him or deemed to have been made by him in any year of assessment commencing on or after April 1, 2004, shall not exceed one third of such assessable income or twenty five thousand rupees, whichever is less ;” ;
 - (b) by the substitution in sub-paragraph (iii) of that paragraph for the words and figures “paragraph (g) of subsection (2), made by him”, of the words and figures “paragraph (g) of subsection (2), made by him prior to March 1, 2004” ; and
 - (c) by the substitution for sub-paragraph (v) of that paragraph, of the following sub paragraph :—
 - “ (v) in respect of the aggregate of all qualifying payments made —
 - (a) on or before March 31, 2004 and referred to in paragraphs (a), (c), (d), (e) and (f) of subsection (2), shall not exceed twenty five thousand rupees ; and
 - (b) on or after April 1, 2004 and referred to in paragraphs (a), (e) and (g) of subsection (2), shall not exceed seventy five thousand rupees or one-third of such assessable income.”
 - (3) in subsection (6A), by the substitution for the words and figure “in paragraphs (i) or (j) of subsection (2)”, of the words and figures “in paragraph (i) of subsection (2)”. and
19. Section 38D of the principal enactment is hereby amended by the substitution for the words “Schedule to this Act.” of the following words :—
- “ Schedule to this Act :
- Provided that the provisions of this section shall not apply in relation to the sale on or after January 1, 2005 of any share, if in respect of such sale the Share Transaction Levy under section 7 of the Finance Act, No. 5 of 2005 has been paid.”.
20. Section 39 of the principal enactment as amended by Act, No. 37 of 2003, is hereby further amended in subsection (2) of that section, by the substitution for sub-paragraph (ii) of paragraph (a) of that subsection, of the following sub-paragraph:—
- “ (ii) subject to the provisions of section 17A of this Act, cultivating land with plants of whatever description ; and ;”.
21. Section 48A of the principal enactment as last amended by Act No. 12 of 2004, is hereby further amended by the substitution for the words and figures “and (h) of section 11,”, of the words and figures “and (h) of subsection (1) of section 11,”
22. Section 52A of the principal enactment as last amended by Act, No. 12 of 2004, is hereby further amended as follows :—
- (1) in subsection (1) of that section, by the substitution for the words and figures “commencing on or after April 1, 2003,” of the words and figures commencing on or after April 1, 2003 but prior to March 31, 2005,” ; and
 - (2) in subsection (2) of that section, by the substitution for the words and figures “commencing on or after April 1, 2003”, of the words and figures “commencing on or after April 1, 2003 but prior to March 31, 2005.”.
23. Section 53 of the principal enactment as last amended by Act, No. 12 of 2004, is hereby further amended in paragraph (e) of subsection (1) of that section, by the substitution for the words “under paragraph (a) of subsection (1)”, of the words “under paragraph (a) of this subsection”.

24. Section 60 of the principal enactment as last amended by Act, No. 12 of 2004, is hereby further amended by the substitution for the words and figures “commencing on or after April 1, 2004” of the words and figures “commencing prior to April 1, 2002”.

25. Section 62 of the principal enactment is hereby amended as follows :—

- (1) in subsection (1) of that section, by the substitution for the words “Where, in the case of a company controlled by not more than five persons, the Assessor is satisfied that the company has not distributed”, of the following words :—

“ Where, in the case of—

(a) a company controlled by not more than five persons, in respect of any year of assessment commencing on or before April 1, 2005 ; or

(b) any company in respect of any year of assessment commencing on or after April 1, 2005, the Assessor is satisfied that the company has not distributed”, and

- (2) by the repeal of subsection (7) of that section.

26. Section 72A of the principal enactment is hereby amended as follows :—

- (1) in subsection (1) of that section, by the substitution for the words “subject to the provisions of this section”, of the words “subject to the provisions of this section:

Provided that for any year of assessment commencing on or after April 1, 2005, the income tax referred to in subsection (1) of this section shall not apply, if the Economic Service Charge paid under the Finance Act, No. 11 of 2004, is more than the income tax payable under the provisions of this subsection :

Provided further, if the income tax payable under subsection (1) is more than the Economic Service Charge paid under the Finance Act, No. 11 of 2004, the amount of income tax payable shall be reduced by the Economic Service Charge paid for the same year of assessment.” ; and

- (2) in subsection (3) of that section, by the substitution for the words “against the Economic Service Charge paid by the partnership” of the words “against the Economic Service Charge levied under the Finance Act, No. 11 of 2004, paid by the partnership”.

27. The following new section is hereby inserted immediately after section 96 of the principal enactment, and shall have effect as section 96A of that enactment :—

“Profits and
income of
Non-
Governmental
Organization
to be
chargeable
with income
tax.

- 96A. (1) Where any Non-Governmental Organization as defined in subsection (2) of this section, receives in any year of assessment, commencing on or after April 1, 2005 any money by way of grants, donations, contributions or by any other means, an amount equal to three *per centum* of such money, shall notwithstanding anything to the contrary in any other provision of this Act, be deemed to be the full profits and income of such year of assessment, and such profits and income of such non-governmental organization shall be deemed to arise in Sri Lanka.
- (2) For the purposes of subsection (1) a “Non-Government Organization” means any organization or association formed by a group of persons on a voluntary basis which is non-governmental in nature dependant on grants, donations, contributions or money received from any other means locally or from any foreign country or any foreign or local organization and established or constituted for the provision of relief and services of a humanitarian nature to the poor and destitute, to the sick, orphans and widows, youth and children and generally for providing relief to the needy in times of disaster, which is determined by the Commissioner-General to be a Non-Governmental Organization for the purpose of this section.
- (3) The profits and income of a Non-Governmental Organization, shall be chargeable with income tax at the appropriate rate as specified in the Sixth Schedule to this Act :

Provided that, where the Commissioner-General is satisfied that any Non-Governmental Organization is engaged solely in—

- (a) rehabilitation and the provision of infrastructure facilities and livelihood support to displaced persons in any area identified by the Government for such purposes ; or
- (b) any other activity approved by the Minister as being of humanitarian in nature, taking into consideration the nature and gravity of any disaster and the magnitude of relief consequently required to be provided.”.

the Commissioner-General may remit the tax payable by such Non-Governmental Organization for that year of assessment.”.

28. Section 98 of the principal enactment as last amended by Act, No. 12 of 2004 is hereby further amended as follows :—

- (1) in paragraph (b) of subsection (1C) of that section, by the substitution for the words “Where there were no remittances declared during”, of the words “Where there were no remittances made during”; and
- (2) by the insertion immediately after subsection (1C) of that section, of the following new subsections :—

“(1D) (a) Any individual who satisfies any four requirements out of the five requirements specified in paragraph (b) of this subsection, during any year of assessment commencing on or after April 1, 2005, shall submit a return of income to the Commissioner-General not later than one month after the fulfilment of such requirements.

- (b) For the purpose of paragraph (a) of this subsection, the requirements shall be as follows :—
 - (i) paying a monthly residential electricity bill exceeding a net amount of ten thousand rupees ;
 - (ii) incurring a monthly credit card bill exceeding twenty-five thousand rupees ;
 - (iii) paying a monthly residential telephone bill exceeding a net amount of ten thousand rupees ;
 - (iv) purchasing an air ticket to travel abroad ; and
 - (v) owning a motor vehicle which is used for travelling purposes.

(1E) Every person chargeable to pay income tax under any provisions of this Act, shall be required to declare—

- (a) the value of every asset and liability, as at the last day of any year of assessment commencing on or after April 1, 2005 ; and
- (b) any profits or income exempted from the payment of income tax under this Act, for any year of assessment commencing on or after April 1, 2005.”.

29. Section 104 of the principal enactment is hereby amended in subsection (1) of this section as follows :—

- (1) in paragraph (b) of that subsection, by the substitution for the words “that section ; or”, of the words “of that section;”.
- (2) in paragraph (c) of that subsection by the substitution for the words and figure “Provisions of section 111 ;” of the words and figure “Provisions of section 111 ; or” ; and
- (3) by the insertion immediately after paragraph (c) of that subsection, of the following new paragraph :—

“(d) any individual who, on or after April 1, 2005 fails to furnish within the time specified in subsection (1D) of section 98, a return which such individual is required to furnish under that section ;”.

30. The following new Chapter is hereby inserted immediately after Chapter XIV of the principal enactment and shall have effect as Chapter XIV A of that enactment :—

“CHAPTER XIVA

PROVISIONS RELATING TO THE PAYMENT OF INCOME TAX BY A GOVERNMENT INSTITUTION

Payment of
income tax by
a Government
institution for
its employees.

121A. (1) Notwithstanding anything contained in section 2 and in Chapter XIII and XIV of this Act, the income tax attributable to one half of official emoluments of any employee of a Government Institution, for any year of assessment commencing on or after April 1, 2005, shall be paid by such Institution, if such part of the official emoluments of such employee for that year of assessment, exceeds an amount equal to the allowance referred to in paragraph (a) of subsection (1) of section 30 :

Provided that no part of such income tax shall be refunded to such employee or set off against any tax payable by such employee.

(2) Notwithstanding anything contained in section 4 of this Act, the income tax in respect of one half of the official emoluments of any employee of a Government Institution shall be deemed not to form part of the profits from employment of such employee.

(3) For the purposes of subsection (1) “the income tax attributable to one half of the official emoluments of any employee of a Government Institution” means the income tax computed, at the rates specified in Part 1D of the First Schedule to this Act, on the one half of emoluments of such employee, after deducting therefrom a sum equal to the allowance referred to in paragraph (a) of subsection (1) of section 30.

(4) For the purposes of this Chapter —

“Government Institution” means any institution or other body which employs individuals holding any paid office under the Republic, a public corporation, Provincial Council, a local authority, University, Institution, board or Commission referred to in paragraph (bb) of subsection (1) of section 9 of this Act ; and

“official emoluments” means profits from employment as specified in paragraph (a) of subsection (1) of section 4 received for services rendered, excluding pension.”.

31. Section 122B of the principal enactment as last amended by Act, No. 12 of 2004, is hereby further amended in subsection (1), by the substitution for the words and figures “where such payment takes place on or after November 1, 2002”, of the words and figures “where such payment takes place on or after November 1, 2002, but prior to April 1, 2005”,

32. Section 123A of the principal enactment as last amended by Act, No. 12 of 2004, is hereby further amended by the substitution for the words and figures “such Security, Bond or Bill or where such Security, Bond or Bill has been issued prior to April 1, 2002”, and “if such income interest forms part”, of the words and figures “such Security, Bond or Bill,” and “if such interest income forms part”, respectively.

33. Section 123B of the principal enactment as last amended by Act, No. 12 of 2004, is hereby further amended in subsection (3) of that section by the substitution for the words “Section 122A or 123B, as the case may be”, of the words “Sections 122A or 122B, as the case may be, when such interest is paid or credited”.

34. Section 124B of the principal enactment is hereby amended in subsection (1) of that section, by the substitution for the words “Any person other than an individual” of the words “Any person being a company, or any other person or partnership receiving interest income as a business receipt”.

35. Section 129A of the principal enactment is hereby amended by the substitution for the words and figures “in subsection (3A) of section 144,” of the words and figures “in subsection (3) of section 144,”

36. Section 132A of the principal enactment as amended by Act, No. 12 of 2004, is hereby further amended in the second proviso to that section by the substitution for the words “such person shall be liable to,” of the words “such person or partnership shall be liable to.”.

37. Section 132B of the principal enactment is hereby amended in paragraph (a) of subsection (2) of that section as follows :—

- (1) in sub-paragraph (i) of that paragraph, by the substitution for the words “working day of each month ;”, of the words “working day of each month or on the date of the last reward payment in any month ;” and
- (2) in sub-paragraph (ii) of that paragraph, by the substitution for the words “working day of each month ;”, of the words : “working day of each month or on the last share of fine payment in any month ;”.

38. Section 134 of the principal enactment as last amended by Act, No. 12 of 2004, is hereby further amended in subsection (5) of that section, as follows :—

- (1) by the substitution for all the words from “under this Act, for any year of assessment by any person who has made” to the words “such return is due.”; of the following words :—
“under this Act—
 - (a) by any person who has made a return of his income on or before the thirtieth day of November of the year of assessment immediately succeeding that year of assessment, after the expiry of the three years from the end of that year of assessment ; and
 - (b) by any person other than the person referred to in the preceding paragraph after the expiry of a period of six years from the end of that year of assessment .”;
- (2) in the second proviso to that subsection by the substitution for the words “not later than five years from the end of that year of assessment.”, of the words “at any time after the end of that year of assessment.”.

39. Section 144A of the principal enactment is hereby repealed.

40. Section 162A of the principal enactment is hereby repealed and the following section substituted therefor :—

Action not to commence after expiry of five years in certain circumstances. 162A. The Commissioner-General shall not, subject to the provisions of section 4 of the Inland Revenue (Regulation of Amnesty) Act, No. 10 of 2004, commence any action under sections 148, 149, 150, 151 or 152 of this Act for the recovery of tax in default, after the expiry of five years from the end of the year of assessment in which the assessment by which such tax was charged or levied becomes final and conclusive under section 142.”.

41. The First Schedule of the principal enactment as last amended by Act, No. 12 of 2004, is hereby further amended as follows :—

- (1) in Part 1C of that Schedule by the substitution for the words and figures “For any year of assessment commencing on or after April 1, 2004”, of the words and figures “For any year of assessment commencing on or after April 1, 2004 but prior to April 1, 2005”;
- (2) by the insertion immediately after Part 1C of that Schedule of the following new part:—

“ PART ID

For any year for assessment commencing on or after April 1, 2005—

On the first Rs. 300,000 of the taxable income	<i>5 per centum</i>
On the next Rs. 200,000 of the taxable income	<i>10 per centum</i>
On the next Rs. 200,000 of the taxable income	<i>15 per centum</i>
On the next Rs. 200,000 of the taxable income	<i>20 per centum</i>
On the next Rs. 200,000 of the taxable income	<i>25 per centum</i>
On the next balance taxable income	<i>30 per centum</i> ”.

- (3) by the insertion immediately after Part IIIB of that Schedule of the following new part :—

“PART IIIc

For any year of assessment commencing on or after April 1, 2005 —

On the first Rs. 2,000,000 if, either the period of contribution in relation to any category of payments referred to in paragraphs (a), (b), (c), (d), (e) or (f) of subsection (2) of section 32 or the period of service, is not less than 20 years ;

Nil

or

On the first Rs. 1,000,000 if, either the period of contribution in relation to any category of payments referred to in paragraphs (a), (b), (c), (d), (e) or (f) of subsection (2) of section 32 is less than 20 years,—

Ni1

On the next Rs. 500,000

5 per centum

On the next Rs. 500,000

10 *per centum*

On the balance

15 per centum."

42. The Sixth Schedule to the principal enactment as amended by Act, No. 12 of 2004, hereby further amended as follows :—

- (1) in item 20 of that Schedule, by the substitution for the words "maximum of fifteen *per centum*.". of the words "maximum of ten *per centum*";

(2) by the addition immediately after item 23 of that Schedule, of the following new item :—

"24. The rate of income tax applicable to the profit on the receipt of any fund set up or funds received by a Non-Governmental Organization (Section 96A) 30 *per centum*."

43. (1) The amendments made to paragraph (c) of subsection (1A) and subsection (1B) of section 29 and to section 123A of the principal enactment by section 17(1) and (2) and 32 of this Act, shall for all purposes be deemed to have come into force on April 1, 2002.

(2) The amendment made to section 132B of the principal enactment by section 37 of this Act, shall for all purposes be deemed to have come into force on April 1, 2003.

(3) The amendments made to sub-paragraph (vi) of paragraph (bb) of subsection (1) of section 23, paragraph (1) of the definition of “interest” appearing in sub-paragraph (iv) of paragraph (aaa) and paragraph (f) of subsection (2) of section 29, section 72A, 144A, and 162A of the principal enactment by sections 14(1)(b), 17(3) and (4), 26, 39 and 40 of this Act, shall for all purposes be deemed to have come into force on April 1, 2004.

(4) The amendment made to paragraph (e) of section 10 of the principal enactment by section 6 (1) of this Act, shall for all purposes be deemed to have come into force on January 1, 2005.

(5) The amendments made to section 8 by the inclusion of new paragraph (LXXVIII), section 39 and 134 of the principal enactment by sections 20 and 38 of this Act and the new sections 16A and 96A inserted into the principal enactment by sections 10 and 27 of this Act, shall for all purposes be deemed to have come into force on April 1, 2005.

44. Section 61 of the Inland Revenue (Amendment) Act, No. 12 of 2004 is hereby amended as follows:—

- (1) in subsection (1) of that section, by the substitution for the words and figures "paragraph (t) of section 15 and section 48A," and for the figures "6(5), 20, 24," of the words and figures "section 48A" and of the figures "21, 25", respectively ;
 - (2) in subsection (2) of that section by the substitution for the words and figure "by section 11 of this", of the words and figure "by section 12 of this" ;
 - (3) in subsection (4) of that section, by the substitution for the words "and to paragraph (a) and the proviso to paragraph (a)" of the words "and the proviso to paragraph (a)" ;
 - (4) in subsection (5) of that section—

- (a) by the substitution in paragraph (a) of that subsection by the substitution for the figures “9, 10, 12, 18 and 21”, of the figures “10, 11, 13, 19 and 22”; and
 - (b) by the repeal of paragraph (b) of that section and the substitution therefor of the following paragraph :—
 - “(b) The new paragraph (hh) inserted to section 3 and the amendment made to paragraph (t) of section 15 of the principal enactment by section 2(2) and 6 (5) of this Act;”;
- (5) in subsection (6) of that section—
- (a) by the substitution in paragraph (a) of that subsection for the figures “15 (2) and (3), 17, 21, 22, 23” of the figures “16 (2) and (3), 18, 23, 24”; and
 - (b) by the substitution for the figures “131A, 131B, 132C” and for the figures “19, 25, 28” of the figures “130D, 130E”, and of the figures “20, 26, 29”, respectively.

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

FINANCE LEASING (AMENDMENT) ACT, NO. 24 OF 2005

[Certified on 8th August, 2005]

AN ACT TO AMEND THE FINANCE LEASING ACT, NO. 56 OF 2000

1. This Act may be cited as the Finance Leasing (Amendment) Act, No. 24 of 2005
 2. Section 4 of the Finance Leasing Act, No. 56 of 2000 (hereinafter referred to as the “principal enactment”) is hereby amended in paragraph (c) of subsection (1) of that section, by the substitution for the words “case of a public company—”, of the words and figures “case of a public company, other than those referred to in paragraph (a) and (b) of section 3—”
 3. Section 21 of the principal enactment is hereby amended in paragraph (b) of subsection (1) of that section, by the substitution, for the words “twenty one days” of the words “seven days”.
 4. Section 24 of the principal enactment is hereby repealed and the following section substituted therefor :—
- “Transfer or assignment of lessor’s right.”
24. (1) A lessor may, with the written consent of the lessee obtained at the time of entering into the finance lease or thereafter, transfer or assign all or any of the lessor’s rights under the finance lease or in relation to any equipment provided under the lease or of both, to any registered establishment or to any special purpose vehicle :

Provided that in the case of a transfer or assignment to a special purpose vehicle, such transfer or assignment shall be made only for the purpose of securitisation and the structure for securitisation shall be as approved by the Central Bank.
 - (2) A registered establishment or a special purpose vehicle shall effect securitisation only in accordance with the structure approved granted by the Central Bank and in compliance with such directions and guidelines as may from time to time be issued by the Central Bank.
 - (3) A transfer or assignment under subsection (1) shall not relieve the transferor or assignor of his duties —
 - (a) under the finance lease or alter the nature or legal effect of such lease; or
 - (b) insofar as they relate to any equipment provided under the terms of the finance lease.

- (4) Upon a transfer or assignment by the lessor as provided for in subsection (1) to a special purpose vehicle of his rights in a motor vehicle within the meaning of the Motor Traffic Act (Chapter 203),—
- (a) the transferee or the assignee shall, notwithstanding anything to the contrary in the Motor Traffic Act (Chapter 203), be deemed to be the absolute owner of the motor vehicle and the transferee or the assignee shall within seven days after the transfer or assignment, as the case may be, apply to the Commissioner to have the name of the transferee or assignee entered as the absolute owner of the vehicle in the appropriate register maintained in such form as may be provided by the Commissioner, for such purpose. The application shall be accompanied by the fee thereto prescribed under the aforesaid Act and a copy of the instrument of transfer or assignment as the case may be. Upon the Commissioner being satisfied on the contents of the document forwarded to him with the application, that the transfer or assignment has been effected under a securitisation structure approved by the Central Bank, he shall cause the name of the transferee or assignee, as the case may, be to be entered as absolute owner of the vehicle in the appropriate register maintained by him ; and
 - (b) the transferee or assignee may from the date of registration, exercise all rights under the aforesaid Act or the finance lease which the transferee or assignor may have exercised, prior to the transfer or assignment of his rights under subsection (1).

For the purposes of this section “Commissioner” means the Commissioner of Motor Traffic appointed under section 204 of the Motor Traffic Act (Chapter 203).”.

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

- “A registered establishment and special purpose vehicle deemed to be a lending institution.
38. Every registered establishment and every special purpose vehicle shall be deemed to be a lending institution within the meaning, and for the purposes, of the Credit Information Bureau of Sri Lanka Act, No. 18 of 1990.”.

6. Section 39 of the principal enactment is hereby repealed and the following section substituted therefor :—

- “Offences. 39. Every person who—
- (a) carries on finance leasing business in contravention of the provisions of section 2 ;
 - (b) fails to comply with the provisions of subsection (3) of section 5 ;
 - (c) fails to pay the annual registration fee as required by section 6 ;
 - (d) fails to provide the particulars required under section 7 ;
 - (e) alters the particulars contained in the operating manual or the Memorandum or Articles of Association in contravention of the provisions of section 8 ; or
 - (f) contravenes any regulation made under this Act or fails to comply with any direction or notice issued under this Act,

shall be guilty of an offence under this Act.”.

7. Section 43 of the principal enactment is hereby amended by the insertion, immediately after the definition of the expression “Monetary Board”, of the following new definitions :—

“securitisation” means the issuance of securities by a special purpose vehicle which are backed by any assets consisting of any or all the rights in a finance lease or any equipment forming the subject matter of a finance lease or of both, transferred or assigned by a lessor in favour of such special purpose vehicle ;

“special purpose vehicle” means a body corporate or unincorporate, including a trust, established solely for the purpose of securitisation and for activities connected therewith or incidental thereto ;”.

8. The following new section is hereby inserted immediately after section 44 of the principal enactment and shall have effect as section 44A of the that enactment :—

- "Registration
of persons
who failed to
register under
section 44 of
the principal
enactment.
- 44A. (1) Notwithstanding the provisions of subsection (1) of section 44 of the principal enactment, a person who was required to be registered under that subsection within the period of time stipulated therein and who has not obtained a registration on the date of the coming into operation of this Act—
- (a) shall not be deemed to have committed an offence under the provisions of the principal enactment and consequently any agreements entered into by such person shall be deemed to be valid ;
 - (b) may continue to carry on the business of finance leasing for a period of two years from the date of the coming into operation of this Act ; and
 - (c) shall, subject to the provisions of subsection (2) of this section, be required within the period referred to in paragraph (b) of this subsection, to apply for and obtain a Certificate of Registration under the principal enactment, to continue to carry on such finance leasing business.
- (2) A person shall not be eligible to be registered under paragraph (c) of subsection (1) of this section, unless such person is a public company incorporated under the Companies Act, No. 17 of 1982 having a minimum issued and paid up capital of such amount as shall be prescribed, provided that the amount shall not exceed the amount prescribed as minimum issued and paid up capital under paragraph (c) of section 3 of this Act.
- (3) Every application made for registration under this section, shall be accompanied by—
- (a) the documents referred to in section 4 of the principal enactment;
 - (b) a copy of the audited balance sheet and the profit and loss account for the year preceding the date of submitting the application; and
 - (c) the prescribed fee.
- (4) The Director may in addition to the documents referred to in subsection (3), request an applicant to submit such further documents or information as he may consider necessary and it shall be the duty of the applicant to comply with any such request.
- (5) The provisions of subsection (2) of section 44 shall apply in respect of a person referred to in subsection (1) of this section.
- (6) The Director in concurrence with the Minister may by notice issued in that behalf, require a person registered under this section, to increase within the time specified therein , its minimum issued and paid up capital to such amount as specified in such notice. Provided that the minimum issued and paid up capital as increased shall not exceed the amount prescribed under paragraph (c) of section 3.
- (7) Where any registered person fails to comply with any requirement under subsection (6), the Director shall have the authority to restrict or limit the finance leasing business or any other transactions being carried on by such person, until the requirement contained in the aforesaid notice is complied with.”.

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

CONVENTION ON THE SUPPRESSION OF TERRORIST FINANCING ACT, NO. 25 OF 2005

[Certified on 8th August, 2005]

AN ACT TO GIVE EFFECT TO THE CONVENTION ON THE SUPPRESSION OF TERRORIST FINANCING ; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

1. This Act may be cited as the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005.
2. The Minister may, from time to time, by Order published in the Gazette certify the States which are parties to the Convention. A State in respect of which an Order is made under this section is hereinafter referred to as a "Convention State".
3. (1) Any person who, by any means, directly or indirectly, unlawfully and wilfully provides or collects funds, with the intention that such funds should be used, or in the knowledge that they are to be used or having reason to believe that they are likely to be used, in full or in part, in order to commit,—
 - (a) an act which constitutes an offence within the scope of, or within the definition of any one of the Treaties specified in Schedule I hereto ;
 - (b) any other act, intended to cause death or serious bodily injury, to civilians or to any other person not taking an active part in the hostilities, in a situation of armed conflict, and the purpose of such act, by its nature or context is to intimidate a population or to compel a government or an international organization, to do or to abstain from doing any act,

shall be guilty of the offence of financing of terrorists or terrorist organizations :

Provided that, for an act to constitute the offence set out above, it shall not be necessary to show that the funds collected were actually used in the commission of an offence.

- (2) Any person who—
 - (a) attempts to commit ;
 - (b) aids or abets the commission of ; or
 - (c) acting with a common purpose with another person or a group of persons, contributes to the commission of,
- the offence of financing of terrorists or terrorist organizations, shall be guilty of an offence under this Act.
- In this subsection "abet" has the same meaning as in sections 100 and 101 of the Penal Code.
- (3) Where an offence specified in subsection (1) or subsection (2) of this section is committed by a body of persons, then, every member, Director, Manager, Secretary, officer or servant of such body of persons shall be guilty of such offence, unless it can be proved that the offence was committed without their knowledge or that they exercised all due diligence to prevent the commission of such offence.
- (4) A person guilty of an offence under subsection (1) or subsection (2) of this section, shall on conviction after trial on indictment by the High Court, be punished with imprisonment for a term not less than fifteen years and not exceeding twenty years, and also be liable to a fine.
4. (1) On indictment of any person in the High Court, for an offence under this Act, all funds collected in contravention of the provisions of section 3, shall, with effect from the date of filing of such indictment—
 - (a) if such funds are lying in an account with any Bank, be subject to an order of freezing ; or
 - (b) if such funds are in the possession or control of any person be liable to seizure ;
- (2) The freezing or seizure of funds in terms of subsection (1) shall be in force until the conclusion of the trial.
- (3) On the filing of indictment, the Attorney-General shall notify the Central Bank of the freezing or seizure as the case may be.

- (4) The Central Bank shall thereupon take steps to give adequate publicity to the order of freezing or seizure as the case may be, as it shall think fit.
5. (1) On the conviction of any person under subsection (4) of section 3, the Court may Order that any funds collected in pursuance of subsection (1) of section 3 shall be forfeited to the State.
- (2) Any funds forfeited to the State under subsection (1), shall vest absolutely in the State. Such vesting shall take effect—
- (a) where no appeal is preferred to the Court of Appeal against the Order of forfeiture, on the expiration of the period within which an appeal may be preferred to the Court of Appeal against such Order of forfeiture ;
 - (b) where an appeal had been preferred to the Court of Appeal against such Order of forfeiture, and no appeal is preferred to the Supreme Court against the Order of the Court of Appeal affirming or upholding such Order of forfeiture, on the expiration of the period within which an Appeal may be preferred to the Supreme Court from such Order of the Court of Appeal;
 - (c) where an appeal had been preferred, to the Court of Appeal against such Order of forfeiture, and an appeal has been preferred to the Supreme Court from the determination of the Court of Appeal on the first mentioned appeal, upon the determination of the Supreme Court affirming or upholding the Order of forfeiture.
- (3) Where the Court is satisfied on the evidence adduced at a trial for an offence under subsection (1) of section 3, that any funds standing to the credit of any account in any bank, are the proceeds of such offence, it may, by written order prohibit the Manager of such bank from permitting or allowing the withdrawal of any funds from the account, until the conclusion of the trial.
6. (1) The High Court of Sri Lanka holden in Colombo or the High Court established under Article 154P of the Constitution for the Western Province, holden in Colombo, shall, notwithstanding anything to the contrary in any other law, have exclusive jurisdiction to try offences under this Act.
- (2) Where an act constituting an offence under this Act is committed outside Sri Lanka, the High Court referred to in subsection (1) shall have jurisdiction to try such offence as if it were committed within Sri Lanka, if—
- (a) the person who committed such act is present in Sri Lanka ;
 - (b) such act is committed by a citizen of Sri Lanka, or by a national of another State which is a party to the Convention, or by a stateless person who has his habitual residence in Sri Lanka ;
 - (c) such act is committed against, or on board, a ship or aircraft registered in Sri Lanka at the time of the commission of the offence ;
 - (d) such act is committed against, or on board a ship or aircraft registered under the laws of another State which is a party to the Convention, at the time of the commission of the offence ;
 - (e) the person in relation to whom the offence is alleged to have been committed is a citizen of Sri Lanka ;
 - (f) such act is committed in order to compel the Government of Sri Lanka, to do, or abstain from doing, any act ;
 - (g) such act is committed against a State or a government facility of that State situated in another country, including any diplomatic or consular premises of such State ; or
 - (h) such act is committed against any property owned, leased or used by the Government of Sri Lanka including an embassy or other diplomatic or consular premises of Sri Lanka.
7. 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 of which he was habitually resident ; and
 - (b) to be visited by a representative of that State ; and
 - (c) be informed of his rights under paragraphs (a) and (b).

8. Where a request is made to the Government of Sri Lanka, by or on behalf of the Government of a Convention State for the extradition of any person accused or convicted of an offence under section 3 or of an offence specified in Schedule II to this Act, the Minister shall on behalf of the Government of Sri Lanka, forthwith notify 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 for that offence.
9. (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 or of an offence specified in Schedule II to 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 from, a Convention state, as may be necessary for the investigation and prosecution of an offence under section 3 or of an offence specified in Schedule II of this Act 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 a Convention state may be made subject to such terms and conditions as the Minister thinks fit.
10. Where there is an extradition arrangement made by the Government of Sri Lanka with any Convention State, in force on the date on which this Act comes into operation, such arrangement shall be deemed for the purposes for the Extradition Law, No. 8 of 1977, to include provision for extradition in respect of the offences specified in Schedule II to this Act.
11. Where there is no extradition arrangement made by the Government of Sri Lanka with any Convention State, the Minister may by Order published in the *Gazette*, treat the Convention, for the purposes of the Extradition Law, No. 8 of 1977 as an extradition arrangement, made by the Government of Sri Lanka with the Convention State providing for extradition in respect of the offences specified in Schedule II to this Act.
12. The Extradition Law, No. 8 of 1977 is hereby amended by the insertion immediately before Part B of the Schedule to that Law, of the following item :—
 “(46) An offence within the scope of the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005.”.
13. Notwithstanding anything in the Extradition Law, No. 8 of 1977, an offence specified in the Schedule to that Law and in Schedule II to this Act, shall for the purposes of that law be deemed not to be an offence of a political character or an offence connected with a political offence or an offence inspired by political motives, for the purposes only of the extradition of any person accused or convicted of any such offence, as between the Government of Sri Lanka and any Convention State, or of affording assistance to a Convention State under section 9.
14. For the furtherance of international co-operation in the prevention of the offences specified in section 3, the Minister in charge of the subject of Foreign Affairs may, in consultation with the Minister to whom the subject of money laundering is assigned, make such regulations, issue such directions or take such action as is provided for by any other written law for the time being in force for the purpose of preventing and combating the commission of an offence under this Act or the offence of money laundering.
15. The Minister may from time to time issue such general or special directions as are necessary for the implementation of the principles and provisions of the Convention to such extent as they are embodied in this Act.
16. (1) The Minister may make regulations for the purpose of giving effect to the principles and provisions of this Act or any matter in respect of which regulations are required or authorized under this Act to be made.

- (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) A Notification of the date of disapproval shall be published in the *Gazette*.

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

SCHEDULE I

(Section 3)

1. The Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on December 16, 1970.
2. The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971.
3. The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973.
4. The International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979.
5. The Convention on Physical Protection of Nuclear Material, adopted at Vienna on March 3, 1980.
6. The Protocol for the Suppression of Unlawful Acts of Violence at Airports serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on February 24, 1988.
7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on March 10, 1988.
8. The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on March 10, 1988.
9. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on December 15, 1997.

SCHEDULE II

(Sections 8,9,10,11, & 13)

- (1) Unlawfully and wilfully providing or collecting funds with the intention that such funds should be used, or in the knowledge that they are to be used, or having reason to believe that they are likely to be used in full or in part, in order to commit,—
 - (a) an act which constitutes an offence within the scope of, or within the definition of any one of the treaties specified in the Schedule I to this Act ;
 - (b) any other act, intended to cause death or serious bodily injury, to a civilian or to any other person not taking an active part in the hostilities, in a situation of armed conflict,

and the purpose of such act, by its nature and context is to intimidate a population or to compel a government or an international organization, to do or to abstain from doing any act.
- (2) Attempt to commit the offence referred to in paragraph (1).
- (3) Aiding and abetting the commission of the offence referred to in paragraph (1).
- (4) Acting with a common purpose with another person or a group of persons and contributing to the commission of the offence referred to in paragraph (1).

PAYMENT AND SETTLEMENT SYSTEMS ACT, NO. 28 OF 2005

[Certified on 20th September, 2005]

AN ACT TO PROVIDE FOR THE REGULATION OF PAYMENT, CLEARING AND SETTLEMENT SYSTEMS ; FOR THE DISPOSITION OF SECURITIES ON THE BOOKS OF THE CENTRAL BANK ; FOR THE REGULATION OF PROVIDERS OF MONEY SERVICES ; FOR THE ELECTRONIC PRESENTMENT OF CHEQUES ; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH AND INCIDENTAL THERETO.

1. This Act may be cited as the Payment and Settlement Systems Act, No. 28 of 2005 and shall come into operation on such date as the Minister may by Order published in the *Gazette* appoint (hereinafter referred to as the “appointed date”).

PART I

GENERAL PROVISIONS

2. (1) The objectives of the Act shall be—
 - (a) to provide for the regulation, supervision and monitoring of payment, clearing and settlement systems ;
 - (b) to provide for the disposition of securities in securities accounts maintained at the Central Bank ;
 - (c) to provide for the regulation, supervision and monitoring of providers of money services ; and
 - (d) to facilitate the electronic presentment of cheques.
- (2) Subject to the definitions specifically provided for in the other provisions of this Act, and unless the context otherwise requires—

“clearing system” means a mechanism for the exchanging and processing of obligations to make payment or the transfer of securities among banks and other financial institutions for the purpose of settling them ;

“money services” means services relating to money including safekeeping, money transmission, cheque encashment and currency exchange ;

“payment system” means institutions and mechanisms facilitating payment in money and the transfer of monetary value by means of payment transactions . It includes mechanisms for clearing and settlement of obligations to make payment ;

“electronic presentment of cheques“ means the electronic transmission by a banker of an image and payment information of the cheque, to the banker on whom it is drawn ;

“settlement system” means a mechanism for the discharge of obligations to make payment and to transfer securities cleared by banks and other financial institutions through the adjustments to their accounts.

“books, records, accounts, documents, information” means books, records, accounts, documents or information recorded or stored in any media including paper and data stored by electronic, optical, magnetic or in any information system.
3. (1) The obligations, requirements, powers and regulatory schemes established under the provisions of this Act, shall be in addition to the obligations, requirements, powers and regulatory regimes under any other written law, and the powers conferred on the Central Bank by this Act shall be in addition to those conferred on it by the Monetary Law Act (Chapter 422), the Banking Act, No. 30 of 1988 or any other written law for the time being in force.
- (2) The provisions of the Act shall be read and construed in conformity with the Monetary Law Act (Chapter 422) and the Banking Act, No. 30 of 1988.
- (3) For the purposes of this Act, “Central Bank” means the Central Bank of Sri Lanka, established under the Monetary Law Act (Chapter 422).

- (4) Where under this Act any power, duty or function is required or authorized to be exercised, performed or discharged by the Central Bank, the Monetary Board of the Central Bank of Sri Lanka may in writing authorise any officer of the Central Bank, to exercise, perform or discharge such powers, duties or functions.

PART II

PAYMENT, CLEARING AND SETTLEMENT SYSTEMS AND MONEY SERVICES

CHAPTER I

THE NATIONAL PAYMENT SYSTEM

4. (1) The Central Bank shall be the authority responsible for the preparation of a plan for a national payment system. The Central Bank shall also be charged with the responsibility of providing guidance and leadership for the establishment and development of payment, clearing and settlement systems in Sri Lanka.
- (2) The Central Bank shall facilitate—
- (a) the interaction of its clearing and settlement systems and related arrangements with other systems or arrangements connected with the exchange, clearing or settlement, of payments or securities ;
 - (b) the development of new methods and technologies for payments in domestic or foreign currencies and the transfer of securities ; and
 - (c) the co-operation among all participants in the evolution of payment systems and the provision of payment services.
- (3) In the exercise of its powers under this Act, the Central Bank may, notwithstanding anything to the contrary in any other law—
- (a) regulate and supervise the services and facilities provided by any Bank, any other financial institution or person, with regard to the sending, processing and receiving of payment orders and instructions for the transfer of securities on its own account and for its customers in domestic or foreign currencies, and assist any bank or other financial institution in the establishment, operation and organization of such services and facilities ;
 - (b) establish, operate, organize, promote, participate or assist in the establishment, operation, organization and promotion of, and regulate and supervise—
 - (i) any system for the clearing and settlement of payments and other arrangements for the making or exchange of payments in domestic or foreign currencies ;
 - (ii) any system for the clearing and settlement of securities and other arrangements for the exchange of securities ; and
 - (iii) any system to facilitate the clearing and settlement including other arrangements for the making or exchange of payments or the exchange of securities in any currency against other payments or securities in another currency.
5. (1) The Central Bank shall have the power to formulate, adopt and monitor the implementation of a payment system policy for Sri Lanka. Such policy shall be made public.
- (2) In the exercise of its powers under subsection (1) the Central Bank shall be guided by best international standards. The payment system policy of the Central Bank shall primarily be designed to facilitate the overall stability of the financial system, promote payment system safety and efficiency and control risk. Subject to this primary objective, the policy shall be designed to enhance other aspects of the public interest and particularly contribute to the promotion of competition in the market for payment services and the protection of payment system users.
- (3) In promoting safety and efficiency of the payment system the Central Bank shall co-operate with Central Banks of other countries and with other relevant domestic or foreign authorities.

CHAPTER II
SECURITIES ACCOUNTS

6. (1) The Central Bank shall maintain securities accounts for each direct participant and for each customer of a dealer direct participant. A person may have more than one securities account. A securities account may be a designated securities account.
 - (2) A securities account holder may exercise all the rights that comprise the security credited to his or her securities account, or designated securities account, subject to any applicable adverse claim :
Provided however, a customer securities account holder may deal with his or her securities account as provided in this section only through a dealer direct participant authorized to act in that customer's securities account :
Provided further that, no remedy against the account holder will be prejudiced where the exercise of rights under this section is in breach of a contract or is otherwise in violation of the rights of any other person.
 - (3) All communications and payments relating to a securities account shall be submitted or made to or by the Central Bank exclusively by or to—
 - (a) direct participants, in respect of own securities accounts ; and
 - (b) dealer direct participants, in respect of both own accounts and on securities accounts of their customers in respect of which they are authorized to act.
Each disposition shall be recorded directly in the securities accounts of the transferee of the security and not pass through the own account of a dealer direct participant authorized to act on behalf of a customer who is the transferee or transferee.
 - (4) The provisions contained in this section shall be read consistently with the provisions of the Local Treasury Bills Ordinance (Chapter 417) and the Registered Stocks and Securities Ordinance (Chapter 420) respectively. The provisions contained in such Ordinances shall prevail in the event of an inconsistency.
7. (1) A disposition of a security is carried out by means of debit and credit posted to the transferee's and transferee's respective securities account.
 - (2) Upon a disposition, the transferee acquires rights to the extent of the interest transferred in the security that the transferee had or had the power to transfer. Where the credit for the interest acquired was posted to the transferee's securities accounts, and the transferee gave value without notice of any adverse claim, the transferee also acquires the transferee's interest in the security, free of any adverse claims. For the purposes of this subsection,—
 - (a) notice to the dealer direct participant authorized to act in the securities account of the transferee customers is not to be attributed to the customer ; and
 - (b) notice only that the transferee acts as a trustee, an agent or in a representative capacity, or that the transfer is out of a designated securities account, is not notice of breach of trust or authority and does not amount to notice of an adverse claim.
 - (3) A dealer direct participant who deals with a security under the authority of a customer, is not liable to a person who has an adverse claim to the security, unless the dealer direct participant—
 - (a) acted in collusion with any person who violated the rights of the adverse claimant ; or
 - (b) acted, after having been served with an injunction, restraining order or other creditor process issued by a Court of competent jurisdiction enjoining the dealer direct participant from so dealing, and the dealer direct participant has had an opportunity to act on the injunction, restraining order, or other creditor process as the case may be.
 - (4) In the handling of a disposition of securities and having it recorded in securities accounts, the Central Bank shall not incur any liability whatsoever to any person, including a direct participant, customer, adverse claimant or third party, unless the Central Bank acts contrary to a binding and effective injunction, restraining order or other creditor process, issued by a Court of competent jurisdiction which has been

lawfully served on the Central Bank, or unless the Central Bank acts in bad faith or in collusion with any wrongdoer.

8. (1) A security credited to a securities account may be made subject to creditor process or insolvency proceedings by or for the benefit of a creditor of the securities account holder, only to the extent of the interest of the securities account holder and subject to any adverse claim to satisfy a debt of the securities account holder.
 - (2) Without prejudice to the generality of subsection (1), a security credited to a securities account held by a customer, may not be subject to creditor process or insolvency proceedings by or for the benefit of a creditor of the dealer direct participant authorized to act in the customer's securities account, to satisfy any debt of that dealer direct participant.
 - (3) The interest of a debtor in a security may be reached only by creditor process duly served on the Central Bank. The Central Bank shall comply with any creditor process duly served on it.
9. A security held in a customers, securities account, sold to the customer by the dealer direct participant authorized to act in the securities account of the customer, is subject to a lien in favour of the dealer direct participant to secure the payment of its price.

10. (1) In this Chapter unless the context otherwise requires—

“adverse claim” means a claim to a property interest in a security credited to the securities account of a person other than that of the claimant, including the right of redemption of a debt, under a mortgage, pledge or charge, or any other transaction intended to secure the payment of a debt and a beneficial interest under a trust ;

“creditor process” means any process of execution issued by a Court of competent jurisdiction on behalf of a creditor or other claimant with respect to a security or securities account, such as a levy, attachment, garnishment, notice of lien, sequestration or similar process, including any order restraining or blocking a disposition, but shall not include any action taken by a securities account holder of a designated securities account to extinguish an adverse claim to a security credited to the designated securities account ;

“customer” means in relation to a dealer direct participant, a transferee or transferee in a disposition, who is a securities account holder, other than a direct participant ;

“dealer direct participant” and “direct participant” shall have the same meanings as are assigned to them in the Local Treasury Bills Ordinance (Chapter 417) and the Registered Stocks and Securities Ordinance (Chapter 420) ;

“designated securities account” means a securities account in which title to securities held in it is stated to be subject to adverse claims ;

“disposition” means any absolute transfer of title to a security between a transferee and transferee ;

“own securities account” means a securities account in the name of a direct participant as the securities account holder ;

“securities account” means an account maintained at the Central Bank to which securities may be credited and debited and in which dispositions of securities are recorded ;

“securities account holder” means a person in whose name the Central Bank maintains a securities account ;

“security” means any—

- (a) treasury bills issued in a scripless form in accordance with the provisions of the Local Treasury Bills Ordinance (Chapter 417) ;
- (b) treasury bonds issued in a scripless form in accordance with the provisions of the Registered Stocks and Securities Ordinance (Chapter 420) ;
- (c) securities issued in a scripless form by the Central Bank in accordance with the provisions of the Monetary Law Act (Chapter 422) ;

“transferee” means the party to a disposition to whom a security is transferred and whose securities account is credited as the result of the disposition ; and

“transferrer” means the party to a disposition who transfers a security and whose securities account is debited as a result of the disposition.

CHAPTER III

MONEY SERVICES AND PAYMENT SYSTEMS

- 11.** The Central Bank shall in terms of the provisions of this Chapter, regulate, supervise and monitor all service providers or any specified category of service providers in accordance with such regulations which the Minister may make for the purposes of this Chapter.
- 12.** (1) The Central Bank may, where it is of the opinion that any person—
 - (a) is engaged in, or is about to engage in any unsafe, unsound or unfair practice in providing any money service or in the operation of a payment system ; or
 - (b) has contravened or failed to comply with, or is likely to contravene or fail to comply with the provisions of this Act, or any rule, regulation, instruction, directive or order given under this Act or any other written law which in the opinion of the Central Bank relates to money services or payment systems or any category thereof,
 issue a directive to that person requiring such person, within such time as the Central Bank considers necessary,—
 - (i) to cease and refrain from engaging in the act, omission or course of conduct ; and
 - (ii) to perform such acts as in the opinion of the Central Bank are necessary to rectify the situation.
 (2) Every directive issued under subsection (1) shall be served on the service provider to whom it is directed and shall be in operation from the date of service thereof.
 (3) Every directive issued under this section shall be binding on the person to whom it is directed.
- 13.** (1) The Central Bank may, if it considers it in the public interest to do so, designate a payment system to be made subject to additional regulation and supervision as provided in sections 14 and 15.
 (2) The following factors shall be taken into consideration when determining whether it is in the public interest to designate a payment system—
 - (i) the level of financial safety provided by the payment system to the participant and users ;
 - (ii) the efficiency and competitiveness of payment systems in Sri Lanka ; and
 - (iii) the best interests of payment system participants and their customers or the financial system in Sri Lanka.
 (3) Prior to the designation of a payment system, the Central Bank shall consult the manager and participants of the payment system and may consult interested parties, with respect to the effects of such designation.
 (4) The Central Bank shall notify the manager and the participants of the designation of the payment system in such manner as the Central Bank considers appropriate. The designation shall be effective from the date specified in such notification. Every such notification shall be published in the *Gazette*.
- 14.** (1) The Manager of the designated payment system or if there is no Manager, the participants of the system, shall forward to the Central Bank a copy of every payment system rule governing the designated payment system, within such periods as are hereinafter set out—
 - (i) where a payment system rule was made before the designation of the payment system, within thirty days of the date of such designation ; and
 - (ii) where a payment system rule was made after the designation of the payment system, within ten days of the date of the making of such rule.

- (2) A payment system rule, other than a payment system rule referred to in paragraph (i) of subsection (1) shall not come into operation before the thirtieth day after a copy of it is sent to the Central Bank under subsection (1) :

Provided that the Central Bank may declare the payment system rule to be in force at any time before the expiry of the aforementioned periods.

- (3) Where the Central Bank is of the opinion that an extension of the period specified in subsection (2) is required to permit adequate review of a payment system rule, the Central Bank may within ten days after its receipt, after giving written notice to the sender of the payment system rule, extend that period upto thirty days.
- (4) The Central Bank may disallow the whole or a part of a payment system rule governing a designated payment system, before or anytime after it comes into force or is in force. A payment system rule when so disallowed becomes ineffective from the moment the decision to disallow it is communicated to the Manager or the participant of a designated payment system, or at any time thereafter, as instructed by the Central Bank in its decision to disallow the payment system rule.
- (5) (a) Where a payment system rule in force is disallowed in whole or in part by the Central Bank under subsection (4), giving rise to the need to amend or replace the payment system rule in order to facilitate the continued smooth operation of the designated payment system, the decision of the Central Bank to disallow it must be included in a directive, issued pursuant to section 15. The Central Bank shall notify the Manager of the designated payment system, of the required amendment or replacement to the payment system rule ;
(b) Every such directive shall provide a text for a temporary payment system rule which shall be applicable until an amendment or replacement to the payment system rule is adopted by the payment system. The temporary payment system rule becomes effective immediately upon the payment system rule which is to be amended or replaced, becoming ineffective.
- (6) The Central Bank may exempt a designated payment system from the application of the requirements of subsection (2).

- 15.** (1) The Central Bank may issue a written directive to the Manager or to a participant of a designated payment system in respect of any one or more of the following:—
(a) the conditions to be met by any person in order to have access or to become a participant of the designated payment system ;
(b) the operation of the designated payment system, including the clearing and settlement procedures to be followed ;
(c) the interaction of the designated payment system with other payment systems ; or
(d) the relationship of the designated payment system with its participants.
- (2) The Central Bank shall prior to issuing any written directive under subsection (1), consult the person to whom it is directed, and may also consult any interested persons with respect to the content and the effect of the directive.
- (3) The Central Bank may by a written directive specify that a Manager of the designated payment system or a participant in such a system shall, within such time as the Central Bank considers necessary—
(i) cease or refrain from engaging in an act or course of conduct ;
(ii) perform such acts as in the opinion of the Central Bank are necessary in the public interest ; or
(iii) make, amend or repeal a payment system rule.
- (4) As soon as is practicable after implementing a directive and completing any actions required to be taken in connection with it, the person to whom it is given shall notify the Central Bank that the directive has been implemented and the action completed.

- (5) Every directive issued under this section shall be communicated to the person to whom it is directed and shall come into operation from the date of its issue. A directive is binding on the person to whom it is directed.
- 16.** (1) The Central Bank may audit, inspect, and require the production of accounts, records, books, and documents, inspect offices of, and request information from, service providers and any person the Central Bank may determine to be a service provider or a payment system designated under this Chapter.
- (2) It shall be the duty of any person, or an employee, agent or manager of a person to whom a request is made under subsection (1) to comply with it.
- (3) The Central Bank may, where it considers it necessary require that audits and inspections under subsection (1) shall be carried out on its behalf, in whole or in part by qualified auditors who shall submit their report to the Central Bank.
- (4) In this section “qualified auditor” shall have the same meaning as in paragraph (8) of Article 154 of the Constitution.
- (5) Every participant shall be required to perform all the duties imposed under this Chapter on a Manager of a payment system.
- (6) If a Manager of a payments system fails to perform the duties imposed on it under this Chapter, the participants jointly and severally shall comply with those duties and shall be liable for contravention in the same manner and to the same extent as the Manager.
- (7) For the purposes of obtaining evidence on oath in relation to any audit or inspection in terms of this section, the Central Bank shall have the power to administer oaths or affirmations in terms of the provisions of the Oaths Ordinance (Chapter 17).
- 17.** (1) The Minister may for the purpose of giving effect to the provisions of this Chapter, make regulations with respect to any matter required by this Chapter to be prescribed or in respect of which regulations are required or authorized to be made.
- (2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations—
- (a) to provide for the conditions, requirements and standards under which money services may be provided and payment systems may be operated and designated ;
- (b) to require the registration or licensing of service providers and the procedure to be followed for such registration or licensing, to specify the conditions and requirements for such registration or licensing and provide for the circumstances under which such license or registration may be revoked by the Central Bank ;
- (c) to provide for the levy of a licence fee and the amount of such charges and fees for the registration of service providers ;
- (d) specifying the procedures required for the regulation, supervision and monitoring of service providers ;
- (e) specifying the conditions, requirements, guidelines, procedures, measures and standards provided in this Chapter, on any matter, including licensing, registration or designation, fees and charges to be levied in respect of the different categories of service providers as classified and determined by regulations ;
- (f) specifying the manner in which the conditions, requirements, guidelines, procedures, measures and standards provided in this Chapter will apply in respect of any person who carries out or is authorized to carry out any part of a money service or the operation of a payment system on behalf of a service provider ;
- (g) specifying the conditions and requirements under which persons including those providing money transmission services may participate in a payment system or maintain accounts and deposits in the Central Bank ;

- (h) specifying the prudential requirements relating to service providers including accounting and reporting requirements ;
 - (i) specifying the requirements, standards and guidelines on corporate matters of service providers including matters with regard to their form of incorporation or organization, administration, management, governance, control, capital adequacy and other capital requirements, ownership structure, quality of shareholders and administrators and business and investment powers ;
 - (j) specifying the requirements, standards and guidelines for service providers designed to facilitate their inspection by the Central Bank, including requirements, standards and guidelines regarding the collection, maintenance of record and reporting to the Bank of information on matters as specified including information about their customers or participants and in relation to transactions or any category of them, in such format and detail as may be specified ; and
 - (k) specifying the measures necessary for the protection of customers and participants or any category of them, and particularly, to specify disclosure requirements and contract terms of money service providers and their customers and of payment systems and their participants.
- (3) Every regulation made by the Minister 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 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 approval. Any such 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 any regulation made by the Minister is rescinded shall be published in the *Gazette*.

18. Unless the context otherwise requires, for the purposes of this Chapter—

“cheque encashment” means receiving compensation for taking payment instruments or stored value, in exchange for money, payment instruments, or stored value delivered to the person delivering the payment instrument or stored value ;

“currency exchange” means receipt of revenues from the exchange of money issued, established, authorized or adopted by one government, or monetary value denominated in its monetary unit, for money issued, established, authorized or adopted by another government or for monetary value denominated in its monetary unit;

“designated payment system” means a payment system designated under the provisions of this Chapter ;

“manager” includes a member of the Board of Directors of service providers and means any person that in the opinion of the Central Bank is in a position to supervise and be responsible for the management of the business and affairs of a service provider. Notice under this Chapter to be given to a Manager is to be given to the Manager as advised to the Central Bank by the service provider, unless the Central Bank specifically designates another person to be a Manager ;

“monetary value” means a medium of exchange, whether or not redeemable in money, including in the form of stored value, payment instrument or credit to account ;

“money” means a monetary unit or a medium of exchange that is issued, established, authorized, or adopted by Sri Lanka or a foreign government. The term includes a monetary unit or a medium of exchange issued, established, authorized or adopted by an inter-governmental organization or by agreement between two or more governments ;

“money services” means any services relating to money, including safekeeping, money transmission, cheque encashment, or currency exchange, and other similar services ;

“money transmission” means selling or issuing monetary value or receiving money or monetary value in connection with the transmission of money or monetary value, either from the transmitter or for a beneficiary and includes the provision of a facility for the withdrawal of money for the transfer of monetary, value between accounts or for the payment of monetary value to third parties. The term includes the taking part in any transaction or arrangement involved in carrying out the transmission from the transmitter to the

beneficiary even if neither the transmitter nor the beneficiary is a party or direct participant to such transaction or arrangement. Money transmission could be from place to place, within, to or from Sri Lanka or any other country ;

“participant” means a party to an arrangement in respect of a payment system. It may include a bank, a provider of money transmission services or any other person but does not include a user or customer of a participant who instructs or receives payment over the payment system ;

“payment card” means any card, plate, coupon book, or other device, including a code or any other means of access to an account, stored value or credit that may be used from time to time to obtain money or to make payment and includes a debit, charge, credit and stored-value card ;

“payment instrument” means cheque, draft, money order, traveller’s cheque, payment card or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer only in goods or services ;

“payment system” means a system or arrangement for the communication, processing, exchange, clearance or settlement of payment orders and other messages effecting, ordering, enabling, or facilitating the making of payments money transmission, money withdrawals, or transfers of monetary value ;

“payment system rule” means a rule, by whatever name called, other than one issued by the Central Bank, that governs a payment system, including its operation, clearing and settlement, and includes an amendment to or a repeal of a payment system rule ;

“person” means an individual, corporation, business trust estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation, or any other public, private or commercial body, unit or organization, with or without separate legal personality ;

“record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form ; and

“service provider” means any person who provides money services or operates a payment system ;

“stored value” means monetary value that is evidenced by an electronic record.

CHAPTER IV

CLEARING AND SETTLEMENT SYSTEMS

- 19. (1)** Where the Central Bank is of the opinion that a clearing and settlement system may be operated in such a manner as to pose a risk to the financial system of Sri Lanka, the Central Bank may designate the clearing and settlement system as a systemically important clearing and settlement system which is subject to the provisions of this Chapter.
 - (2)** The Central Bank shall in writing, notify a designated clearing and settlement system’s clearing house of the designation and shall cause a copy of the designation to be published in the *Gazette*. The designation shall be effective as from the date of the making of the relevant notification.
 - (3)** Designation of a clearing and settlement system as systemically important under Chapter IV of this Part of the Act may be in addition to the designation of the same system as a payment system which is subject to additional regulation, supervision and monitoring under Chapter III of this Part of this Act :
Provided however, where there is a designation made in terms of both Chapters of this Part of the Act as aforesaid, it shall be incumbent on the persons who are subject to the provisions of Chapters III and IV of this Act, to comply with the requirements under both Chapters respectively
- 20. (1)** The Central Bank may issue rules, instructions and directions and may enter into any agreement with a clearing house or a participant of a designated clearing and settlement system, or both, in respect of the following matters :—

- (a) netting arrangements;
 - (b) risk sharing and risk control mechanisms ;
 - (c) certainty of settlement and finality of payment;
 - (d) the nature of financial arrangements among participants ;
 - (e) the operational systems and financial soundness of the clearing house; and
 - (f) such other matters that in the view of the Monetary Board pertain to a risk to the financial system.
- (2) The Minister may make regulations in respect of all or any of the matters specified in paragraphs (a) to (f) of subsection (1) and in the event of a conflict between any rule, instruction, direction or agreement and any regulations made in that behalf under this Act, such regulation shall prevail.
- 21.** (1) Where the Central Bank is of the opinion that—
- (i) a clearing house for a designated clearing and settlement system engages in or is about to engage in any act, omission or course of conduct ;
 - (ii) a participant is engaging in or is about to engage in any act, omission, or course of conduct with respect to its participation in the designated clearing and settlement system; or
 - (iii) the designated clearing and settlement system operates or is about to be operated in a manner, that results in or is likely to result in a risk to the financial system being inadequately controlled, the Central Bank may issue a directive in writing to the clearing house, requiring it within such time as the Central Bank considers necessary—
 - (i) to cease or refrain from engaging in the act, omission or course of conduct or require the participants to cease or refrain from engaging in the act, omission or course of conduct ;
 - (ii) to perform such acts or have the participant perform such acts as in the opinion of the Central Bank are necessary to remedy the situation.
- (2) Where the Central Bank is of opinion in terms of subsection (1) that the risk to the financial system is being inadequately controlled, and it appears to the Central Bank that—
- (i) the clearing house fails to comply with a directive that has been issued to it in terms of subsection (1) ;
 - (ii) the designated clearing and settlement system does not have a clearing house located in Sri Lanka ; or
 - (iii) in the opinion of the Central Bank—
 - (a) the risk to the financial system is being inadequately controlled due to an act, omission, or course of conduct of a participant with respect to its participation in the designated clearing and settlement system; and
 - (b) the act, omission, or course of conduct does not comply with any agreement, rule, procedure, guideline or other documentation relating to the designated clearing and settlement system, the Central Bank may issue a directive in writing to any participant requiring it, within such time as the Central Bank considers necessary,—
 - (i) to cease or refrain from engaging in certain acts, omissions, or courses of conduct with respect to its participation in the designated clearing and settlement system; and
 - (ii) to perform such acts with respect to its participation as the Central Bank considers necessary to remedy the situation.
- (3) A directive under this section may be made in respect of any matter that is directly related to participation in the designated clearing and settlement system. A directive under this section may not be made in respect of—
- (i) the capital adequacy of a participant;
 - (ii) the management of its investments;
 - (iii) its corporate governance;

- (iv) its relations with customers who are not themselves participants in the designated clearing and settlement system; or
 - (v) its ownership structure.
- (4) A directive may require that the payment obligations that arises from clearing within the designated clearing and settlement system shall be settled through adjustments to the account or accounts of one or more of the participants at the Central Bank.
- (5) A directive, if it so provides, shall be applicable to a designated clearing and settlement system that is established by or under any written law.
- (6) A directive issued under this section shall be communicated to the person to whom it is directed and shall be published in the *Gazette*. A directive so issued shall come into operation on the date it is issued.
- (7) A directive shall be binding on the person to whom it is issued.
- 22.** (1) The Central Bank may perform all or any of the following functions in relation to a designated clearing and settlement system and its clearing house :—
 - (a) the provision of a secured or unsecured guarantee of settlement by participants;
 - (b) the making of liquidity loans to the clearing house and the central counter-party; and
 - (c) acting as the central counter-party to the participants.

(2) If the Central Bank is of the opinion that participation in a designated clearing and settlement system by a participant poses or is likely to pose, an unacceptable risk, to the financial system or an unacceptable risk to the Central Bank in guaranteeing settlement of that participant's obligations, the Central Bank may—
 - (a) suspend participation of that participant; or
 - (b) prohibit it from being a participant; or
 - (c) may require it to comply with such conditions, with respect to its participation, as the Central Bank considers necessary.

23. (1) In section 23 and 24 “insolvency proceedings” shall mean any collective measures provided for in any applicable law, either to wind-up the participant or to re organize it, whether voluntarily or involuntarily, or to suspend its business, including insolvency proceedings instituted under the Insolvency Ordinance (Chapter 81), where such measure involves the suspending of, or the imposing of limitations on, payment orders and payments.

(2) Payment orders which have been entered into a designated clearing and settlement system and their netting shall be legally enforceable and binding on third parties, notwithstanding the commencement of insolvency proceedings against a participant, provided that payment orders were entered into the system prior to the commencement of such insolvency proceedings.

(3) Where payment orders have been entered into a designated clearing and settlement system after the commencement of insolvency proceedings and are carried out on the day of the commencement of such proceedings, such payment orders shall be legally enforceable and binding on third parties only if, after the time of settlement, the central counter-party or the clearing house can furnish evidence to the satisfaction of the Court of the fact that they were not aware nor could they have been aware of the commencement of such proceedings.

(4) The specific moment of entry of a payment order into a designated clearing and settlement system shall be determined by the rules of that system.

(5) For the purposes of this section, the time of commencement of insolvency proceedings is the moment either when the judgement or order of insolvency, winding-up or suspension is pronounced or the effective resolution for the voluntary winding-up is passed.

(6) A participant against whom a judgement or order is pronounced, or who has passed an effective resolution for voluntary winding-up, as provided for in subsection (5), shall advise the Central Bank and where

applicable the central counter-party or the clearing house as the case may be, of the judgement, order or resolution on the day it is pronounced or passed.

- (7) Insolvency proceedings shall not have any retroactive effect on the rights and obligations of a participant, arising from the clearing and settlement of payment obligation on a designated clearing and settlement system prior to the time of commencement of such proceedings.

24. (1) Notwithstanding anything to the contrary in any other written law—

- (i) the settlement rules of a designated clearing and settlement system are valid and binding on the clearing house, the participants, the central counter-party and the Central Bank. Any action may validly be initiated or any payment may be made in accordance with such settlement rules;
- (ii) the obligation of a participant, a clearing house or a central counter-party to make payments to a participant, and the right of a participant, a clearing house or a central counter-party to receive payments from a participant, clearing house or central counter-party, shall be netted, and a net settlement or close-out amount shall be determined in accordance with the settlement rules of the designated clearing and settlement system, if it is so provided in the rules; and
- (iii) where the settlement rules of a designated clearing and settlement system provide that the settlement of a payment obligation through an entry to, or a payment out of, an account of a participant, a clearing house or a central counter-party at the Central Bank is final and irrevocable, the entry or payment shall not be reversed, repaid or set aside.

- (2) An entry to or a payment out of the account of a participant, a clearing house or a central counter-party at the Central Bank to settle a payment obligation in a designated clearing and settlement system shall not be the subject of any provision or order that operates as a stay of that activity.

- (3) The rights and remedies of a participant, a clearing house, a central counter-party or the Central Bank, with respect to collateral granted to it as security for a payment or the performance of an obligation incurred in a designated clearing and settlement system, may not be affected by insolvency proceedings. In particular, such rights and remedies may not be the subject of any stay provision or order affecting the ability of creditors to exercise rights and remedies with respect to the collateral.

- (4) Notwithstanding the fact that all or part of the administration or operation of a designated clearing and settlement system is conducted outside Sri Lanka or that its settlement rules are governed by the laws of a foreign jurisdiction, if a Court in Sri Lanka determines that the rights and obligations of any person arising out of or in connection with the operation of the designated clearing and settlement system are governed in whole or in part by the law of Sri Lanka, the provisions of this section shall be applicable thereto, to such extent as the law of Sri Lanka is applicable in determining those rights and obligations.

- (5) In this section “settlement rules” means the effective rules, however made, which provide the basis upon which payment obligations are calculated, netted or settled and includes rules for instituting action where a participant fails or is likely to become unable to meet its obligations to the clearing house, a central counter-party or the other participants respectively.

- 25. (1)** Every clearing house shall, with respect to its designated clearing and settlement system, provide the Central Bank with reasonable notice in advance of any significant change intended to be made by the clearing house in relation to the designated clearing and settlement system. Without limiting the generality of the foregoing the clearing house shall give notice with respect to any change affecting—

- (i) any document including its Memorandum of Association, and the relevant resolutions, agreements, rules and procedures relating to the formation, establishment, constitution, governance, administration and operation of the clearing house;
- (ii) the operation of the designated clearing and settlement system; or
- (iii) the agreements, rules, procedures, guidelines or other documentation governing the designated clearing and settlement system.

- (2) Every clearing house shall, forthwith after it makes any other change in relation to the designated clearing and settlement system, provide the Central Bank with written notice of the change, and, without limiting the generality of the foregoing, the notice shall provide information in respect of any change affecting—

- (i) the composition of the Board of Directors whether by resignation or otherwise; or
(ii) the appointed auditor of the clearing house.
- (3) Every clearing house shall, with respect to its designated clearing and settlement system, provide the Central Bank with such information, at such times and in such form, as the Central Bank may in writing require.
- 26.** (1) The Central Bank may, for the purpose of carrying out its functions under this Chapter, conduct audit and inspections of a clearing house.
- (2) The Central Bank may, where it considers it necessary, require that audits and inspections under subsection (1) shall be carried out on its behalf, in whole or in part, by qualified auditors, who shall submit their report to the Central Bank.
- (3) The Central Bank and every qualified auditor appointed to carry out audit and inspections, shall be entitled to have access to the information, books and records of the clearing house. The clearing house shall assist the Central Bank or the qualified auditor in carrying out its duties under this section.
- (4) For the purposes of this section “qualified auditor” shall have the same meaning as in Article 154 of the Constitution.
- (5) For the purpose of obtaining evidence under oath in relation to an audit or inspection under this section, the Central Bank shall have the power to administer oaths or affirmations in terms of the provisions of the Oaths Ordinance (Chapter 17).
- 27.** The Central Bank shall have the power to do all or any of the following things in relation to a clearing and settlement system and its clearing house :
- (i) be a participant, participate and act as a central counter-party, including in a loss-sharing mechanism;
(ii) act as a custodian of financial assets, or settlement agent, or both; and
(iii) accept and pay interest on deposits from clearing house, a participant or the central counter-party.
- 28.** Where a financial institution or the Central Bank is a party to a netting agreement, then notwithstanding anything in any other law relating to bankruptcy or insolvency, or any order of court made pursuant to an administration or re-organization arrangement, or receivership involving insolvency, the financial institution or the Central Bank may enforce the agreement, terminate the contract giving rise to any obligation governed by it, and determine a net termination value or net settlement amount in accordance with the provisions of the agreement, in which case, the party entitled to the net termination value or settlement amount is to be a creditor of the party owing the net termination value or net settlement amount for that value or amount as the case may be.
- 29.** (1) The Central Bank may, where it has reasonable grounds to believe that a system or arrangement exists for the clearing and settlement of payment obligations, request a person who is a party to the system or arrangement to provide the Central Bank with further information, records and documents relating to the system or arrangement as the Central Bank may require, in order to make a determination on the existence of the clearing and settlement system.
- (2) Every person who is required under subsection (1) to provide information, records and documents shall comply with such request.
- (3) Every clearing house shall, in respect of its clearing and settlement system provide the Central Bank with such information and documents as the Central Bank may from time to time require to enable the Central Bank to determine whether the clearing and settlement system poses a risk to the financial system. Without limiting the generality of the foregoing, the clearing house shall, in respect of the clearing and settlement system, provide the Central Bank with :—
- (a) the names of its participants;
(b) copies of all documents relating to the formation, establishment, constitution, governance and operation of the clearing house, including Memorandum of Association, by-laws, and relevant resolutions, agreements, rules and procedures;

- (c) the names of directors, committee members and auditors of the clearing house;
 - (d) copies of its reports, statements, or other documents that are required to be filed with any government agency or regulatory body; and
 - (e) copies of its financial statements.
- (4) No participant is required to provide information to the Central Bank under this Chapter concerning another participant of a clearing and settlement system if that information has not been made available to all the participants.
- 30.** (1) Where a clearing house fails to comply with the obligations imposed on it under this Chapter with respect to its clearing and settlement system or otherwise contravenes the provisions of this Chapter, the participants shall jointly and severally comply with those obligations and they shall be liable for the contravention of those obligations in the same manner and to the same extent, as the clearing house.
- (2) Where a clearing and settlement system does not have a clearing house located in Sri Lanka, the participants located in Sri Lanka—
- (i) shall comply with the obligations imposed under this Chapter on a clearing house with respect to a clearing and settlement system; and
 - (ii) shall have all the rights conferred by this Chapter on a clearing house with respect to a clearing and settlement system,

in the same manner and to the same extent as if the participants located in Sri Lanka were the clearing house on which those obligations and rights are imposed or conferred respectively. Any action taken by the Central Bank in respect of the clearing house may only be taken in respect of the participants located in Sri Lanka.

For the purposes of this subsection, a participant incorporated or formed under a law applicable in Sri Lanka is said to be located in Sri Lanka.

31. A foreign bank that is or wishes to be a participant in a designated clearing and settlement system shall from time to time, provide the Central Bank with any information regarding the application of foreign laws to the foreign bank as the Central Bank considers necessary.

32. In this Chapter, unless the context otherwise requires—

“central counter-party” means a corporation, association, partnership, agency or other service provider or person involved in a clearing and settlement system with whom all payment rights and obligations of the participants are netted to produce a single amount owing as between each participant and the central counter-party;

“clearing and settlement system” means a system or arrangement for the clearing or settlement of payment obligations in the financial system, in any currency, and in which there is a minimum of three participants, at least one of whom is a financial institution; and includes a system or arrangement for the clearing or settlement in the official currency of Sri Lanka, or for securities transactions, foreign exchange transactions or other transactions or financial contracts where the system or arrangement also clears or settles payment obligations arising from those transactions and contracts;

“clearing house” means a corporation, association, partnership, agency or organization or other entity or person that provides clearing or settlement services for a clearing and settlement system, but does not include the Central Bank;

“designated clearing and settlement system” means a clearing and settlement system designated under this Chapter;

“financial institution” means—

- (i) a licensed commercial bank within the meaning of the Banking Act, No. 30 of 1988 ;
- (ii) such other person, entity or person, or entity within a class of persons, or service providers engaged primarily in the business of providing financial services and which are designated by the Central Bank to be a financial institution for the purposes of this Chapter ;

“financial system” means the financial system of Sri Lanka ;

“net termination value” means the net amount obtained after setting off or otherwise netting the obligations between the parties to a netting agreement in accordance with the provisions of such agreement ;

“netting agreement” means an agreement between two or more financial institutions or between the Central Bank and one or more financial institutions that provides for the netting or set off of present or future obligations to make payments against the present or future rights to receive payments ;

“participant” means a member of a clearing house or a party to an arrangement that establishes a clearing and settlement system ;

“risk to the financial system of Sri Lanka” means the risk that the inability of a participant to meet its obligations in a clearing and settlement system as they become due, or a disruption to a clearing and settlement system, that could through the transmittal of financial problems into the system, cause—

- (i) other participants in the clearing and settlement system to be unable to meet their obligations as they become due ;
- (ii) financial institutions in other parts of the financial system of Sri Lanka to be unable to meet their obligations as they become due, or
- (iii) the clearing and settlement system’s clearing house or the clearing house of another clearing and settlement system within the financial system of Sri Lanka to be unable to meet its obligations as they become due.

PART III

ELECTRONIC CHEQUE PRESENTMENT

33. (1) A banker may instead of presenting the cheque itself for payment, present a cheque by electronic means for payment to the banker on whom it is drawn, by transmitting an image thereof along with the stipulated electronic payment information of the cheque.
- (2) In making the electronic presentment of a cheque under subsection (1) a banker may act in whole or in part through a third party service provider, including another banker or the clearing house, and such service provider is deemed to be an agent for the banker.
- (3) Notwithstanding anything contained in subsection (1), and subject to the provisions of subsection (5), the banker on whom a cheque is drawn and to whom electronic presentment was made, may request the presenting banker to present the cheque itself for payment thereof.
- (4) Where either an electronic presentment under subsection (1) was precluded or wholly failed, or a valid request under subsection (3) is made, the presentment under subsection (1) shall be disregarded, and the provisions of this section shall not apply to the subsequent presentment of the cheque itself. For the subsequent presentment of the cheque to be considered as having been timely made, the presenting banker is deemed to have received the cheque in order to present it for payment at the time he either received the request under subsection (3), or should have known that the electronic presentment was precluded or had wholly failed, as the case may be.
- (5) A request under subsection (3) can be validly made, only—
 - (a) before payment is made ; and
 - (b) where the electronic presentment has failed or did not enable the banker on whom the cheque is drawn to conclude with adequate certainty that in honouring the cheque he is complying with the instructions of his customer who is stated as being the drawer of the cheque ; and
 - (c) where the banker on whom the cheque is drawn has reasonable grounds to believe that there is a greater likelihood that he could arrive at such conclusion on the basis of the presentment of the cheque itself, and such request shall be accompanied by an explanation as to the grounds thereto and shall reach the presenting banker before the close of business on the day following the day the electronic presentment of the cheque is made, in accordance with the provisions of subsection (1).

- (6) A valid request under subsection (3) for the presentment of the cheque itself shall not be deemed to be a dishonouring of the cheque by non-payment.
 - (7) For the avoidance of doubt it is stated that, any payment made upon presentment in accordance with subsection (1) by the transmission of an image and electronic payment information of the cheque, shall not be considered to have been made outside the ordinary course of business, in bad faith or negligently.
 - (8) For the purposes of this section—
 - (a) the image of a cheque shall comprise the front view and the back view of the cheque ; and
 - (b) the electronic payment information of a cheque shall comprise—
 - (i) the serial number of the cheque ;
 - (ii) the code which identifies the banker on whom the cheque is drawn ;
 - (iii) the account number of the drawer of the cheque ;
 - (iv) the amount for which the cheque is drawn, as entered by the drawer of the cheque ; and
 - (v) any other matter as may from time to time be prescribed by regulation.
- 34.** (1) Where a cheque presented for payment in accordance with subsection (1) of section 33 is dishonoured by non-payment, the banker to whom the holder delivered the cheque for collection shall either return the cheque to the holder or shall issue to the holder an image return document conforming to all requirements set out by the Central bank.
- (2) An image return document shall be deemed to be the cheque to which it relates.
- 35.** (1) A banker who makes an electronic presentment in terms of subsection (1) of section 33, warrants that the image is a true, complete and accurate image of the original cheque and that the stipulated electronic payment information is the same as is on the cheque. He shall also indemnify the drawer against any loss incurred due to the presentment being made by electronic means instead of by presentment of the cheque itself.
- (2) A banker who issues an image return document in terms of subsection (1) of section 34 warrants that it is a true copy of the cheque to which it relates and shall also indemnify the drawer against any loss in the event of the cheque itself being paid or sued on.
- (3) The warranties and indemnities guaranteed under this section are in favour of the banker on whom the cheque is drawn, its customer who is stated to be the drawer of the cheque, the holder who delivered the cheque to the presentment bank for collection and any prior indorser.
- (4) Notwithstanding the provisions of subsection (3), the person stated to be the drawer of the cheque, may recover on the breach of warranty or indemnity and claim under this section directly from the banker on whom the cheque is drawn, who may then be subrogated to the claim of that person against the banker making the warranty, or be liable on the indemnity obligation.
- 36.** (1) The provisions of subsection (4) of section 52 of the Bills of Exchange Ordinance (Chapter 82) shall not apply—
 - (a) to the presentment of a cheque for payment under subsection (1) of section 33;
 - (b) to a cheque which is paid following presentment under subsection (1) of section 33.
- (2) Where a cheque is presented for payment by a banker under subsection (1) of section 33, the provisions of section 45 of the Bills of Exchange Ordinance (Chapter 82) shall not be construed as being applicable and requiring the presentment to be made at the proper place or at a reasonable hour on a business day.
- (3) The provisions of this Part of this Act shall, in so far as it is possible be read and construed as one with the Bills of Exchange Ordinance (Chapter 82).
- 37.** (1) Agreements between bankers, including those in the form of clearing house rules or similar arrangements, may govern the implementation of all matters set out in this Part and shall be binding between the parties thereto :

Provided that any rules, directions or instructions issued by the Central Bank for such purposes under this Act, shall supersede any such agreement or arrangements as the case may be.

- (2) Rules, directions and instructions relating to the implementation of this Part are deemed to bind and benefit parties liable on and entitled to enforce a cheque governed by them.

PART IV

MISCELLANEOUS PROVISIONS

- 38.** Where any person fails to comply with any provision of this Act or any regulation made thereunder or a directive, direction, instruction, or rule issued by the Central Bank in connection with any matter as relates to the foregoing provisions, or a lawful request for information, records or documents directed under this Act, the Central Bank may make an application to a Court of competent jurisdiction for an order directing compliance with the provisions of this Act, regulation, rule, instruction, directive or request, as the case may be.
- 39.** (1) Every person who contravenes or fails to comply with any provision of this Act or any regulations made thereunder, or directive, direction, instruction or rule issued by the Central Bank in connection with any matter under those provisions, or a lawful request for information, records or documents, directed under this Act, shall be guilty of an offence, and—
 - (i) in the case of a natural person, be liable on conviction after summary trial to a fine not exceeding one million rupees or to imprisonment of either description for a term not less than one year and not more than three years, or to both such fine and imprisonment; or
 - (ii) in the case of any other entity, be liable on conviction after summary trial to a fine not exceeding seven hundred and fifty thousand rupees.
- (2) Where a corporation or any other legal entity other than an individual, or an unincorporated body or organization contravenes any provisions of this Act or any regulation made thereunder or any directives, directions, instructions or rules issued by the Central Bank, then, every director and member shall be liable for the contravention in the same manner and to the same extent as the corporation, legal entity or the unincorporated body or organization as the case may be.
- 40.** (1) Any information or documents obtained under this Act by the Central Bank shall be treated as confidential.
- (2) Nothing in subsection (1) precludes the Central Bank from disclosing any information or documents to any government agency or regulatory body charged with the regulation of financial institutions, provided that the Central Bank is satisfied that the information or documents shall be treated as confidential by the agency, body or person to whom they are disclosed.
- (3) Nothing contained in the provisions of subsection (1) shall preclude the Central Bank from disclosing any information if required to do so by a Court of law.
- 41.** No action shall lie against the Monetary Board of the Central Bank, or its members, any officer, employee, director of the Central Bank, or any person acting under the direction of the Central Bank, for anything lawfully done or omitted to be done in good faith in the exercise or performance of any powers, duties or functions under this Act, which are intended or authorized to be exercised or performed.
- 42.** Subject to the provisions of the Constitution, in the event of an application for judicial review being made of any designation under this Act or of any directive issued thereunder, no stay of the designation or directive shall be granted, pending the final disposition of the application.
- 43.** (1) The Minister may, for the purpose of giving effect to the principles and provisions of this Act, make regulations with respect to any matter required by this Act to be prescribed or in respect of which regulations are required or authorized to be made by the Act.
- (2) In particular and without prejudice to the generality of the powers conferred on the Minister by subsection (1), the Minister may, make regulations in respect of all or any of the following matters :—
 - (a) the protection of customers and the integrity and development of payment systems in Sri Lanka ;

- (b) the imposition of restrictions, limitations or prohibition on the use of payment orders from designated categories of accounts and persons and the specification of the conditions governing such use ;
 - (c) the imposition of restrictions on the liability of individuals by specifying restrictions and pre-conditions for such liability, in connection with payment transactions to or from accounts that are used primarily for personal or household and non-business purposes ;
 - (d) the determination of standards by which the performance of duties under the Act may be measured ;
 - (e) the determination and modification of the time periods or deadlines for any action or omission specified by this Act, for all or specified categories of parties, participants, securities transfers or payment transactions ;
 - (f) the specification of the procedures and provision of time limits, and the rights and remedies in case of computer breakdowns or other emergency affecting the financial system in whole or in part ; and
 - (g) the determination of the fees to be imposed and charges to be levied in order to recover the full operating costs of the administration of this Act.
- (3) Every regulation made by the Minister 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 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 approval. Any such 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 any regulation made by the Minister is rescinded shall be published in the *Gazette*.
- 44.** The Central Bank shall issue general directions, instructions and guidelines, for the proper and efficient implementation, administration and enforcement of the provisions of this Act, and in particular in respect of the following :—
- (a) the execution of its payment policy, control of payment system risk, and the achievement of settlement certainty ;
 - (b) the format of instructions for the disposition of securities governed by this Act ;
 - (c) the standards for the communication of instructions for the disposition of securities governed by this Act ;
 - (d) statistical information required for the proper and efficient conduct of monetary policy to be provided to the Central Bank by the banks and other financial institutions ;
 - (e) monitoring of all payment, clearing and settlement systems operated by the Central Bank or through accounts maintained on the books of the Central Bank ;
 - (f) the regulation, licensing and supervision of money service providers, payment systems and designated systems ;
 - (g) electronic presentment of cheques and all related matters, including the requirements for valid presentment, collection, retention of cheques, the dishonour of cheque so presented and responsibilities of bankers ; and
 - (h) any other matter specified in this Act.
- 45.** (1) Every regulation made by the Minister, and every rule, instruction, directive, direction and guideline as the case may be, issued under this Act shall be binding on all parties involved in the handling of a payment order or the disposition of a security, and shall supersede any inconsistent agreement, including inter-bank clearing rules and other agreements, to the extent of the inconsistency.
- (2) In the implementation of the provisions of this Act the Minister and the Central Bank shall in so far as it is possible, follow international standards.
- 46.** Notwithstanding anything contained in any other law, relating to payment and settlement system the provisions of this Act shall prevail in case of inconsistency between the provisions of this Act and any other written law, other than as specifically provided for in this Act.
- 47.** In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

APPROPRIATION ACT, NO. 39 OF 2005

[Certified on 30th December, 2005]

AN ACT TO PROVIDE FOR THE SERVICE OF THE FINANCIAL YEAR 2006, TO AUTHORISE THE RAISING OF LOANS IN OR OUTSIDE SRI LANKA, FOR THE PURPOSE OF SUCH SERVICE ; TO MAKE FINANCIAL PROVISION IN RESPECT OF CERTAIN ACTIVITIES OF THE GOVERNMENT DURING THAT FINANCIAL YEAR ; TO ENABLE THE PAYMENT, BY WAY OF ADVANCES OUT OF THE CONSOLIDATED FUND OR ANY OTHER FUND OR MONEYS OF, OR AT THE DISPOSAL OF, THE GOVERNMENT, OF MONEYS REQUIRED DURING THAT FINANCIAL YEAR FOR EXPENDITURE ON SUCH ACTIVITIES ; TO PROVIDE FOR THE REFUND OF SUCH MONEYS TO THE CONSOLIDATED FUND ; AND TO MAKE PROVISION FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

1. This Act may be cited as the Appropriation Act, No. 39 of 2005.
2. (1) Without prejudice to any other law authorising any expenditure, the expenditure of the Government which it is estimated will be rupees six hundred and nine thousand two hundred and sixty six million eighty three thousand for the service of the period beginning on January 1, 2006 and ending on December 31, 2006, in this Act referred to as the "financial year 2006", shall be met—
 - (a) from payments which are hereby authorised to be made out of the Consolidated Fund or any other fund or moneys of, or at the disposal of, the Government ; and
 - (b) from the proceeds of loans which are hereby authorised to be raised, whether in or outside Sri Lanka, for and on behalf of the Government, so however, that the aggregate of such proceeds does not exceed rupees five hundred and forty eight thousand four hundred and seventy five million.
- (2) The sum of rupees six hundred and nine thousand two hundred and sixty six million eighty three thousand referred to in subsection (1) may be expended as specified in the First Schedule to this Act.
- (3) The provisions of subsection (1) shall have effect, without prejudice to the provisions of any other written law authorising the raising of loans for and on behalf of the Government.
3. (1) The receipts of the Government during the financial year, 2006, from each activity specified in Column I of the Second Schedule to this Act, shall be credited to the account of such activity, but the aggregate of receipts so credited shall be not less than the minimum limit specified in the corresponding entry in Column III of that Schedule. The net surplus, if any, of such activity, shall be paid to the Consolidated Fund before the expiry of six months after the close of the financial year 2006.
 - (2) For the purpose of determining the net surplus under subsection (1), the following charges shall be set off against the revenue of each activity :—
 - (a) the working, establishment and other expenses of the activity whether paid or accrued, properly chargeable to the revenue of the activity ; and
 - (b) provision to cover the depreciation of the movable and immovable property of the activity.
 - (3) The expenditure incurred by the Government, during the financial year 2006, on each activity specified in Column I of the Second Schedule to this Act, shall be paid out of the receipts of the Government from such activity during that financial year, but such expenditure shall not exceed the maximum limit specified in the corresponding entry in Column II of that Schedule.
 - (4) The debit balance outstanding at the end of the financial year, 2006, of any activity specified in Column I of the Second Schedule to this Act, shall not exceed the maximum limit specified in the corresponding entry in Column IV of that Schedule and the total liabilities of that activity at the end of that financial year shall not exceed the maximum limit specified in the corresponding entry in Column V of that Schedule.
4. Whenever, at any time during the financial year, 2006, the receipts of the Government from any activity specified in Column I of the Second Schedule to this Act, are insufficient to meet the expenditure incurred by the Government on such activity, the Minister may from time to time, by Order direct that such sums as he may deem

necessary to meet such expenditure shall be payable by way of advances, out of the Consolidated Fund or any other fund or moneys of, or at the disposal of, the Government, so however, that the aggregate of the sums so advanced shall not exceed the maximum limit of expenditure specified in the corresponding entry in Column II of that Schedule. Any sum so advanced in respect of such activity shall be refunded to the Consolidated Fund in such manner as the Minister may by Order direct.

5. (1) Any moneys which, by virtue of the provisions of the First Schedule to this Act, have been allocated to Recurrent Expenditure under any Programme appearing under any Head specified in that Schedule, but have not been expended or are not likely to be expended, may be transferred to the allocation of Capital Expenditure within that Programme, or to the allocation of Recurrent Expenditure or Capital Expenditure under any other Programme within that Head, by order of the Secretary to the Treasury or any other officer authorised by him.
- (2) No moneys allocated to Capital Expenditure under any Programme appearing under any Head specified in the First Schedule to this Act, shall be transferred out of that Programme or to any allocation of Recurrent Expenditure of that Programme.
6. Any money allocated to Recurrent Expenditure or Capital Expenditure under the "Public Resources Management" Programme appearing under the Head "Department of National Budget" specified in the First Schedule, may be transferred to any other Programme under any other Head in the Schedule by order of the Secretary to the Treasury or any other officer authorized by him. The money so transferred shall be deemed to have been covered by a supplementary estimate submitted by the appropriate Minister.
7. Where the Minister is satisfied—
 - (a) that receipts from taxes and other sources will be less than the amounts anticipated to finance authorised expenditure ; or
 - (b) that amounts originally appropriated for a particular purpose or purposes are no longer required,
 he may, with the approval of the Government, withdraw in whole or in part, any amounts previously released for expenditure under the authority of a warrant issued by him from the Consolidated Fund or from any other fund or moneys of, or at the disposal of, the Government, to meet any authorized expenditure.
8. (1) The Minister with the approval of the Government may, on or before May 31, 2007, by Order, vary or alter—
 - (a) any of the maximum limits specified in Column II, Column IV and Column V ;
 - (b) the minimum limits specified in Column III,
 of the Second Schedule to this Act.
- (2) No Order made under subsection (1) shall have effect unless it has been approved by Parliament, by resolution.
- (3) Any Order made under subsection (1) shall, if so expressed therein, be deemed to have had effect from such date prior to the date of making such Order as may be specified therein.
9. Parliament may by resolution, amend the Second Schedule to this Act, by adding to the appropriate Columns of that Schedule any activity, and providing for—
 - (a) all or any of the maximum limits relating to such activity ;
 - (b) the minimum limit relating to such activity.
10. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.