

PART IV

PART IV

MAJOR LEGISLATIVE ENACTMENTS OF 2000

RELATING TO THE FUNCTIONS AND OPERATIONS OF THE CENTRAL BANK AND BANKING INSTITUTIONS IN SRI LANKA

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SRI LANKA INSTITUTE OF CREDIT MANAGEMENT (INCORPORATION) ACT, NO. 7 OF 2000

[Certified on 27th March, 2000]

AN ACT TO INCORPORATE THE SRI LANKA INSTITUTE OF CREDIT MANAGEMENT

WHEREAS an Institute called and known as the "The Sri Lanka Institute of Credit management" has heretofore been established in Sri Lanka in the Year One Thousand Nine Hundred and Eighty Eight for the purpose of effectually carrying out its objects and transacting all matters connected with the said Institute according to the rules agreed to by its members :

AND WHEREAS the said Institute has herefor successfully carried out and transacted the several objects and matters for which it was established and has applied to be incorporated and it is for the public advantage to grant such application :

- 1.** This Act may be cited as the Sri Lanka Institute of Credit Management (Incorporation) Act, No. 7 of 2000.
- 2.** From and after the date of commencement of this Act, all persons who are now Fellows and Associates of the Sri Lanka Institute of Credit management (hereinafter referred to as the "Institute") and such other persons as shall hereafter be admitted as members of the Corporation shall be and become a body corporate with perpetual succession under the name and style of "The Sri Lanka Institute of Credit Management" (hereinafter referred to as "the Corporation") and by that name may sue and be sued in all courts with full power and authority to have, and to use, a common seal and alter the same at its discretion.
- 3.** The General objects for which the Corporation is constituted are hereby declared to be :—
 - (a) to promote and advance the study and practice of Credit Management ;
 - (b) to organize, supervise, and control the admission to membership of the Corporation and to undertake and regulate the professional education and training of persons desiring to qualify in Credit Management, to prescribe and approve courses for study for qualify in Credit Management, to prescribe and approve courses for study for qualifying examinations for membership of the Corporation to conduct or provide for the conducting of such courses and examinations and to collaborate with recognized educational institutions for the furtherance of education in the field of Credit Management ;
 - (c) to seek recognition from and affiliate with appropriate Institutions ;
 - (d) to create and offer awards and prizes for achievements in the field of Credit Management ;
 - (e) to prescribe the qualifications and disqualifications for membership of the Corporation, and the standards of professional conduct for members of the Corporation and to secure adherence thereto ;
 - (f) to protect and promote the interests, status, welfare, rights and privileges of the professions and interests of the Public in relation to the profession of Credit Management ;
 - (g) to organize and conduct conferences, seminars, forums, workshops and meetings ; and
 - (h) to do all such other acts and things as are necessary for and incidental or conducive to the attainment of the above objects.
- 4.** Subjects to the provisions of this Act and any other written law, the Corporation shall have the power to—
 - (a) acquire, hold, take or give on lease or hire, mortgage, pledge, sell, exchange, or otherwise alienate, encumber or dispose of, any immovable property for the purpose of the Corporation ;
 - (b) enter into and perform or carry out, whether directly or through any officer or agent authorized in that behalf by the Corporation, all such contracts or agreements as may be necessary for the attainment of the objects or the exercise of the powers of the Corporation ;
 - (c) accept gifts, donations and requests in cash or in kind ;

- (d) invest its funds, create and administer Trusts*and to maintain current, deposit and savings accounts in any Bank ;
 - (e) publish or cause to be published books, journals, magazines and other literature and establish and maintain libraries, bookshops and printing presses ;
 - (f) advance or lend and to borrow money for the purposes of the Corporation in such manner and upon such security as the Corporation may think fit ;
 - (g) levy fees, subscriptions and contributions in respect of membership, admission to membership and admission to courses and examinations conducted by or on behalf of the Corporation ;
 - (h) prescribe the terms and conditions of, and to supervise, control and regulate the engagement, training, transfer and dismissal of persons desiring to qualify as Credit Managers ;
 - (i) appoint, employ, transfer, exercise disciplinary control over and dismiss, officers and servants required for the carrying out of the objects of the Corporation and to prescribe their terms and conditions of services ;
 - (j) establish and maintain hostels ; and
 - (k) generally do all such acts and things as are necessary for and incidental or conducive to the carrying out of the objects of the Corporation.
5. (1) A affairs of the Corporation shall, subject to the rules in force for the time being of the Corporation administered by a Council (hereinafter referred to as "the Council") consisting of a President, Vice-President honorary Assistant Treasurer and Nine other members elected or appointed on accordance with the rules of the Corporation.
 - (2) The Council shall have the power to do all such things on behalf of the Corporation as the Corporation is herein empowered to do and may delegate its functions to any such officer as it may from time to time determine.
 - (3) The first Council of the Corporation, shall consist of the persons who were, on the date of commencement of this Act, the members of the Council of Management of the Institute.
 6. (1) It shall be lawful for the Corporation from time to time at an Annual General Meeting or at any special General Meeting of the Corporation convened for that purpose with two weeks notice and by a majority of not less than two thirds of the members present and voting, to make rules, not inconsistent with the provisions of this Act or any other written law for the admission, withdrawal, and expulsion of members of the Corporation, the powers conduct and duties of the office bearers, the procedure to be observed in the transaction of business at the meeting of the Corporation, the conduct, duties and functions of the officers and employees of the Corporation and, otherwise generally for the management of the affairs of the Corporation and the accomplishment of its objects. Such rules when made may, at a like meeting and in like manner be altered, added to, amended or rescinded.
 - (2) The rules of the Institute in force on the day preceding the date of commencement of this Act, shall be deemed to be the rules of the Corporation made under this section, insofar as they are not inconsistent with the provisions of this Act or any other written law.
 7. (1) The members of the Corporation shall consist of Fellows and Associates.
 - (2) The Council may, however, admit as non-members, of such classes and with such privileges and obligations as it may prescribe, persons not eligible for Corporate membership.
 - (3) All persons who were members of the Institute prior to the date of commencement of this Act shall be and shall be deemed for all purposes to be members of the same class or category, as the case may be, of the Corporation, and shall continue to be subject to the provisions of this Act and the rules made hereunder.
 8. The Council may appoint such other Officers and Servants and assign their designations as it may deem necessary.

9. The Council shall cause to be kept proper books of account with respect to all sums of money received and expended by the Corporation and such accounts shall be audited by a qualified auditor or auditors.
10. (1) Every member shall be entitled to take and use the title 'Associate of the Institute of Credit Management' and 'Fellow of the Institute of Credit Management' as the case may be, and use after his name the Initials "AICM" or "FICM", as the case may be.
- (2) Save as aforesaid no person shall take or use such title or such initials for any purpose whatsoever.
11. The Seal of the Corporation shall not be affixed to any instrument except in the presence of the Chairman and either the Secretary or the Treasurer who shall sign their names to the instrument in token of their presence and such signing shall be independent of the signing of any person as a witness.
12. All debts and liabilities of the Institute existing on the day preceding the date of commencement of this Act shall be paid by the Corporation hereby constituted and all debts due to and subscriptions and contributions payable to the Institute on that day shall be paid to the Corporation for the purposes of this Act.
13. (a) The financial year of the Corporation shall be the calendar year.
- (b) The Corporation shall cause proper accounts to be kept of its income and expenditure, assets and liabilities and all other transactions of the Corporation.
- (c) The accounts of the Corporation shall be audited by a qualified auditor.
- In this section, "qualified auditor" means —
- (i) an individual who being a member of the Institute of Chartered Accountants of Sri Lanka, or of any other Institute established by law, possesses a certificate to practise as an Accountant issued by the Council of such Institute; or
- (ii) a firm of Accountants each of the resident partners of which, being a member of the Institute of Chartered Accountants of Sri Lanka or of any other Institute established by law, possesses a certificate to practise as an Accountant issued by the Council of such Institute.
14. Nothing in this Act, contained shall prejudice or affect the rights of the Republic or of anybody politic or corporate or of any other person, except such as are mentioned in this Act, and those claiming by, from or under them.
15. No person shall be liable in any suit or other legal proceeding for any act done, or purporting to be done, in good faith in pursuance of the powers conferred by or under this Act, or for the purpose of carrying out the provisions of this Act.
16. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

STAMP DUTY (AMENDMENT) ACT, NO. 27 OF 2000

[Certified on 19th July, 2000]

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

1. This Act may be cited as the Stamp Duty (Amendment) Act, No. 27 of 2000.
2. Section 5 of the Stamp Duty Act, No. 43 of 1982 (hereinafter referred to as "the principal enactment") as last amended by Act, No. 25 of 1999 is hereby amended by the addition, at the end of that section, of the following paragraphs :—
 - "(28) a forward contract between a buyer and a seller, for the sale of agricultural produce ;
 - (29) a bill of exchange or inland bill of exchange drawn in connection with a contract referred to in paragraph (28)."
3. Section 13 of the principal enactment as last amended by Act, No. 29 of 1993 is hereby amended as follows :—
 - (1) by the repeal of subsection (2) of that section, and the substitution of the following subsection therefor :—

"(2) Notwithstanding the preceding provisions of this section—

 - (i) any person making payments to one hundred employees or more in respect of their employment shall collect stamp duty payable on the receipts for such payment ;
 - (ii) every bank, approved credit agency, institution, company or licensed stock broker shall collect the stamp duty payable in respect of every bill of exchange (other than a cheque), promissory note, trust receipt, letter of trust or declaration of trust taken by it, every pledge in respect of corporeal movables made to it, every application made to it for a letter of credit (other than an application in respect of which a letter of credit is opened on or after April 1, 2000, solely for the purpose of import of goods into Sri Lanka from another country including imports on entrepot terms) every certificate of deposit issued by it, any one of the documents of payment presented to it in respect of any corporeal movable (being any corporeal movable in respect of which a letter of credit has not been opened with it), share certificate issued by it, and the instrument effecting a transfer of shares in a quoted public company effected by him or it ; and
 - (iii) The Director-General of Customs shall collect stamp duty on every invoice presented to him for the purpose of import of goods into Sri Lanka including imports made on entrepot terms, and shall, in every such case, unless otherwise directed, remit to the Commissioner-General quarterly, within fifteen days of the end of each quarter ending on March 31, June 30, September 30 and December 31 of every year, the sums payable as stamp duty during each preceding quarter, together with a certified statement of collection." ; and
 - (2) by the repeal of subsection (4) of that section, and the substitution, of the following subsection therefor :—

"(4) Where the payment of the stamp duty with which every bill of exchange (other than a cheque) promissory note, trust receipt, letter of trust, declaration of trust, pledge in respect of corporeal movables, application made for a letter of credit, an invoice presented to the Director-General of Customs for the purpose of import of goods, certificate of deposit, any one of the documents of payment presented to it in respect of any corporeal movable (being any corporeal movable in respect of which a letter of credit has not been opened with it), share certificate or instrument effecting a transfer of shares in a quoted public company has been compounded or collected and remitted, as the case may be, in accordance with this section, the bank, the approved credit agency, institution, company, licensed stock broker or the Director-General of Customs, as the case may be, shall certify on such bill of exchange (other than a cheque), promissory note, trust receipt, letter of trust, declaration of trust, pledge in respect of corporeal movable, application made for a letter of credit,

invoice for the import of goods, certificate of deposit, document of payment, share certificate or instrument effecting transfer of shares in a quoted public company, as the case may be, that the stamp duty payable on it has been compounded or collected and remitted, as the case may be. Such certificate shall be substantially in the following form :—

“It is hereby certified that the stamp duty payable in respect of this instrument, namely, Rs. has been compounded in terms of Section 13 of the Stamp Duty Act.”.

4. The provisions of this Act shall be deemed to have come into force on April 1, 2000, and accordingly, where the stamp duty payable on an invoice for the import of goods has been compounded by the Director-General of Customs, in accordance with the provisions of Section 13 of the principal enactment as amended by Section 3 of this Act, at any time during the period commencing on April 1, 2000 and ending on the date on which this Act is certified as an Act of Parliament, such compounding shall be deemed to have been, and to be, validly made.
5. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

CIVIL PROCEDURE CODE (AMENDMENT) ACT, NO. 34 OF 2000

[Certified on 21st July, 2000]

AN ACT TO AMEND THE CIVIL PROCEDURE CODE

1. This Act may be cited as the Civil Procedure Code (Amendment) Act, No. 34 of 2000.
2. Section 544 of the Civil Procedure Code is amended in subsection (1) of that section as follows :—
 - (1) by the repeal of paragraph (a) of that subsection, and the substitution of the following paragraph therefor :—

“(a) money in any account, other than a current account, in any licensed Commercial Bank or licensed Specialized Bank, within the meaning of the Banking Act, No. 30 of 1988 ; ” ; and
 - (2) by the repeal of paragraph (e) of that subsection, and the substitution of the following paragraph therefor :—

“(e) any other movable property in any vault, in any licensed Commercial Bank or licensed Specialized Bank, within the meaning of the Banking Act, No. 30 of 1988 ; ” .
3. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

FINANCE (AMENDMENT) ACT, NO. 36 OF 2000

[Certified on 27th July, 2000]

AN ACT TO AMEND THE FINANCE ACT, NO. 11 OF 1963

1. This Act may be cited as the Finance (Amendment) Act, No. 36 of 2000.
2. Section 71 of the Finance Act, No. 11 of 1963 (hereinafter referred to as the "principal enactment") is hereby amended as follows :—
 - (1) in subsection (2) of that section, by repeal of paragraph (c) of that subsection and the substitution of the following paragraph therefor :—

“ (c) unless the Bank is satisfied —

 - (i) in the case of an application made by the original owner, that the annual average statutory income of the original owner and the other members of the family of which he is the head ; or
 - (ii) in the case of an application made by the spouse or any descendant of the original owner, that the annual average statutory income of such spouse and the other descendants of the original owner,

computed under the provisions of the written law relating to the imposition of income tax for the three years immediately preceding the date on which the application was made by such original owner, spouse or descendant, as the case may be, does not exceed one hundred thousand rupees ” ;
 - (2) by the insertion, immediately after subsection (3) of that section, of the following subsection :—

“ (3A) for the purposes of making a determination under subsection (3), the Bank shall cause an inquiry to be held into the application by an inquiring officer appointed by the Bank. The inquiring officer appointed by the Bank shall give the owner of the premises to which the application relates and the person making the application, an opportunity of being heard either in person or by an agent authorized in that behalf, and shall have all the powers of a District Court—

 - (a) to summon and compel the attendance of witnesses;
 - (b) to compel the production of documents ; and
 - (c) to administer any oath or affirmation to witnesses.”.
3. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

REGULATION OF INSURANCE INDUSTRY ACT, NO. 43 OF 2000

[Certified on 9th August, 2000]

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF AN INSURANCE BOARD FOR PURPOSE OF DEVELOPING, SUPERVISING AND REGULATING THE INSURANCE INDUSTRY ; FOR THE REPEAL OF THE CONTROL OF INSURANCE ACT, NO. 25 OF 1962 ; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

1. This Act may be cited as the Regulation of Insurance Industry Act, No. 43 of 2000 and shall come into operation on such date as the Minister may appoint by Order published in the *Gazette* (hereinafter referred to as the "appointed date").

ESTABLISHMENT AND CONSTITUTION OF THE INSURANCE BOARD OF SRI LANKA

2. (1) There shall be established a board which shall be called the Insurance Board of Sri Lanka (hereinafter referred to as the "Board") which shall be responsible for the development, supervision and regulation of the insurance industry in Sri Lanka.
(2) The Board shall, by the name assigned to it by subsection (1), be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in such name.
3. The object and responsibility of the Board shall be, to ensure that insurance business in Sri Lanka is carried on with integrity and in a professional and prudent manner with a view to safeguarding the interests of the policy-holders and potential policy holders.
4. (1) The Board shall consist of the following members :—
 - (a) Deputy Secretary to the Treasury ;
 - (b) a Deputy Governor of the Central Bank of Sri Lanka nominated by the Monetary Board ;
 - (c) the Director-General of the Securities and Exchange Commission of Sri Lanka ;
 - (d) four members appointed by the Minister from among persons who have had academic or professional qualifications and experience in the field of insurance, commerce, financial management, business management, economics, law or any other related field (in this Act, referred to as "appointed members").
(2) The Minister shall nominate one of the members of the Board as the Chairman of the Board.
(3) The provisions of the Schedule to this Act, shall have effect in relation to the term of office of the appointed members of the Board, remuneration payable to members of the Board, meetings and the Seal of the Board.
5. For the purpose of fulfilling its object and responsibility, the Board may exercise, perform and discharge all or any of the following powers, duties and functions—
 - (a) register as insurers persons carrying on insurance business in Sri Lanka ;
 - (b) register persons as insurance brokers ;
 - (c) advise the Government on the development and regulation of the insurance industry ;
 - (d) implement the policies and programmes of the Government with respect to the insurance industry ;
 - (e) employ such officers and servants as may be necessary for the purpose of exercising, performing and discharging the powers, duties and functions of the Board ;
 - (f) acquire and hold any property, movable or immovable and sell, lease, mortgage or otherwise dispose of the same ;

- (g) enter into all such contracts as may be necessary for the exercise, performance and discharge of its powers, duties and functions ; and
 - (h) do all such other acts as may be necessary for the due exercise, discharge and performance of its powers, duties and functions under this Act.
6. (1) The Board shall have its own Fund.
- (2) There shall be paid into the Fund of the Board—
- (a) all such sums of money as may be voted from time to time by Parliament for the use of the Board ;
 - (b) all such sums of money as may be paid as registration fees under Sections 14, 81 and 83 of this Act ;
 - (c) all such sums of money paid by insurers as an annual fee under Section 16 of this Act ;
 - (d) all such sums of money as may be received by the Board in the exercise, performance and discharge of its powers, duties and functions under this Act ; and
 - (e) all such sums of money as may be received by the Board by way of loans, donations, gifts and grants from any source whatsoever, whether in or outside Sri Lanka.
- (3) There shall be paid out of the Fund of the Board, all such sums of money required to defray the expenditure incurred by the Board, in the exercise of its powers, discharge of its functions and performance of its duties.
7. (1) There shall be charged, levied and paid a cess at such rates as may be determined by the Minister with the concurrence of the Board from time to time by Order published in the *Gazette*, on the annual net premium income of every insurer, so however that such rate shall not exceed one half *per centum* of such annual net premium income.
- (2) Every Order made by the Minister under this Section shall come into force on the date of its publication in the *Gazette* or on such later date as may be specified therein, and shall be brought before Parliament for approval within four months of the date of its publication. Any such Order which is not so approved shall be deemed to be revoked from the date of disapproval, but without prejudice to the validity of anything previously done thereunder.
- (3) The cess imposed under this Section shall be in addition to any other tax or cess levied under any other written law.
- (4) For the purpose of subsection (1) "annual net premium income" means the gross insurance premium income, less reinsurance premium.
8. (1) The financial year of the Board shall be the calendar year.
- (2) The Board shall cause proper books of accounts to be kept of the income and expenditure, assets and liabilities and all other transactions of the Board.
- (3) The provisions of Article 154 of the Constitution relating to the audit of the accounts of Public Corporations shall apply to the audit of accounts of the Board.
9. (1) The Minister shall, in consultation with the Board, appoint a Director-General of the Board, who shall be its chief executive officer. The conditions of employment including remuneration of the Director-General, shall be determined by the Minister.
- (2) The Director-General shall attend meetings of the Board on being invited to do so by the Board, but shall not be entitled to vote at such meetings.
- (3) The Director-General shall, subject to the general direction and control of the Board, be charged with the direction of the affairs and transaction of all the business of the Board in the exercise, discharge and performance of its powers, functions and duties, and the administration and control of the officers and servants of the Board.
- (4) The Director-General may, with the approval of the Board, whenever he considers it necessary to do so, delegate to any officer or servant of the Board any power, function or duty conferred or imposed on or

assigned to him by this Act, and such officer or servant shall exercise, discharge and perform such power, function or duty subject to the general or special directions of the Director-General.

- (5) The Minister may on the recommendation of the Board, remove from office the Director-General appointed under subsection (1), for reasons assigned therefor.
10. (1) The Board may appoint such officers and servants as it considers necessary for the efficient discharge of its functions.
- (2) The officers and servants appointed under subsection (1), shall be remunerated in such manner and at such rates and shall be subject to such conditions of service as may be determined by the Board.
- (3) At the request of the Board, any officer in the public service may, with the consent of the officer and the Secretary to the Ministry of the Minister in charge of the subject of Public Administration, be temporarily appointed to the staff of the Board for such period as may be determined by the Board with like consent, or with like consent be permanently appointed to such staff.
- (4) Where any officer in the public service is temporarily appointed to the staff of the Board, the provisions of subsection (2) of Section 14 of the National Transport Commission Act, No. 37 of 1991, shall, *mutatis mutandis*, apply to, and in relation to, such officer.
- (5) Where any officer in the public service is permanently appointed to the staff of the Board, the provisions of subsection (3) of Section 14 of the National Transport Commission Act, No 37 of 1991, shall, *mutatis mutandis*, apply to, and in relation to, such officer.
- (6) Where the Board employs any person who has agreed to serve the Government for a specified period, any period of service to the Board by that person shall be regarded as service to the Government for the purpose of discharging the obligations of that person under such agreement.
11. (1) At the request of the Board, any officer or servant of a public Corporation may, with consent of such officer or servant and the governing board of such Corporation, be temporarily appointed to the staff of the Board for such period as may be determined by the Board with like consent, or with like consent be permanently appointed to the staff of the Board on such terms and conditions, including those relating to pension or provident fund rights, as may be agreed upon by the Board and the governing board of such Corporations.
- (2) Where any person is appointed whether temporarily or permanently under subsection (1) to the staff of the Board, he shall be subject to the same disciplinary control as any officer or servant of the Board.

PART II

REGISTRATION OF INSURERS

12. (1) Subject to the provisions of this Act, from and after the appointed date, no person shall carry on insurance business in Sri Lanka unless such person is for the time being registered or deemed to be registered under this Act, to carry on such business.
- (2) A registration under subsection (1) may be for general insurance business or for long term insurance business or for both general and long term insurance business.
- (3) Notwithstanding the provisions of subsection (1), the provisions of this Act, shall not apply in respect of the Agricultural and Agrarian Insurance Board established by the Agricultural and Agrarian Insurance Act, No. 20 of 1999, the Sri Lanka Export Credit Insurance Corporation established by the Sri Lanka Export Credit Insurance Corporation Act, No. 15 of 1978 and the Social Security Board established by the Social Security Board Act, No. 17 of 1996.
- (4) A person registered under subsection (1) shall not carry on any form of business other than insurance business :

Provided that, a person may with the prior written approval of the Board, carry on any financial services business which is ancillary or associated with the insurance business for which a registration is obtained under this Act.

13. (1) No person shall be registered to carry on, either one or both classes of insurance business in Sri Lanka, unless such person—
- (a) is a public company incorporated in Sri Lanka and registered under the Companies Act, No 17 of 1982 ;
 - (b) has a paid up share capital of not less than the prescribed amount ;
 - (c) pays as deposit to the Treasury such amount as may be determined by the Board, by rules made in that behalf ;
 - (d) pay the prescribed fee ; and
 - (e) fulfil such other requirements as may be laid down by the Board by rules made in that behalf, for the purpose of ensuring the proper conduct of insurers to safeguard the interests of the insured public and for the development of the insurance industry.
- (2) For the purpose of paragraphs (b), (c) and (d) of subsection (1), different amounts may be prescribed for different classes of insurance business.
14. (1) Every application for registration under Section 12, shall be made to the Board in such form as may be provided for that purpose by the Board, and be accompanied by—
- (a) a statement in writing by the applicant that the provisions of paragraphs (b) and (c) of subsection (1) of Section 13 have been complied with, together with a certificate issued by the Deputy Secretary to the Treasury specifying the amount deposited under paragraph (c) of that subsection ;
 - (b) the fee prescribed in respect of the class of insurance business in respect of which the application for registration is being made ;
 - (c) a certified copy of the Memorandum and Articles of Association of the company applying for registration ;
 - (d) a certified copy of the certificate of incorporation of the company applying for registration ;
 - (e) a certified copy of the certificate to commence business issued by the Registrar of Companies ;
 - (f) a statement setting out prescribed particulars relating to —
 - (i) the share holders of the company ;
 - (ii) the Directors of the company ; and
 - (iii) the officers referred to in Sections 32, 46 and 94 ;
 - (g) a statement setting out the class, and where necessary the sub-class of insurance business proposed to be carried on by the applicant ;
 - (h) a statement setting out the details of fulfilment of requirements, if any, that were laid down by the Board under paragraph (e) of subsection (1) of Section 13 ; and
 - (i) a scheme of work or business plan for a period of three years.
- (2) Every application under this Section shall be certified by a declaration signed by the person making the application that the statement accompanying the application are true and accurate. Every such declaration shall be free of stamp duty.
- (3) The Board may conduct such investigations as it may consider necessary to verify the accuracy of any details contained in the application made under subsection (1), and to determine the suitability of the applicant to be registered under this Act, as an insurer.
15. (1) Where the Board is satisfied that any company making an application for registration under Section 14 has complied with the provision of Section 13 of this Act, and where an investigation is conducted under subsection (3) of Section 14, the Board is satisfied regarding the suitability of the applicant to be registered, the Board shall register such company as an insurer and shall issue to the insurer a licence in which shall be specified the class, and where necessary the sub-class of insurance business, which such insurer is authorized to carry on.

- (2) The licence issued to an insurer under subsection (1) shall be kept at all times at the principal office or place of business of the insurer, and be made available for inspection by any member of the Board, its Director-General or any person authorized by the Board for that purpose.
16. (1) Every insurer shall pay to the Board as an annual fee, such sum of money as may be prescribed.
- (2) The Board may prescribe different amounts as annual fee in respect of different classes of insurance business.
17. Whenever, after the registration of a company under Section 15, any alteration or change occurs or is made so as to affect any of the document or particulars submitted with the application for registration under subsection (1) of Section 14, or were required to accompany the application for registration, the insurer shall forthwith furnish to the Board a full authenticated statement of such alteration or change.
18. (1) The Board may cancel or suspend the registration of an insurer, either wholly or in respect of a particular class or sub-class of insurance business, for any one or more of the following reasons or grounds, namely, that the insurer:—
- (a) has not commenced business within twelve months after being registered ;
 - (b) has ceased to carry on insurance business in respect of any class of business ;
 - (c) proposes to make or has made any composition or arrangement with its creditors or has gone into liquidation or has been wound up or otherwise dissolved ;
 - (d) is carrying on its business in a manner likely to be detrimental to the interests of its policy holders or to the development of the insurance industry or the national interest ;
 - (e) is unable to meet its obligations ;
 - (f) has failed to maintain the solvency margin of such amount as is determined by the Board under Section 26 ;
 - (g) has contravened any provision of this Act, or any regulation or rule made thereunder or any condition imposed or any direction given by the Board under this Act ;
 - (h) has furnished false, misleading or inaccurate information, or has concealed or failed to disclose material facts, in its application for registration ;
 - (i) has ceased to be of good financial standing ;
 - (j) has since the grant of the licence, been disqualified for the grant of licence ; or
 - (k) is found guilty of any malpractice or irregularity in the management of his affairs.
- (2) The Board may, for any one or more reasons or grounds specified in subsection (1), and by notice sent in that behalf, suspend the registration granted to an insurer for a period not exceeding three weeks, without prejudice to such insurer's responsibility to meet its obligations under policies already issued, and the insurer shall thereafter be prohibited from issuing new insurance policies until the suspension is removed.
- (3) The notice referred to in subsection (2), shall specify the period of suspension and the date before which the insurer is required to show cause to the Board why such suspension should be removed.
- (4) On receipt of an insurer's response to the notice sent under subsection (2), the Board may —
- (a) where an insurer shows sufficient cause why the suspension should be removed, immediately remove the suspension ; or
 - (b) where the Board is not satisfied with the response of the insurer, either extend the period of suspension already imposed, or cancel the registration, as the case may be.
- (5) Where the Board decides under subsection (4) to cancel or suspend for a further period the registration of an insurer, it shall be its duty to forthwith inform the insurer of the cancellation or suspension as the case may be, and in the event of an extension of a suspension for a further period, the Board shall further inform the insurer —
- (a) of the period for which the suspension is being extended ;

- (b) of the action that needs to be taken to rectify or remove the reason or ground which caused the imposition of the suspension ; and
 - (c) the time within which the corrective measures referred to in paragraph (b) should be taken.
- (6) Where a registration is cancelled or suspended under subsection (4), it shall be the duty of the licence holder whose licence is being cancelled or suspended as the case may be, to forthwith surrender the licence to the Board, and the Board shall thereupon —
- (a) in the case of a cancellation of a registration, cancel the licence ; or
 - (b) in the case of a suspension of a registration for a specified period, make an endorsement to that effect on the face of the licence, and return the licence to the holder thereof.
- (7) Notwithstanding the provisions contained in subsections (1) and (2) of this Section, the Board may in lieu of a cancellation or suspension on any one or more grounds referred to in subsection (1), of a licence issued to an insurer under this Act, and where the nature of the act or omission referred to therein and which is committed by such insurer is not of such nature as to warrant a cancellation or suspension of the licence, direct the insurer to take such measures as may be determined by the Board, to—
- (a) prevent the continuance of such act or omission ; and
 - (b) rectify and set a right any consequences resulting from such act or omission.
19. (1) An insurer who is aggrieved by a decision made by the Board under Section 18 may, within fourteen days of being informed of such decision, appeal therefrom to the Court of Appeal.
- (2) The Court of Appeal may on appeal made under this Section, confirm, revise, modify or set aside the decision against which the appeal is made and may make such order as the interests of justice may require.
20. (1) Where a licence issued to an insurer under this Act, is cancelled or suspended under subsection (4) of Section 18, and the Board is of the view that national and public interest requires that administration and management of the insurance business of such insurer should be taken over by an administrator, the Board may inform the Minister of that fact and the Minister may, by notice published in the *Gazette*, appoint an administrator to manage and administer such business under the direction and control of the Board, for such period as shall be specified in the notice. The period so specified may, where necessary be extended in like manner from time to time.
- (2) The Board shall cause a copy of the notice to be served on the Registrar of Companies, who shall be required to make an entry in the record maintained by such Registrar, relating to such insurance company.
21. (1) Every company applying for registration as an insurer under this Act, shall keep deposited with the Deputy Secretary to the Treasury, for and on behalf of the Government of Sri Lanka, such sum of money as is determined by the Board under paragraph (c) of subsection (1) of Section 13 of this Act.
- (2) A deposit made under subsection (1) may consist of cash or of Government securities or of Government guaranteed securities, and the value of any securities so deposited shall be taken to be their market value at the date of deposit.
- (3) A deposit made in cash shall be held by the Deputy Secretary to the Treasury to the credit of the insurer, and shall be returnable to the insurer in cash in the circumstances and in the manner in which under the provisions of this Act, such a deposit may be returned, and any interest accruing due on securities deposited under this Section by any insurer shall, when it is collected, be paid by the Deputy Secretary to the Treasury to the insurer.
- (4) An insurer may at any time substitute for the securities deposited with the Deputy Secretary to the Treasury under this Section, other Government securities or Government guaranteed securities of equal value assessed at the market rate prevailing at the time of substitution, and the Deputy Secretary to the Treasury shall, on the written application of any insurer who has made a deposit, invest in Government securities or Government guaranteed securities the whole or any part of the cash received by the Deputy Secretary to the Treasury on the redemption of any securities deposited by the insurer under this Act.

- (5) The Deputy Secretary to the Treasury shall, if so requested by the insurer, sell any securities deposited with him and either hold the cash realized by such sale as deposit or invest in such Government securities or government guaranteed securities as may be specified by the insurer, the whole or any part of the cash received by him and hold the securities in which the investment is so made as deposit.
22. The deposit made by an insurer shall be deemed to be part of the assets of the insurer, but shall not —
- (a) be capable of being transferred or assigned or of being encumbered with any mortgage or other charge by the insurer or be liable to seizure in execution of any decree ; or
 - (b) be available for the discharge of any liability of the insurer, except for the discharge in the event of the winding up of the insurer, of liabilities arising out of policies of insurance business issued by the insurer and remaining undischarged.
23. Where the Board is satisfied that an insurer has ceased to carry on any class of insurance business and its liabilities in respect of that class have been satisfied or otherwise provided for, the deposit in respect of that class of insurance business shall be refunded on expiry of two years from the date of issue of the last policy of insurance of that class, issued by the insurer.
24. Every insurer who carries on general insurance business, whether solely or in addition to long term insurance business, shall establish and maintain adequate technical reserves :
- Provided that where the Board is of the view that the technical reserve being maintained by the insurer is inadequate to meet its liabilities the Board shall have the power to require such insurer to increase or enhance its technical reserve.
25. (1) Not less than twenty *per centum* of the assets of the technical reserve being maintained for a general insurance business under Section 24 and not less than thirty *per centum* of the assets for the Long Term Insurance Fund being maintained under subsection (1) of Section 38, shall be in the form of Government Securities. The balance assets shall be in the form of such other investments as shall be determined by the Board.
- (2) The Board shall have the power, where it considers any investment of any assets in any reserve or Fund referred to in subsection (1) of this Section is unsuitable, to issue directions for the disposal of such investment within such time as may be specified in such directions.
 - (3) Assets of a reserve or Fund being maintained by an insurer under this Act, and all other assets of such insurer shall be kept in Sri Lanka, unless otherwise permitted by the Board on application being made in that behalf by an insurer. Guidelines for the granting of permission by the Board shall be as prescribed.
26. (1) Every insurer shall maintain in respect of each class of insurance business, a solvency margin of such amount as may be determined by the Board in respect of that class of insurance business, by rules made in that behalf.
- (2) Rules may be made by the Board to provide for the determination of the value of the assets and their admissibility and the amount of the liabilities for the purpose of determining the solvency margin to be maintained in respect of the class of insurance business being carried on by any such insurer.
 - (3) For purpose of ensuring the avoidance of mismatching of assets as against liabilities by insurers, the Board may, from time to time by rules made in that behalf, lay down criteria to be made applicable in determining the minimum limits of their assets as against their liabilities.

PART III

GENERAL PROVISIONS APPLICABLE TO INSURERS

27. Where an insurer carries on business of one or more classes of insurance business, such insurer shall keep separate accounts of all receipts and payments in respect of each class of insurance business and also maintain separate accounts in respect of each sub-class of general insurance business it is carrying on.

28. Every insurer shall, in respect of all insurance business transacted by such insurer, keep and maintain —

- (a) a register or record of policies, in which shall be entered in respect of every policy issued by the insurer, the name and address of the policy holder, the date when the policy was effected, and particulars of any transfer, assignment or nomination of which the insurer has notice ; and
- (b) a register or record of claims in which shall be entered every claim presented to the insurer, together with the date of the claim and the name and address of the claimant, the date of settlement of the claim, and where a claim is repudiated the date of repudiation and the grounds therefor.

29. (1) No insurer shall grant to any person who holds the position of a director of such insurer, or to any company in which such a person holds any such position, any loan, other than a loan on a mortgage of a policy of life assurance issued by that insurer, except with the prior approval of the Board which shall grant such approval only if it is satisfied that sufficient security is being given for the repayment of the loan.

- (2) Where a loan has been granted by the insurer to a director of such insurer or to any company in which such person is a director, on the mortgage of a policy of life assurance and such loan is outstanding on the appointed date, the Board shall have the power, notwithstanding anything to the contrary in any agreement or contract, to examine the adequacy of the security given by such person for the repayment of the loan and, if the Board considers it necessary to do so, to require that the loan be repaid or that additional security be given, on or before a specified date. If such person fails to repay the loan, or to give additional security, on or before the specified date, he shall, on the expiry of a period of one year from that date, cease to hold office as a director of such insurer.

30. None of the assets of any insurer shall be kept otherwise than in the name of the insurer.

31. (1) An insurer may, subject to such terms and conditions that may be specified by the Board in order to ensure that the interests of policy holders and the insurers are adequately safeguarded, reinsure with any other insurer in or outside Sri Lanka, any liability arising out of any contract or policy of insurance, effected or issued by the first-mentioned insurer.

- (2) The Board may by a notice in writing, require any insurer carrying on reinsurance to furnish such information as it may deem necessary to ascertain whether such insurer has the necessary funds to satisfy any claim that may be made on such insurer to comply with the requirements of such notice.
- (3) The Board may from time to time, by Notification published in the *Gazette*, prohibit all insurers, from reinsuring with any specified reinsurer in or outside Sri Lanka, risks upon policies or contracts of insurance issued or effected in respect of insurance business transacted in Sri Lanka, where any such arrangement with that reinsurer is detrimental to the national interest :

Provided however, that before issuing any Notification under this subsection, the Board shall inform the insurer or insurers who is or are carrying on reinsurance business with such specified reinsurer in or outside Sri Lanka, of its intention to issue such Notification, and shall consider any representations made by such insurer or insurers, with reference to its proposed decision.

32. (1) Every insurer carrying on insurance business shall employ as a specified officer, at least one person possessing the qualification of Associate of the Chartered Insurance Institute, or an equivalent qualification acceptable to the Board, and having at least five years post qualification experience, at managerial level.

- (2) A person employed as a specified officer may also function as the principal officer of the insurer, provided such officer possesses the qualifications of a principal officer as determined by the Board under Section 94.

33. No —

- (a) insurer or the holding or associate or subsidiary company of an insurer; or
- (b) director, principal officer or specified officer of an insurer or the director or chief executive officer of a holding or associate or subsidiary company of an insurer ;

shall be a shareholder, director or employee of a company registered as a broker under this Act:

Provided that where an insurer or any such person as is referred to in this Section is a shareholder, director or employee of any company registered as a broker under this Act, as on the date of registration, such insurer or person shall be required to dispose of such shares, or to relinquish such directorships or employment, as the case may be, within such period as may be determined by the Board.

34. No insurer shall accept any insurance business except from —

- (a) any person who has an insurable interest in the subject matter of insurance ;
- (b) another insurer in respect of reinsurance ;
- (c) an insurance agent ; or
- (d) an insurance broker registered under this Act.

35. An insurer shall not be liable to pay any amount due under any contract or policy of insurance effected or issued by such insurer in respect of insurance business other than life assurance business, unless —

- (a) the full premia due under such contract or policy on the date on which such amount becomes payable, has been paid ; or
- (b) a bank guarantee for the payment of such premia has been furnished by the insured or broker on the date on which such amount became payable and the insured or broker pays such premia within such period of time as may be determined by the Board.

36. (1) The Board may from time to time, where it is of the view that policy holders are being adversely affected by any tariff limits set by insurers, fix the minimum tariff for motor, fire and employers liability, to be charged by such insurers in respect of policies of insurance to be issued by them, and also may fix the maximum tariff for motor insurance business.

(2) No insurer shall accept as under a contract or policy of insurance effected or issued by it in respect of such sub-class of insurance as is referred to in subsection (1), an amount which is —

- (a) less than the minimum rate that may be fixed in respect of motor, fire and employers liability under subsection (1) ; or
- (b) higher than the maximum rate that may be fixed in respect of motor insurance under subsection (1).

37. (1) The Board may by notice in writing, require any insurer to furnish to it copies of policy forms issued by such insurer, for purpose of examining whether the interests of policy holders are being adequately safeguarded, and it shall be the duty of such insurer to comply with such notice.

(2) The Board may having regard to the need to ensure that the terms of the contract of insurance covered by such policy form are fair and equitable, direct amendments to any policy form furnished to the Board under subsection (1), and it shall be the duty of the insurer furnishing such forms to give effect to such amendments.

(3) No information acquired under this Section by any member of the Board or any officer or servant thereof, shall be disclosed or used by such person, except when required to do so by a court of law, or for the purpose of exercising, performing and discharging the powers, duties and functions of the Board.

PART IV

LONG TERM INSURANCE BUSINESS

38. (1) Every insurer who carries on long term insurance business, whether solely or in addition to general insurance business, shall—

- (a) maintain a separate fund to be called the "Long Term Insurance Fund" and shall credit all money received in respect of the long term insurance business carried on by such insurer, to that Fund ; and
- (b) keep the assets in respect of the long term insurance business separate from the assets in respect of any other class of insurance business.

- (2) The Long Term Insurance Fund maintained by an insurer under subsection (1), shall not be liable for any contracts of the insurer for which it would not have been liable had the business of the insurer been only that of long term insurance business, and shall not be applied directly or indirectly for any purposes other than those of the long term insurance business carried on by that insurer.
 - (3) For the purpose of verifying whether an insurer complies with the provisions of subsection (1), the Board may—
 - (a) call upon such insurer to furnish from time to time a return in such form as may be prescribed ;
 - (b) authorize an officer in writing to enter at all reasonable hours the place at which such insurer is carrying on long term insurance business and examine any books, registers or documents of such insurer relating to such business, and such insurer shall furnish such return or permit such officer to enter such place and make such examination.
 - (4) Where, following an actuarial investigation into the financial affairs of an insurer transacting long term insurance business under subsection (1) of Section 48, there is an established surplus in respect of participating policies which the actuary has recommended as being available for distribution, the insurer shall not transfer or otherwise apply assets representing any part of that surplus, unless the insurer has allocated for the payment of bonuses to holders of participating policies at least ninety *per centum* of that surplus.
39. (1) A transfer or an assignment of a policy of long term insurance business, whether with or without consideration, may be made only by an endorsement upon the policy itself or by a separate instrument signed in either case by the transferror or by the assignor or his duly authorized agent, and attested by at least one witness, and specifically setting forth the fact of transfer or assignment.
- (2) No transfer or assignment of a policy of long term insurance business shall be of any effect as against the insurer, unless it is made in accordance with subsection (1), and until a notice in writing of the transfer or assignment, together with the instrument or endorsement or a copy thereof which is certified by or on behalf of the parties to the transfer or assignment to be correct, is served on the insurer at its principal place of business in Sri Lanka.
 - (3) The date on which the notice referred to in subsection (2) is served on the insurer, shall regulate the priority of all claims under a transfer or an assignment of a policy of long term insurance business as between persons interested in the policy, and where there is more than one instrument of transfer or assignment, the priority of the claims under such instruments shall be governed by the order in which the notices referred to in subsection (2) are served.
 - (4) Upon the receipt of the notice referred to in subsection (2), the insurer shall record the fact of such transfer or assignment together with the date thereof and the name of the transferee or the assignee, and shall on the request of the person by whom the notice was given, or of the transferee or assignee, grant a written acknowledgment of the receipt of such notice, and any such acknowledgment shall be conclusive evidence against the insurer that such insurer has duly received the notice to which such acknowledgment relates.
 - (5) Subject to the terms and conditions of the transfer or assignment, the insurer shall, from the date of the receipt of the notice referred to in subsection (2), recognize the transferee or assignee named in the notice as the only person entitled to benefit under the policy, and such person shall be subject to all liabilities and equities to which the transferror or assignor was subject at the date of the transfer or assignment, and may institute any proceedings in relation to the policy without obtaining the consent of the transferror or assignor or making him a party to such proceedings.
 - (6) Any rights and remedies of an assignee or transferee of a policy of long term insurance business under an assignment or transfer effected prior to the appointed date, shall not be affected by the provisions of this Section.
 - (7) Notwithstanding any law or custom having the force of law to the contrary, an assignment in favour of a person made with the condition that the interest shall pass to some other person on the happening of a specified event during the lifetime of the person whose life is insured, and an assignment in favour of survivor or survivors of a number of persons, shall be valid.

40. (1) Where, in terms of a policy of long term insurance business, the policy is to mature upon survival to a fixed date or on the death of such person, and the policy is subject to payment of premia at an uniform rate for a fixed term or where the death occurs before the expiry of such fixed term, until the date of such death, and all premia have been paid for three consecutive years, the policy shall be deemed to acquire a surrender value, and, notwithstanding any contract to the contrary, shall not lapse by reason of non-payment of further premium, but shall, notwithstanding such non-payment, be kept in force to the extent of its paid-up value.

For the purpose of this subsection, the method to be used to calculate surrender values and paid-up values, shall be certified by an actuary.

- (2) Where a debt owing to an insurer is secured by a policy of long term insurance business issued by the insurer and, under subsection (1), the policy is kept alive to the extent of its paid-up value, the insurer—
- (a) may treat the debt as a debt secured by the policy so kept alive, and thereupon the policy so kept alive shall be a security for the debt ; or
 - (b) may reduce the amount of such paid-up value by an amount the present value of which is equal to the amount of the debt, and thereupon the debt shall cease to be owing to the insurer.
- (3) This Section shall not apply in any case where —
- (a) the sum assured is payable only on the happening of a contingency which may not arise ;
 - (b) the paid-up value of the policy is less than such amount as is determined by the Board from time to time ;
 - (c) after default has occurred in the payment of the premium, the parties agree in writing to some other arrangement ; or
 - (d) the surrender value of the policy is automatically applied under the terms of the contract for maintaining the policy in force notwithstanding the non-payment of premia.

41. No policy of long term insurance business shall after the expiry of two years from the date of the issue of the policy, be called in question by any insurer on the ground that a statement made in the proposal or other document on the faith of which the policy was issued or reinstated, or in any report of a medical officer or referee, was inaccurate or false, unless the insurer shows that such a statement was made on a material matter or suppressed facts which it was material to disclose, and that it was fraudulently made by the policy holder and that the policy holder knew at the time of making it that the statement was false or that it suppressed facts it was material to disclose :

Provided that, nothing in this Section shall prevent the insurer from calling for proof of age at any time, if it is entitled to do so under the policy conditions, and no policy shall be deemed to have been called in question merely because the terms of the policy are adjusted on subsequent proof that the age of the life insured was incorrectly stated in the proposal.

42. (1) Where any premium in respect of a policy of long term insurance business is not paid on the date on which it is payable, notice of the options available to the policy holder shall be given to him by the insurer before the expiry of a period of three months from the said date, unless such options are set out in the policy, and no further notice of the options available shall be given thereafter to the policy holder.
- (2) Every notice under subsection (1) shall be deemed to have been duly given to the policy holder if it is sent to him to such address as may be specified in the policy or, where the address is not so specified, to the address to which a renewal premium notice or receipt was last sent by the insurer to the policy holder.
- (3) Upon application made to an insurer in that behalf, the insurer shall supply to the policy holder or to his legal representative or to an assignee of the policy, a certified copy of the proposal for the policy and of the personal statement made to the medical officer by the proposer, unless copies thereof are attached to the policy.
43. (1) The holder of a policy of long term insurance business may, when effecting the policy or at any time before the policy matures for payment, nominate the person or persons to whom the money secured by the policy shall be paid in the event of his death :

Provided that, where any nominee is a minor, it shall be lawful for the policy holder to appoint in the prescribed manner any person on behalf of the minor, who may receive the money secured by the policy, in the event of his death during the minority of the nominee.

- (2) A nomination under subsection (1) shall, unless it is incorporated in the text of the policy itself, be made by an endorsement on the policy and such endorsement shall by notice in writing be communicated to the insurer who shall register such endorsement in the record or register relating to that policy. Any such nomination may at any time before the policy matures for payment be cancelled or changed by another endorsement or by a will of the policy holder, as the case may be, and unless notice in writing of any such cancellation or change has been given by the policy holder to the insurer, the insurer shall not be liable for any payment under the policy made *bona fide* by him to a nominee mentioned in the text of the policy, or registered in records of the insurer.
- (3) The insurer shall furnish to the policy holder a written acknowledgment of having registered a nomination or of any cancellation or change thereof.
- (4) A transfer or assignment of a policy made in accordance with Section 39 shall have the effect of cancelling a nomination :

Provided that, the assignment of a policy to an insurer who bears the risk on the policy at the time of the assignment, in consideration of a loan granted by that insurer on the security of the policy within its surrender value, or its reassignment on repayment of the loan, shall not effect a cancellation of a nomination, but shall affect the rights of the nominee only to the extent of the insurer's interest in the policy.

- (5) Where the policy matures for payment during the lifetime of the person whose life is assured or where the nominee, or if there are more nominees than one, all the nominees, die before the policy matures for payment, the amount secured by the policy shall be payable to the policy holder or his heirs or legal representatives, as the case may be.
 - (6) Where the nominee, or if there are more nominees than one, one or more of such nominees survive the person whose life is assured, the amount secured by the policy shall be payable to such survivor or survivors.
44. No insurer who carries on long term insurance business shall, for the purpose of declaring or paying any dividend to shareholders or any bonus to its policy holders, or of making any payment in service of any debentures, loans or advances on account, utilize directly or indirectly any portion of the Long Term Insurance Fund or of the funds of such other class of insurance business, except a surplus shown in the valuation balance sheet submitted to the Board as part of the abstract referred to in Section 48 as a result of an actuarial valuation of the assets and liabilities of the insurer ; and such surplus shall not be increased by contributions out of any reserve fund or otherwise, unless such contributions have been brought in as revenue through the revenue account applicable to long term business on or before the date of the valuation aforesaid, except when the reserve fund is made up solely of transfers from similar surpluses disclosed by valuation in respect of which returns have been submitted to the Board under Section 49 of this Act.
45. Notwithstanding anything contained in this Act to the contrary, an insurer shall be at liberty to declare on the recommendation of an actuary made at the last preceding valuation, an interim bonus or bonuses to long term insurance business policy holders, whose policies mature for payment by reason of death or otherwise, during the inter-valuation of period.
46. Every insurer carrying on long term insurance business shall employ or retain on a permanent basis, an actuary.

PART V

Accounts, Inspection and Investigation

47. (1) An insurer shall prepare and maintain its accounts in such form and manner as may be determined by the Board by rules made in that behalf.

- (2) Every insurer shall have its annual accounts audited by an auditor selected from and out of a list of approved auditors that shall be issued by the Board, and shall submit a copy of such audited accounts to the Board within such period after the close of the financial year as the Board may determine. The auditor shall state in his report whether the accounting records of the insurer have been maintained in the manner required by the rules made by the Board in that behalf, so as to clearly indicate the true and fair view of the financial position of the insurer.
 - (3) The Board may on receipt of the auditor's report call upon the auditor to submit —
 - (a) information regarding the format and contents of the audited accounts ; and
 - (b) any other additional information relating to the audit as the Board may consider necessary.
48. (1) Every insurer shall, in respect of all long term insurance business transacted by the insurer, cause an investigation to be made by an actuary at the end of each financial year into the financial condition of such long term insurance business, including a valuation of its assets and liabilities in respect of that business, and shall cause an abstract to be made in accordance with rules made in that behalf by the Board within such period after the close of the financial year as the Board may determine. The actuary shall certify whether the reserves of the insurer are adequate to meet all liabilities current and contingent of its policy holders and determine the surplus, and shall recommend the quantum of bonus that may be paid to policy holders. The actuary shall also recommend the surplus that is available for transfer to the shareholders of the insurer.
- (2) The provisions of subsection (1) regarding the making of an abstract shall apply whenever at any other time, an investigation into the financial condition of the insurer is made with a view to the distribution of surplus, or an investigation is made the results of which are made public.
 - (3) A copy of an abstract made under subsection (1) shall be submitted to the Board, and the Board shall have power to call for any additional information and documents relating to the actuarial valuation.
 - (4) there shall be appended to every abstract required by subsection (1) or subsection (2), a certificate signed by the director or principal officer of the insurer, that full and accurate particulars of every policy under which there is a liability either actual or contingent, have been furnished to the actuary for the purposes of the investigation.
 - (5) There shall be appended to every abstract required by subsection (1) or subsection (2) a statement of the long term insurance business subsisting at the date to which the accounts of the insurer are made up, for the purposes of such abstract.
 - (6) Where an investigation into the financial condition of an insurer is made at a date other than the last date of the year of account, the accounts for the period elapsing after the end of the preceding year of account, and the balance sheet as at the date at which investigation is made, shall be prepared and audited in the manner provided for in this Act.
49. Every insurer shall furnish to the Board —
- (a) a certified copy of the report relating to the business of the insurer submitted to the shareholders of the company, or the policy holders of the insurer, immediately after it is so submitted ; and
 - (b) a quarterly return containing such information as may be determined by the Board by rules made in that behalf.
50. (1) Every insurer shall from time to time furnish the Board with certified copies of its reinsurance treaties (including treaties which are revised), contracts and arrangements relating to any class of insurance business transacted by such insurer in Sri Lanka :
- Provided that certified copies of such reinsurance treaties, contracts and arrangements as are in force on the appointed date, shall be furnished not later than three months after the appointed date.
- (2) The Board shall have the power to review all reinsurance treaties, contracts and arrangements furnished to it under subsection (1), for the purpose of determining whether such treaty, contract or arrangement is in

any way detrimental, to the interest of the insurer, the insured or to the development of the insurance industry or to the national interest. Where the Board is of the view that the interests of the insurers and the public are not adequately safeguarded, the Board shall have the power to recommend any amendments that it considers necessary for the development of the insurance industry.

- (3) Where any recommendations are made for amendments, it shall be the duty of the insurer to make the necessary amendments to such treaty, contract or arrangement as the case may be, when such treaty, contract or arrangement comes up for renewal.

51. (1) If it appears to the Board that any return furnished to it under the provisions of this Act, is inaccurate or defective in any respect, it may—

- (a) require from the insurer such further information, certified if the Board so directs by such auditor or actuary as it may consider necessary, to correct or supplement such return ;
- (b) call upon the insurer to submit for its examination at the registered office or the principal place of business of the insurer, any book of account, register, or other document or to supply any statement which it may specify in a notice served on the insurer for the purpose ;
- (c) examine any officer of the insurer on oath or affirmation in relation to the return ; or
- (d) decline to accept such return unless such further information as may be required by the Board is furnished before the expiry of one month from the date on which the requisition asking for such further information was delivered to the insurer, or of such further time as the Board may specify in the requisition.

- (2) A District Court may, on the application of an insurer and after hearing the Board, direct the acceptance of any return which the Board has declined to accept, if the insurer satisfies the Court that the action of the Board was in the circumstances unreasonable :

Provided that, no application under this subsection shall be entertained by the District Court, unless it is made before the expiration of two months after the date on which the Board made the order or declined to accept the return.

- (3) The decision of the District Court in any application under this Section shall be final and shall not be subject to any appeal.
- (4) An application to the District Court under this Section shall be made by petition in the way of summary procedure, and the provisions of the Civil Procedure Code relating to such procedure shall apply to and in regard to the same.

52. (1) If it appears to the Board that an investigation or valuation made under Section 48 does not properly indicate the condition of the affairs of the insurer by reason of what appears to it to be a faulty basis adopted in the valuation, the Board may after giving the insurer reasonable notice and an opportunity of being heard, cause an investigation and valuation as at such date as it may specify, to be made at the expense of the insurer, by an actuary appointed by the insurer for that purpose and approved by the Board, and the insurer shall place at the disposal of such actuary, all the material required by such actuary for the purposes of the investigation and valuation within such period, not being less than three months, as the Board may specify.

- (2) The provisions of subsections (1) and (4) of Section 48 relating to the making of abstracts shall apply in relation to any investigation and valuation to be made under this Section :

Provided that, the abstract prepared as the result of such investigation and valuation shall be furnished on or before such date as the Board may specify.

53. Where upon examination of the returns and reinsurance treaties, contracts and arrangements furnished by any insurer, it appears to the Board that the deposit made by the insurer under Section 21 or that the amount of the assets in respect of insurance business of the insurer is inordinately low in relation to the volume of insurance business transacted by the insurer, the Board may, after giving the insurer an opportunity of being heard, order the insurer to make an additional deposit under the provisions of subsections (2), (3), (4) and (5) of Section 21 and the provisions of Section 22 and Section 23 shall apply to such additional deposit :

Provided however, where the insurer establishes to the satisfaction of the Board that the assets of such insurer in Sri Lanka are adequate to meet the outstanding claims and unexpired risks in respect of the insurance business transacted in Sri Lanka by such insurer, the amount of such additional deposit, together with any deposit made under Section 21, shall not exceed the solvency margin as determined by the Board under Section 26.

54. (1) Where the Board has reason to believe —

- (a) that the interests of the policy holders of an insurer are in danger ; or
- (b) that any insurer is unable to meet its obligations or has made default in complying with any of the provisions of this Act,

the Board may, after giving the insurer reasonable notice and an opportunity of being heard, order an investigation of the affairs of the insurer to be made on behalf of the Board by an auditor or an actuary or by both an auditor and an actuary appointed simultaneously or first an auditor only or an actuary only and afterwards by an actuary or auditor, or may itself make such investigation :

Provided that, an auditor or actuary appointed for the purpose by the Board shall not be an auditor or actuary in the employment of the insurer.

(2) The cost and expenses of any investigation under subsection (1) shall be paid for by the insurer.

(3) In carrying out an investigation under this Section, the Board may, by notice in writing require —

- (a) the insurer, or any person having the custody of books of accounts, records or other documents on behalf of the insurer ;
- (b) any person who is or has at any time been or acted as a director, actuary, auditor, an officer or servant or agent of the insurer ; or
- (c) any past or present member or policy holder of the insurer,

to produce for its inspection and allow it to copy, the whole or any part of any books, accounts, records or other documents of the insurer, including documents evidencing the insurer's title to assets held for the purposes of such business :

Provided that, a requirement under this subsection shall extend only to documents relating to business carried on by the insurer evidencing the insurer's title to assets held for the purposes of any such business.

- (4) In making an investigation under this Section, the Board may require any such individual as is specified in subsection (3), to attend before it and be examined on oath with respect to the insurer's business, and for the purpose of this Section, it may administer oaths.**
- (5) Any person who refuses or fails when required to do so under subsection (3) or (4) to produce any document in his or her custody or to attend for or submit for examination by the Board or any person appointed by it, or to answer any question put to him or her on such examination, shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to a fine not less than fifty thousand rupees.**
- (6) The results of any investigation made under this Section shall be recorded in writing by the auditor or actuary appointed, as the case may be, and copies of the record shall be supplied to the Board and to the insurer.**

55. When any investigation in respect of an insurer is made under Section 54, the provision of Section 162 of the Companies Act, No. 1 of 1982, shall apply for the purposes of such investigation, as they apply to an investigation made in pursuance of that Section of that Act, and all expenses of and incidental to such investigation shall be defrayed by the insurer and shall have priority over other debts due from the insurer.

56. Every insurer shall furnish to the Board such further returns or abstracts or amended or substituted returns or abstracts as may be determined by the Board by rules made in that behalf.

57. (1) Where the Board is satisfied that the affairs of any insurer are being conducted in a manner likely to be detrimental to the public or national interest or the interest of the policy holders or prejudicial to the

interests of the insurer, the Board may issue such directions to the insurer as it may consider necessary, and in particular may require the insurer —

- (a) to take such action or recruit such management personnel as may be necessary to enable it to conduct its business in accordance with sound insurance principles ;
 - (b) to remove any of its directors or any person whom the Board considers unfit to be associated with it ;
 - (c) to take action as to the disposition or recovery of any of its assets ;
 - (d) to take steps for the recovery by the insurer of sums appearing to the Board to have been illegally or improperly paid ; and
 - (e) to make such arrangements with respect to reinsurance as the Board considers necessary.
- (2) The Board may, upon representations being made to it, or on its own motion, modify or cancel any directions issued under subsection (1) and in so doing, may impose such conditions as it thinks fit.
- (3) Any insurer who fails to comply with any direction issued to it under subsection (1) 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 less than fifty thousand rupees.
- (4) Where upon a conviction under subsection (3) an insurer continues to fail to comply with a direction issued, the Board shall have the power to suspend the registration granted for a period to be specified by the Board, and the provisions of subsection (2) of Section 18 shall apply in respect of such insurer, during that period of suspension.

PART VI

PUBLICITY

58. (1) Every return furnished to the Board under this Act, or a certified copy thereof shall be kept at the office of the Board, and shall be open for inspection by any person with the approval of the Board at such hours as it may specify, except such information which in the opinion of the Board is confidential, which shall not be open for inspection by any person.
- (2) A person may obtain a copy of any return or any part thereof, (other than confidential information) on payment of such fee as is determined by the Board by rules made in that behalf.
59. Every document purporting to be certified by the Board to be a copy of a return furnished to it, shall be deemed to be a copy of that return and shall be received in evidence as if it were the original return, unless some variation between it and the original return is proved.
60. The Board shall publish in each year, in such manner as the Minister may direct, a summary of the accounts, balance sheets, statements, abstracts and other returns furnished or purporting to be furnished under this Act, to the Board by insurers and brokers, and may append to such summary any note made by the Board thereon and any correspondence in relation thereto :
- Provided, however, that no reference shall be made in any such note to any matter affecting any particular insurer, unless the insurer has been afforded an opportunity to make representations against the inclusion of such reference in the note.

61. Every return submitted by an insurer shall be in the prescribed form, and may be published in that same form :
- Provided that, nothing contained in this Section shall prevent an insurer from publishing a true and accurate abstract from such returns, for the purpose of publicity.

PART VII

MANAGEMENT BY ADMINISTRATION AND WINDING UP

62. (1) If at any time the Board has from information available to it from any source whatsoever, reason to believe that an insurer who is carrying on long term insurance business or general insurance business or long term insurance business and general insurance business, has acted in a manner prejudicial to the interests of holders of insurance policies or is acting in a manner likely to be prejudicial to the interests of holders of insurance policies, it may, after giving such opportunity to the insurer of being heard as it thinks fit, make a report thereon to the Minister.
- (2) The Minister, if he is of opinion after considering the report that it is necessary and proper to do so, may appoint an administrator to manage the business of the insurer under the direction and control of the Board.
- (3) An administrator appointed under subsection (2) shall receive such remuneration as the Minister may direct, and such remuneration shall be payable out of the funds of the business which is managed by the administrator.
- (4) The management of the business of an insurer shall, on and after the date of appointment of an administrator under subsection (2), vest in such administrator and the insurer shall cease to exercise any power in relation to such business during the period of the administration :
- Provided however that, except with the approval of the Board, an administrator shall not issue any new policies of insurance.
- (5) The Minister may at any time revoke the appointment of any person as administrator and appoint some other person as administrator, and thereupon the first-mentioned person shall be divested of the management of the affairs of the insurer.
- (6) The Board may issue such directions to the administrator as to his or her powers and duties as the Board may deem desirable in the circumstances of the case, and the administrator may apply to the Board at any time for instructions as to the management of the business of the insurer or in relation to any matter arising in the course of such management.
63. (1) The administrator shall conduct the management of the business of the insurer with the greatest economy compatible with efficiency, and shall as soon as may be possible, file with the Board a report stating which of the following courses is, in the circumstances most advantageous to the general interests of the holders of life assurance policies, namely —
- (a) the transfer of the business to such an institution as the Board may, with the approval of the Minister, determine ;
- (b) the winding up of the insurer ; or
- (c) such other course as he or she may deem advisable.
- (2) On the filing of the report with the Board, the Board may take such action as it thinks fit for protecting and promoting the interests of the holders of insurance policies in general.
- (3) Any act done by the Board in pursuance of the powers vested in it by subsection (2), shall have effect notwithstanding anything in the memorandum of or articles association of the insurer.
64. An administrator may, at any time during the continuance of his or her management of the affairs of an insurer, cancel or vary (either unconditionally or subject to such conditions as he or she thinks fit to impose) any contract or agreement, other than a policy between the insurer and any other person, which the administrator is satisfied has been or is prejudicial to the interests of holders of insurance policies. Before cancelling or varying any contract or agreement, the administrator shall give to all persons, who will be affected by such cancellation or variation, an opportunity of being heard.
65. If at any time, on a report made by the Board in that behalf, it appears to the Minister that the purpose of the appointment of an administrator has been fulfilled or that for any reason it is undesirable that such appointment should continue, the Minister may revoke the appointment and thereupon the administrator shall be divested of

the management of the business of the insurer which shall, unless otherwise directed by the Minister, again vest in the person in whom it was vested immediately prior to the date of appointment of the administrator.

66. Any decision of the Minister made in pursuance of Section 62 or Section 65 shall be final.
67. If any director of an insurer fails to deliver to the administrator any book of account, register or any other document in his or her custody relating to the business of the insurer, the management of which has vested in the administrator, or retains any property of such insurer, he or she shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to imprisonment of either description for a period not exceeding one year, or to a fine not exceeding fifty thousand rupees or to both such imprisonment and fine.
68. Notwithstanding anything in any other law, the business of an insurer shall not be wound up voluntarily except with the prior approval of the Board.
69. (1) The District Court may order the winding up of an insurer in accordance with the Companies Act, No. 17 of 1982, and the provisions of that Act shall, subject to the provisions of this Part of this Act, apply accordingly.
- (2) The District Court may order the winding up of an insurer —
- (a) if a petition in that behalf is presented by holders of not less than one *per centum* of long term insurance policies issued by that insurer and which have been in force for not less than three years and which will on maturity be of the total value of not less than five hundred thousand rupees ; or
- (b) if the Board, which is hereby authorized to do so, applies in that behalf to the District Court on any of the following grounds, namely —
- (i) that the insurer has failed to comply with the provisions of Section 21 or 26 or any directions issued under Section 57 ;
- (ii) that the insurer having failed to comply with any requirement of this Act, has continued such failure, or having contravened any provisions of this Act, has continued such contravention, for a period of three months after notice of such failure or contravention has been brought to the notice of the insurer by the Board ;
- (iii) that it appears from the returns furnished under the provisions of this Act, or from the results of any investigation made thereunder, that the insurer is insolvent ; or
- (iv) that the continuance of the insurer is prejudicial to the interests of the policy holders.
- (3) Where any petition under paragraph (a) of subsection (2) is found to have been made frivolously or vexatiously, the District Court may make order for the payment by the petitioners of the costs and expenses actually and reasonably incurred by the insurer in consequence of the petition and in the proceedings thereon.
70. (1) In the winding up of an insurer, the value of the assets and liabilities of the insurer shall be ascertained in such manner and upon such basis as the liquidator thinks fit, subject, as far as practicable in accordance with rules made by the Board in that behalf, and any directions which may be given by the District Court.
- (2) For the purposes of any reduction by the District Court of the amounts of the contracts of an insurer, the value of the assets and liabilities of the insurer and all claims in respect of policies issued by the insurer shall be ascertained in such manner and upon such basis as the Court thinks proper, having regard to any rules that may be made in that behalf by the Board.
71. (1) In the winding up of an insurer, the value of the assets and the liabilities of the insurer in respect of long term insurance business shall be ascertained by an independent actuary appointed by the Board, separately from the value of any other assets and liabilities of the insurer, and the first-mentioned assets shall not be applied for the discharge of any liabilities other than those in respect of long term insurance business, in so far as the first-mentioned assets exceed the liabilities in respect of long term insurance business.
- (2) Where in the winding up of any insurer carrying on long term insurance business, it is found that when the assets and liabilities of the insurer are ascertained there is a surplus of assets over liabilities (hereinafter

referred to as a "*prima facie* surplus") and that any part of the surplus had, at any time during the ten years preceding the commencement of the winding up, been allocated to long term insurance policy holders, the following provisions shall have effects :—

- (a) there shall be added to the liabilities of the insurer in respect of the long term insurance business, an amount which bears to the *prima facie* surplus the same proportion, as the aggregate amount of surplus so allocated to policy holders with profit policies during the aforesaid ten years bears, to the total surplus arising from the long term insurance business in those ten years ; and
- (b) the assets of the insurer shall be deemed to exceed its liabilities only in so far as they are in excess after such addition is made :

Provided that —

- (i) if in any case there has been no such allocation or if it appears to the District Court that by reason of special circumstances, it would be inequitable that the amount to be added to the liabilities of the insurer in respect of the long term insurance business should be an amount equal to such proportion as aforesaid, the amount to be so added shall be such amount as the District Court may direct ; and
- (ii) for the purpose of the application of this subsection to any case, where before the commencement of the winding up a proportion of such surplus as aforesaid of a category only of the long term insurance business in question has been allocated to long term insurance policy holders, the value of the assets and liabilities of the insurer in respect of that category shall be separately ascertained in like manner as the value of the assets and liabilities of such insurer in respect of the long term insurance business was ascertained, and any surplus so found of assets over liabilities shall, for the purpose of ascertaining the amount to be added to the liabilities of the insurer in respect of the long term insurance business, be deemed to be *prima facie* surplus.

72. In the winding up of an insurer otherwise than in a case to which Section 73 applies, the liquidator shall apply to the District Court for an order for a return of the deposit made by the insurer under Section 21 or Section 53 and the Court shall on such application order a return of the deposit subject to such terms and conditions as it shall direct.

73. (1) If at any time it appears to be expedient that the affairs of an insurer in respect of any class of insurance business comprised in the undertaking of the insurer should be wound up, but that any other class of insurance business comprised in the undertaking should continue to be carried on by the insurer, or be transferred to such an institution as may be declared by the Minister by notification published in the Gazette, a scheme for such purpose may be prepared and submitted for confirmation of the District Court in accordance with the provisions of this Act.

- (2) Any scheme prepared under this Section shall provide for the allocation and distribution of the assets and liabilities of the insurer between any classes of insurance business effected (including the allocation of any surplus assets which may arise on the proposed winding up), for any future rights of every class of policy holders in respect of their policies and for the manner of winding up of any of the affairs of the insurer which are proposed to be wound up, and may contain provisions for altering the memorandum of the insurer with respect to its objects and such further provisions as may be expedient for giving effect to the scheme.
- (3) The provisions of this Act, relating to the valuation of liabilities of insurers in liquidation and to the applications of surplus assets of the Long Term Insurance Fund in liquidation, shall apply to the winding up of any part of the affairs of an insurer, in accordance with the scheme under this Section in like manner as they apply in the winding up of an insurer, and any scheme under this Section in relation to a company may apply with the necessary modifications to any of the provisions of the Companies Act, No. 17 of 1982 relating to the winding up of companies.
- (4) An order of the District Court confirming a scheme under this Section whereby, the memorandum of that company is altered with respect to its objects, shall as respects the alteration, have effect as if it were an order confirmed under Section 7 of the Companies Act, No. 17 of 1982, and the provisions of that Section shall apply accordingly.

- (5) When making an order confirming a scheme under this Section, the District Court may make such orders as it considers necessary for the disposal of so much of the deposit made by the insurer under Section 21 or Section 53, as does not relate to the classes of insurance business, if any, which the insurer continues to carry on.
74. In the winding up of an insurer for the purpose of a cash distribution of assets, the liquidator shall ascertain the value of the liability to each person appearing by the books of the insurer to be entitled to or interested in the policies granted by the insurer, and shall give notice of such value to each such person in such manner as the District Court may direct ; and any person to whom notice is so given shall be bound by the value so ascertained, unless he gives notice of his intention to dispute such value in such manner and within such time as may be specified by the District Court.
75. (1) Where an insurer is in liquidation, the District Court may make an order reducing the amounts payable in respect of the insurance contracts of the insurer upon such terms and subject to such conditions as the District Court thinks just.
- (2) Where an insurer carrying on long term insurance business has been proved to be insolvent, the District Court may, if it thinks fit, in lieu of making a winding-up order, reduce the amounts payable in respect of the insurance contracts of the insurer upon such terms and subject to such conditions as the district Court thinks just.
- (3) Application for an order under this Section may be made either by the liquidator or by or on behalf of the insurer, or by a policy holder or by the Board ; and the Board and any person whom the District Court thinks likely to be affected, shall be entitled to be heard on any such application.
76. Where on or after an insurer carrying on long term insurance business has wound up, or takes steps to wind up such business, and where the assets relating to such business have not been or are not sufficient to meet the liabilities subsisting under policies of long term insurance business issued by such insurer, then every holder of such a policy shall be entitled by action instituted in a court of competent jurisdiction to proceed against the private assets of each director of such insurer on or after that date, and recover any sum outstanding under such policy of insurance, where it has been proved that the winding up of the long term insurance business was due to the wilful negligence, fraud or dishonesty of each of those directors of the insurer.
77. Where a District Court orders the winding up of an insurer under Section 69, notwithstanding the provisions of the Companies Act, No. 17 of 1982 or any written law to the contrary, the policy holders of the insurer shall have a prior claim in the distribution of the assets of such insurer.

PART VIII

REGISTRATION OF BROKERS AND INSURANCE AGENTS

78. (1) An insurer or broker is permitted to appoint an individual as an insurance agent, who shall be registered with such insurer or broker as an insurance agent. Every insurer or broker shall maintain in such manner as specified by the Board by rules made in that behalf, a register of all individuals who are registered with them as insurance agents.
- (2) Every insurer or broker is required to send a copy of the register being maintained under subsection (1) annually to the Board, and shall keep the Board informed of any additions or deletions made in the list.
- (3) The Board shall have the right to require an insurer or broker as the case may be, to delete the name of any insurance agent appearing in the register submitted to the Board by such insurer or broker, when it considers the person concerned to be unsuitable to function as an insurance agent, having regard to the interests of the policy holders.
- (4) The Board may by rules made in that behalf, determine the qualifications required of any person for purposes of being appointed as an insurance agent.

- (5) No insurer or broker shall appoint as an insurance agent any individual who is already registered as an insurance agent with any other insurer or broker.
79. No person shall act or hold itself out as an insurance broker unless such person is a holder of a certificate of registration as a broker granted by the Board and is a member of an Association of Insurance Brokers approved by the Board.
80. (1) No person shall be registered as an insurance broker under this Act, unless such person—
- (a) is a company registered under the Companies Act, No. 17 of 1982, having a paid up share capital not less than such amount as shall be determined by the Board, by rules made in that behalf ;
 - (b) has in its employment or on its directorate, persons with such qualifications and experience in insurance business as shall be acceptable to the Board ;
 - (c) takes out a policy or policies of insurance for professional indemnity with two or more insurers ;
 - (d) fulfils such other requirements as may be laid down by the Board by rules made in that behalf, for the purpose ensuring the protection of the interests of the insured public.
- (2) No company shall be entitled to be registered as an insurance broker, where—
- (a) such company is a shareholder of any insurer; or
 - (b) (i) a director or specified officer of such company; or
(ii) a director or the chief executive officer of an associated or subsidiary company of such company,
- is a director or shareholder or employee of any insurer.
81. Every application for registration as a broker shall be made to the Board in such form as may be provided for that purpose by the Board, and be accompanied by—
- (a) a certified copy of the Memorandum and Articles of Association of the company ;
 - (b) a certified copy of the certificate of incorporation of the company ;
 - (c) statements setting out particulars relating to —
 - (i) the shareholders of the company ;
 - (ii) the directors and senior managers of the company ;
 - (iii) the fulfilment of the requirements, if any that are laid down by the Board under paragraph (d) of Section 80 ;
 - (d) a copy of Form 48 issued by the Registrar of Companies duly perfected and certified ;
 - (e) a statement setting out the class or classes of insurance business proposed to be transacted by the company ;
 - (f) a statement setting out the amount of the paid up share capital of the company ;
 - (g) a fee as determined by the Board by rules made in that behalf, each for long term insurance business and general insurance business ;
 - (h) a certified copy of the professional indemnity insurance policy or policies issued by two or more insurers in such form and for such amount as may be determined by the Board ; and
 - (i) such other documents and information as may be required to be submitted by the Board.
82. (1) Where the Board is satisfied that—
- (a) the volume of business which is likely to be available to and the earning prospects of an applicant are adequate ;
 - (b) the business in respect of which the application is made will be conducted in accordance with accepted professional standards ;
 - (c) the financial standing of the applicant is sound ;

- (d) the knowledge, skill and experience in insurance broking business of those in the applicant's employment are adequate ; and
- (e) the company is registered under the Companies Act, No. 17 of 1982 for the sole purpose of carrying on insurance broking business,

the Board shall register such applicant as an insurance broker for such class or classes of insurance business in respect of which the application was made.

- (2) Upon the registration of an insurance broker under subsection (1), a certificate of registration shall be issued by the Board to the applicant, subject to such conditions as shall be specified therein, and which shall be valid for a period of one year. Separate certificates of registration shall be issued in respect of long term insurance business and general insurance business.
 - (3) The certificate of registration issued by the Board shall authorise the holder to carry on such business as specified therein.
 - (4) A certificate of registration issued to a broker under this Section shall not be—
 - (a) transferred to any other person, and any such transfer shall be null and void ; and
 - (b) used for the benefit of any other person.
 - (5) The Board may at any time add to, vary or revoke any existing conditions of registration of an insurance broker or impose new conditions.
83. The certificate of registration issued to a broker may be renewed annually on an application being made in that behalf to the Board and such application shall be accompanied by —
- (a) a professional indemnity policy of insurance for the ensuing period in such form and for such amount as may be determined by the Board ;
 - (b) a statement of business transacted in the preceding financial year ;
 - (c) a renewal fee as determined by the Board in respect of such renewal ; and
 - (d) such other documents as may be required by the Board.
84. (1) The Board may suspend or cancel a registration or refuse to renew a certificate issued to a broker, where—
- (a) the broker has under the law in force, been found or declared to be an undischarged bankrupt or insolvent ;
 - (b) the broker persists in disobeying any instructions issued by the Board ;
 - (c) (i) a director or a specified officer of the broker ; or
 - (ii) a director or the chief executive officer of an associated or subsidiary company of such broker,
- is a director or shareholder or employee of an insurer ;
- (d) the broker has been found guilty of any offence under this Act, or warned or cautioned in writing by the Board on at least three separate occasions ; or
 - (e) any statement in any application, account, written information or document submitted to the Board by the broker was found to be false or misleading.
- (2) A broker who is aggrieved by the decision of the Board under subsection (1) may appeal therefrom to the Court of Appeal and the provisions of Section 19 of this Act, shall apply in relation to such appeal.
85. (1) Every broker shall take out and maintain policies of insurance with two or more registered insurers approved by the Board, against losses arising from claims in respect of any description of civil liability incurred by them or by their present or former employees in connection with the business of such broker.
- (2) Without prejudice to the generality of the foregoing provisions of this Section, such policy shall indemnify the insured against losses arising from claims made against the insured for breach of duty in connection with the business, by reason of any negligent act, error, or omission :

Provided that, the policy shall not be required to afford indemnity to any person committing, making or condoning any dishonest or fraudulent act or omission.

- (3) The policy obtained under subsection (1) shall, at the date of renewal of a certificate of registration provide a minimum limit of indemnity in either—
 - (a) a total sum of rupees one million five hundred thousand ; or
 - (b) a sum equal to three time the brokerage of the business for the last accounting period ending prior to the inception or renewal of the policy, subject to a maximum limit of liability as determined by the Board.
 - (4) No policy shall, without the written approval of the Board, have an excess or a deductible in an amount which exceeds 2.5 *per centum* of the minimum limit of indemnity.
- 86.** (1) Every broker shall maintain accounts in such manner and in such form as may be determined by the Board by rules made in that behalf.
- (2) Every broker shall submit to the Board within six months of the expiry of the accounting period, audited accounts which shall comprise of a balance sheet, a profit and loss account and a note to such accounts, certified by a qualified auditor.
 - (3) Every broker shall submit a return to the Board, stating the names of all the insurers with whom it has placed business and the percentage of the business it has so placed. A certificate to the effect that the percentage of business so placed does not exceed such limit as determined by the Board, shall be submitted to the Board annually, duly signed by two directors of such broker.
 - (4) Every broker shall pay into an account to be called the "Insurance Broking Account" and maintained by it with a licensed commercial bank, all moneys received by such broker in connection with a contract of insurance.
 - (5) If it appears to the Board that any account, statement or return furnished by a broker is inaccurate or incomplete in any respect, it may—
 - (a) require further information, which shall be certified if the Board so directs, by an auditor or other person it may consider necessary ; or
 - (b) require any further document for its examination.
- 87.** No application for registration as a broker or for a renewal of a certificate of registration already issued, shall be rejected by the Board, without giving notice in writing to the applicant to show cause within such period as specified in the notice, as to why such application should not be rejected, and the application will be rejected where the applicant—
 - (a) fails to show cause within the time specified ; or
 - (b) fails to show sufficient cause acceptable to the Board.
- 88.** The Board shall determine the maximum rate of the commission which may be paid by an insurer to a broker or insurance agent, in respect of each class of insurance business carried on by them.
- 89.** It shall be the duty of a broker or an insurance agent, to remit premia collected by them on behalf of an insurer, within two weeks of such collection.

PART IX

OFFENCES

90. Any company which—

- (a) carries on insurance business, or commences any insurance business, without being duly registered under this Act ; or

- (b) carries on any type of insurance business which it is not authorized to carry on under a licence issued under Section 15 of this Act,

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

91. Any person who carries on business as an insurance agent without being duly registered as an insurance agent with an insurer or broker, shall be guilty of an offence and shall on conviction after summary trial before a Magistrate, be liable to a fine not less than fifty thousand rupees or to imprisonment of either description for a term not less than one year or to both such fine and imprisonment.
92. Any person who carries on business as a broker without being duly registered under Section 82 of this Act, shall be guilty of an offence and shall on conviction after summary trial before a Magistrate, be liable to a fine not less than fifty thousand rupees or to imprisonment for a term not less than one year or to both such fine and imprisonment.
93. Without prejudice to the provisions of Sections 54, 57, 67, 90, 91 or 92 by which a special penalty is specified for an offence, any person who contravenes or fails to comply with any provision of this Act, or any direction sent by the Board under this Act, or any rule made under this Act, shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not less than fifty thousand rupees, and in the case of a continuing offence to a further fine not less than two thousand rupees for each day on which the offence is so continued after the conviction.

PART X

GENERAL

94. (1) Every insurer and broker shall maintain a principal office, and appoint as its principal officer a person having such qualifications as shall be determined by the Board by rules made in that behalf, who shall be responsible for the general control, direction and supervision of its business activities.
- (2) The Board shall, taking into consideration the obligations an insurer or broker owes to the insured public and the need to ensure that persons qualified or having experience in the field of insurance are employed as principal officers, have the power to object to the appointment of a principal officer where it considers such person to be unfit and unsuitable to hold such position.
- (3) Where the Board objects to an appointment of a principal officer under subsection (2), the insurer or broker as the case may be, who employed him or her, shall revoke his or her appointment and appoint another in his or her place.
95. Every insurer, and broker shall maintain a register of policies in such form as may be determined by the Board by rules made in that behalf, which shall contain—
- (a) details of every policy issued, giving the name and address of the policy holder ;
- (b) the date on which the policy was issued and the policy number ;
- (c) the amount of premium received and commission paid to insurance agents and brokers ;
- (d) the sum insured and the date of commencement of the policy ;
- (e) particulars of claims made and dates on which such claims were paid and the amounts paid ; and
- (f) in the event of a claim being repudiated, reasons for such repudiation and in the event of partial settlement, the reasons therefor.
96. No person, other than an insurer, a broker registered under this Act, or an insurance agent of such an insurer or broker, shall, without the written approval of the Board, use as part of its name, title or description, the word "insurance" or any of its derivatives or any other similar word in any language, to indicate that such person

carries on insurance business in Sri Lanka in that name, title or description, or make any representations to such effect in any bill head, letter head, notice or advertisement :

Provided that nothing in this Section shall prohibit an association of insurers or brokers from using the word "insurance" or any of its derivatives or similar word in any language as part of its name, title or as description of its activities.

97. Any notice or other document required or authorized by or under this Act, to be served on any insurer, shall be served on any director or manager or officer thereof in accordance with the provisions in that behalf contained in the Companies Act, No. 17 of 1982, and, if so served, shall be deemed for the purposes of this Act, to have been duly served.
98. Where a dispute relating to the settlement of a claim on a policy of long term insurance business by which the sum assured does not exceed such sum as may be determined by the Board, (exclusive of any profit or bonus not being a guaranteed profit or bonus) and which was issued by an insurer in respect of insurance business transacted by the insurer, arises between a claimant under the policy and the insurer who issued the policy or has otherwise assumed liability in respect thereof, the dispute may, at the option of the claimant, be referred to the Board for its decision, and the Board may, after giving an opportunity to the parties of being heard and after making such further inquiries as it may think fit, make its order in the dispute.
99. (1) Advertisements issued by insurers, insurance agents, and brokers shall not contain any information or material which is false, incorrect or is likely to mislead the public.
- (2) The Board shall have the power to issue directions to any person or body of persons referred to in subsection (1) in respect of any advertisement containing information or material which is false, incorrect or misleading, and it shall be the duty of such person or body or persons to amend such advertisement in accordance with directions issued.
- (3) Notwithstanding the provisions of subsection (1), it shall be the duty of every insurer, insurance agent and broker, to indicate after its name in every advertisement, letter head, name board, brochure and other publications issued by them, whether it is an insurer, insurance agent or broker as the case may be.
- (4) For the purpose of this Section, "advertisement" means a document inviting persons to enter into or to offer to enter into contracts of insurance and includes any document which contains information calculated to lead directly or indirectly to persons entering into or offering to enter into such contracts.
100. No insurer or a broker, shall, without the prior written approval of the Board, carry on any insurance business other than the insurance business in respect of which it has obtained a registration from the Board under this Act.
101. (1) No person in Sri Lanka, shall without the prior written approval of the Board, directly or indirectly place any insurance business with an insurer not registered under this Act, except in relation to reinsurance business.
- (2) The Board may grant written approval for purpose of subsection (1), only upon taking into consideration the policy of the Government in respect of the insurance industry and the national interest.
102. (1) All transactions relating to any transfer and amalgamation of insurance business shall be approved by a District Court, and when applying for such approval, a copy of the Board's observations on such transfer and amalgamation should also be submitted to Court for its perusal.
- (2) The Board may in making its observations as referred to in subsection (1), take into consideration the effect of the transfer and amalgamation as indicated by an independent actuary, and shall also where necessary, call for any further information and documents relating to the proposed transfer and amalgamation for the purpose of making such observations.
- (3) The observations of the Board shall be made in accordance with guidelines issued and regulations made under the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987, relating to take-overs and mergers.

103. (1) The Board shall establish a fund to be known as the "Policy Holders Protection Fund" (in this Section referred to as the "Fund") to which shall be credited money realised from the cess levied and charged under Section 7 of this Act.
- (2) The monies lying to the credit of the Fund shall be utilized for the general protection of policy holders and for any other specific purpose as may be determined by the Board, by rules made in that behalf.
- (3) Any money which is not immediately required for any of the purposes referred to in subsection (2), shall be invested by the Board in such prudent manner as would yield a good return and safeguard the investment.
104. Where an offence under this Act, is committed by a body of person, every Director, Manager or Secretary of that body corporate, shall be guilty of that offence :
- Provided that the Director, Manager or Secretary of such body corporate shall not be deemed to be guilty of such offence, if he or she proves that such offence was committed without his or her knowledge or that he or she exercised all due diligence to prevent the commission of such offence.
105. (1) Board shall have the power to make rules in respect of matters required by this Act, to be specified by rules, or in respect of which rules are authorized to be made.
- (2) Every rule made under subsection (1) shall be published in the *Gazette*, and shall come into operation on the date of its publication or on such later date as may be specified therein.
106. The Board shall at the end of each financial year, submit to the Minister for the Minister's approval, a report of its activities during the year. On being approved by the Minister, such report shall be laid before Parliament.
107. (1) Any insurer who is registered under the provisions of this Act, to carry on motor vehicle insurance business, shall be deemed to be an "authorized insurer" for the purposes of Part VI of the Motor Traffic Act.
- (2) Any insurer who is registered under the provisions of this Act, to carry on employers liability insurance business, shall be deemed to have been granted a licence under subsection (1) of Section 45 of the Workmen's Compensation Ordinance, to undertake insurance against liabilities to workmen which may be incurred by employers under that Ordinance.
108. (1) No suit or prosecution shall be instituted against any member of the Board or any officer or servant of the Board, for any act which is in good faith done or purported to be done by such member, officer or servant as the case may be under the provisions of this Act, or any rule or regulation made thereunder, or on the direction of the Board.
- (2) Any expense incurred by the Board in any suit or prosecution brought by or against the Board, and any costs paid to or received by the Board in any such suit or prosecution, shall be credited to the Fund of the Board.
- (3) Any expense incurred by any such person as is referred to in subsection (1) in any suit or prosecution brought against him or her before a court in respect of any act which is done or purported to be done by him or her under this Act, or on the directions of the Board, shall, if the Court hold that such act was done in good faith, be paid out of the Fund of the Board, unless such expense is recovered by him or her in such suit or prosecution.
109. No writ against person or property shall be issued against any member of the Board in any action brought against the Board.
110. The Board shall be deemed to be a scheduled institution within the meaning of the Bribery Act and the provisions of that Act, shall be construed accordingly.
111. All officers and servants of the Board shall be deemed to be public servants within the meaning and for the purposes of the Penal Code.

112. (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 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 therein.
- (3) Every regulation made by the Minister 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*.

113. (1) The Control of Insurance Act, No. 25 of 1962 is hereby repealed.

(2) Notwithstanding the repeal of the aforesaid Act :—

- (a) every company registered to carry on insurance business of any class under the repealed Act, shall be deemed to be a company registered under the provisions of this Act, to carry on insurance business of that class ;
- (b) every person registered to carry on business as an insurance broker under the repealed Act, shall be deemed to be a person registered under the provisions of this Act, as an insurance broker ;
- (c) every regulation or rule made or directive issued under the repealed Act, as is in force on the appointed date, in so far as such regulation, rule or directive is not inconsistent with the provisions of this Act, shall be deemed to be a regulation or rule made under this Act, and may be amended or rescinded by regulations or rules made or directive issued under this Act ;
- (d) every action, prosecution or proceeding instituted by or against the Controller of Insurance under the repealed Act, and pending in any Court, whether original or appellate, on the appointed date, shall be deemed to be an action, prosecution or proceeding instituted by or against the Board and every such action, prosecution or proceeding may be proceeded with to completion and be enforced accordingly ; and
- (e) any decree, order or award entered or made in favour of or against the Controller of Insurance by any Court or tribunal or other body in any action, matter or proceeding or thing and remaining unsatisfied on the appointed date shall with effect from the appointed date, be deemed to be a decree, order or award entered or made in favour or against the Board and may be enforced accordingly.
- (3) Where any insurer who is deemed to be an insurer under subsection (2) had been registered under the repealed Act, to do life assurance business and has not as on the appointed date completed three years of such business from the date of such registration, he or she shall, cause an investigation to be made by an actuary at least once a year till it completes the three years, into the financial condition of such business, including a valuation of its assets and liabilities in respect of that business and shall cause an abstract to be made in accordance with rules made in that behalf by the Board. The actuary shall certify whether the reserves are adequate to meet the current and contingent liabilities of its policy holders.

114. (1) In this Act, unless the context otherwise requires—

“actuary” means —

- (a) a Fellow of the Institute of Actuaries in England or of the Faculty of Actuaries in Scotland or a Fellow of any other professional Actuarial Institute, approved by the Board ; or
- (b) an Associate of any of the professional Actuarial Institutes referred to in paragraph (a), with not less than ten years post qualification-experience in relevant actuarial matters ;

“broker” means an insurance broker registered under the provisions of this Act, and who functions as an intermediary for the placing of insurance business for or on behalf of an insurer, a policy holder or a proposer for insurance or reinsurance, with an insurer or reinsurer, in expectation of a payment by way of brokerage or a commission ;

- "certified" in relation to any statement, account or return, or to any copy or translation of a document required to be furnished by or on behalf of an insurer, means that a certificate to the effect that such statement, account or return is true and correct or that the copy is a true copy or that the translation is correct translation, has been endorsed thereon or attached thereto by the insurer or the principal officer of the insurer authorized in that behalf, as the case may be ;
- "claims incurred but not reported (IBNR)" means claims which have occurred under any policy or policies of insurance issued by an insurer, during a financial year, but which have not been advised ;
- "claims outstanding" means all claims advised by the assured and for which the insurer will be liable under a policy or policies of insurance, but which have not been settled ;
- "classes of insurance business" means general insurance business and long term insurance business ;
- "Government guaranteed securities" includes any security in respect of a loan, the repayment of which together with interest thereon, is guaranteed by the Government of Sri Lanka ;
- "Government securities" means promissory notes (including treasury bills), stock, bearer bonds, and any other security issued by or on behalf of the Government of Sri Lanka in respect of any loan raised either before or after the appointed date, but does not include currency notes ;
- "gross premium" means the premium after deduction of discounts, refunds and rebates, but before the deduction therefrom of any premium paid or payable by an insurer for reinsurance ceded ;
- "insurance agent" means an individual registered as an insurance agent with an insurer or broker under the provisions of this Act, and who in consideration of a commission solicits or procures insurance business for such insurer or broker as the case may be ;
- "insurance business" means—
- (a) long term insurance business, that is to say, the business of entering into or maintaining contracts of assurance on human lives, such contracts including contracts whereby the payment of money is assured on death or on the happening of any contingency dependent on human life, and contracts which are subject to payment of premia for a term dependent on human life and such contracts being deemed to comprise and include the following sub- classes :—
 - (i) life insurance—contracts of insurance dependent on human life ;
 - (ii) linked long term—where benefits are wholly or partially determined by reference to an index or to the value of or to the income from assets of any description ;
 - (iii) annuities—contracts for the grant of annuities dependent on human life ;
 - (iv) contracts for the granting of disability and multiple indemnity, accident and sickness benefits if so specified in such contracts, but excluding insurance business which is principally or wholly of any kind included in sub paragraph (i), (ii), (iii), (v) and (vi) ;
 - (v) permanent health—contracts of insurance providing specified benefits on incapacity from accident or sickness which are both in effect for a period of more than five years and cannot be cancelled by the insurer ;
 - (vi) capital redemption contracts ; and
 - (vii) pension policies—insurance contracts to provide pre and post retirement benefits for individuals ;
 - (b) General Insurance Business which means all insurance business which do not fall within the definition of "long term business" being deemed to comprise and include the following sub classes :—
 - (i) "Marine, aviation or transit insurance policy" means a policy of insurance —
 - (A) upon vessels of machinery, tackle or furniture or equipment of vessels or aircraft, or
 - (B) upon goods, merchandise or property of any description whatever on board vessels ;
 - (C) upon the freight or any other interest in or relating to vessels ;

- (D) against damage arising out of or in connection with the use of vessels including third party risks ;
 - (E) against transit risks (whether the transit is by sea, inland water, land, air or partly one and partly another) including risks incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance but, not including risks the insurance of which is motor vehicle insurance business ; or
 - (F) against any of the risks the insurance of which is customarily undertaken in conjunction with or incidental to any such business as is referred to in the foregoing paragraphs of this definition ;
- (ii) fire insurance business, that is to say, the business of effecting, otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by, or incidental to, fire or other occurrence customarily included among the risks insured against in fire insurance policies ;
 - (iii) motor vehicle insurance business, that is to say, the business of effecting contracts of insurance against loss of motor vehicles or damage arising out of or in connection with the use of motor vehicles, including third-party risks ;
 - (iv) employers' liability insurance business, that is to say, the issue of, or the undertaking of liability under policies insuring employers against liability to pay compensation or damages to workmen in their employment ;
 - (v) miscellaneous insurance business, including personal accident insurance, fidelity guarantee insurance, burglary insurance, cash in transit insurance, cash in safe insurance, contractors all-risk insurance, erection all-risk insurance, electronic/computer insurance, boiler insurance and machinery breakdown insurance but excluding insurance business which is principally or wholly of any kind or kinds included in sub-paragraphs (i), (ii), (iii) and (iv) and those classes which would fall within the definition of "long term business" involving contracts of a long-term nature ;

"insurer" means a company registered to carry on insurance business in Sri Lanka under the provisions of this Act, and includes a company deemed to be registered under subsection (2) of Section 113;

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

"local authority security" means any security that may be issued, in accordance with the law in force for the time being by any local authority in Sri Lanka ;

"net claims outstanding" means all claims advised by the assured and for which the insurer will be liable under a policy or policies of insurance, but which have not been settled, less reinsurance recoveries ;

"net premium" means the balance of the gross premium after deduction therefrom of any premium paid or payable by the insurer for reinsurance ceded.

"net unearned premium" means the amount set aside as at end of a financial year of an insurer, out of premiums in respect of risks to be borne by such insurer after the end of such financial year, under a contract of insurance entered into, prior to the end of that financial year ;

"participating policies" means those policies issued by an insurer which are continually entitled to a share in the surplus arising from such policies.

"policy"

- (a) in relation to long term insurance business, includes an instrument evidencing a contract to pay an annuity upon human life ;
- (b) in relation to bond investment business includes a bond, certificate, receipt or other instrument evidencing the contract with the insurer ; and

(c) in relation to other classes of insurance business, includes an instrument under which there is for the time being an existing liability already accrued or under which any liability may accrue ;

"policy holder" means the person who for the time being is the legal holder of the policy for securing the contract with the insurer ;

"Registrar of Companies" means the person, by name or by office appointed to act as the Registrar of Companies under Section 423 of the Companies Act, No. 17 of 1982 and include any Deputy Registrar or Assistant Registrar appointed under that Section ;

"reinsurance" means the transfer of an insurer's liability incurred under any contract or policy of insurance, to a reinsurer ;

"Securities Exchange Commission of Sri Lanka" means the Securities Exchange Commission of Sri Lanka established by the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987 ;

"technical reserve" include net unearned premium, provision made for unexpired risks, net claims outstanding, reserve for claims incurred but not reported (IBNR) and any contingency reserves, less any deferred acquisition expenses ; and

"unexpired risks" means the amount set aside at the end of a financial year of an insurer, (in addition to net unearned premiums) in respect of risks to be borne by such insurer after the end of such financial year under a contract of insurance entered into prior to the end of that financial year.

(2) For the purposes of this Act, a person shall be deemed to carry on or transact insurance business of any class in Sri Lanka, if such person—

(a) issues, or undertakes liability under, any policy or contract of insurance of that class to or with a person for the time being in Sri Lanka ; or

(b) offers whether orally or in writing, to issue or undertake liability under any policy or contract whether such offer is made directly to any such person or generally to any such person by the publication, transmission, or circulation of any advertisement, book, pamphlet, or any document whatsoever ; or

(c) employs, engages or in any other manner causes or encourages, any person to make any such offer as aforesaid whether or not any remuneration is paid or payable to such other person.

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

PROVISIONS RELATING TO THE APPOINTED MEMBERS OF THE BOARD

1. A person shall be disqualified from being appointed or continuing as an appointed member of the Board—
 - (a) if he is, or becomes a member of Parliament a Provincial Council or any local authority ;
 - (b) if he is not, or ceases to be a citizen of Sri Lanka ;
 - (c) if he is under any law in force in Sri Lanka or in any other country, found or declared to be of unsound mind ; or
 - (d) if he is serving or has served, a sentence of imprisonment imposed by any court in Sri Lanka or any other country.
2. Every appointed member of the Board shall, unless he vacates office earlier by death, resignation or removal, hold office for a term of three years from the date of his appointment and unless he has been removed from office, be eligible for reappointment ;

Provided that a member appointed in place of a member who had vacated office, by death, resignation or removal, shall hold office for the unexpired term of office of the member whom he succeeds.
3. The Minister shall, by Order published in the *Gazette*, remove an appointed member of the Board from office, for misconduct in the performance of his duties or where such member has been found guilty of an offence involving fraud or dishonesty. An appointed member who is removed shall cease to hold office from and after the date of publication of such Order in the *Gazette*.
4. An appointed member of the Board may at any time resign from his office by letter to that effect addressed to the Minister and such resignation shall take effect upon it being accepted by Minister in writing.
5. In the event of the vacation of office by death, resignation or removal of an appointed member of the Board, the Minister may having regard to the provisions of paragraph (d) of subsection (1) of Section 4 appoint any other person to succeed such member. Any person so appointed in place of such member, shall hold office during the unexpired part of the term of office of the member whom he succeeds.
6. Where an appointed member of the Board by reason of illness, infirmity or absence from Sri Lanka for a period not less than three months, is temporarily unable to perform his duties, it shall be the duty of such member to inform the Minister in writing of such inability. Thereupon, the Minister may having regard to the provisions of paragraph (d) of subsection (1) of Section 4, appoint some other person to act in his place during such period.
7. The members of the Board may be paid such remuneration out of the Fund of the Board as the Minister may, determine.
8.
 - (1) The Chairman of the Board shall, if present, preside at every meeting of the Board. In the absence of the Chairman from any such meeting, the members present shall elect one of the members present, to preside at such meeting.
 - (2) The quorum for any meeting of the Board shall be five members.
 - (3) The person presiding at any meeting of the Board shall, addition to his own vote, have a casting vote.
 - (4) Subject to the provisions of this paragraph, the Board may regulate the procedure in regard to the meetings of the Board and the transaction of business at such meetings.
9. No Act, decision or proceeding of the Board shall be deemed to be invalid by reason only of the existence of any vacancy in the Board or any defect in the appointment of any member thereof.
10.
 - (1) The seal of the Board may be determined and devised by the Board, and may be altered in such manner as may be determined by the Board.
 - (2) The seal of the Board shall be in the custody of such person as the Board may decide from time to time.
 - (3) The seal of the Board shall not be affixed to any instrument or document except with the sanction of the Board and in the presence of two members of the Board who shall sign the instrument or document in token of their presence.
 - (4) The Board shall maintain a register of the instruments and documents to which the seal of the Board has been affixed.
11.
 - (1) If the Chairman is, by reason of illness or absence from Sri Lanka temporarily unable to perform the duties of his office, the Minister may appoint another member of the Board to act in his place.
 - (2) The Minister may, without assigning any reason therefor, terminate the appointment of the Chairman.
 - (3) The Chairman may at any time resign from the office of Chairman by a letter addressed to the Minister. Such resignation shall take effect upon it being accepted by the Minister in writing.
 - (4) Subject to the provisions of sub-paragraph (2) and (3) the term of office of the Chairman shall be his period of membership of the Board.

BANK OF CEYLON (AMENDMENT) ACT, NO. 54 OF 2000

[Certified on 18th August, 2000]

AN ACT TO AMEND THE BANK OF CEYLON ORDINANCE

1. This Act may be cited as the Bank of Ceylon (Amendment) Act, No. 54 of 2000.
2. Section 7 of the Bank of Ceylon Ordinance (Chapter 397) (hereinafter referred to as "the principal enactment") is hereby amended by the repeal of subsection (1) of that section, and the substitution, of the following subsection therefor :—

"(1) The authorized capital of the bank shall be fifty billion rupees divided into fifty million shares of one thousand rupees each."

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

- (1) by the substitution, for the words "specified either in section 17 or in section 19", of the words "specified in section 17 or in section 17A or in section 19"; and
- (2) by the substitution, for the words "in accordance with section 17", of the words "in accordance with section 17 or section 17A".

4. Section 17 of the principal enactment is hereby repealed and the following section substituted therefor :—

"Authorization of manager to take possession of immovable property.

17. Subject to the provisions of section 20, the Board may by resolution to be recorded in writing authorize any person specified in the resolution to enter upon and take possession of any immovable property mortgaged to the bank as security for any loan, overdraft, advance or other accommodation in respect of which default has been made and to manage and maintain such property and to exercise the same powers in the control and management of such property as might have been exercised by the mortgagor, if he had not made default."

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

"Authorization of person to seize movable property.

17A. Subject to the provisions of Section 20, the Board may by resolution to be recorded in writing authorize any person specified in the resolution to seize any movable property mortgaged to the bank as security for any loan, overdraft, advance or other accommodation in respect of which default has been made."

6. Section 19 of the principal enactment is hereby amended by the substitution for the words "Section 26", of the words "Section 26, and thereafter it shall not be competent for the borrower or any person claiming through or under any disposition whatsoever of the right, title or interest of the borrower to and in the property made or registered subsequent to the date of the mortgage to the bank, in any court to move to invalidate the said resolution or the subsequent sale for any cause whatsoever, and no court shall entertain any such application".

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

- (1) by the substitution in subsection (1) of that section for the words and figures "the provisions of Sections 17 and 19 shall apply", of the words and figures "the provisions of Sections 17, 17A and 19 shall apply";
- (2) by the repeal of subsection (2) of that section and the substitution of the following subsection therefor :—

"(2) (a) Where—

- (i) the borrower is dead ;
 - (ii) bank has been notified, in writing of his death within a period of three months of his death ;
- and

(iii) probate of his will or letters of administration to his estate have not been issued,

the District Court of Colombo or the District Court of the district in which that property is situate or kept may, upon application made in that behalf by the bank and after service of notice of the application on such persons, if any, as the court may order, and if satisfied that the grant of probate or the issue of the letters of administration is likely to be unduly delayed, appoint a person to represent the estate of the borrower for the purposes of this section.

(b) Where the borrower is dead and the bank has been notified in writing of his death within a period of three months of his death, the board shall not take action as specified in Section 17 or section 17A or Section 19 unless and until a representative of his estate has been appointed under this section.”.

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

“Notice of
resolution of
Board to sell
mortgaged
property.

21. Notice of every resolution under Section 19 authorizing the sale of any property shall be published, in addition to the *Gazette*, in three daily newspapers in Sinhala, Tamil and English respectively and copies of such notice shall be sent to the borrower by registered post to the address furnished by him to the bank.”.

9. Section 22 of the principal enactment is hereby amended by the repeal of paragraph (a) of that section and the substitution of the following paragraph therefor :—

“(a) be sent to the borrower by registered post to the address furnished by him to the bank ;”.

10. Section 27 of the principal enactment is hereby amended by the substitution for the words “property is situate or kept”, of the following :—

“property is situate or kept :

Provided however that where the borrower has made default in respect of any other loan, overdraft, advance or accommodation granted to him by the bank, the board shall, in lieu of paying of such balance to the borrower or any person legally entitled to accept the payments due to the borrower or depositing in court, as aforesaid, deposit such balance in the District Court of the district in which the property mortgaged as security for such other loan, overdraft, advance or accommodation is kept or situate.”.

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

FINANCE LEASING ACT, NO. 56 OF 2000

[Certified on 18th August, 2000]

AN ACT TO PROVIDE FOR THE REGULATION AND MONITORING OF FINANCE LEASING BUSINESSES; TO SPECIFY THE RIGHTS AND DUTIES OF LESSORS AND LESSEES AND SUPPLIERS OF EQUIPMENT; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

1. This Act may be cited as the Finance Leasing Act, No. 56 of 2000 and, shall come into operation on such date as the Minister may appoint by Order published in the *Gazette* (hereinafter referred to as the "appointed date").

PART I

REGISTRATION OF FINANCE LEASING BUSINESSES

2. Subject to the provisions of Section 44, from and after the appointed date, no person shall carry on finance leasing business, except under the authority of a certificate of registration issued in that behalf under the provisions of this Act.
3. A person shall not be eligible to be registered under this Act, unless such person
 - (a) is a licensed commercial bank or a licensed specialised bank within the meaning of the Banking Act, No. 30 of 1988 ;
 - (b) a finance company within the meaning of the Finance Companies Act, No. 78 of 1988; or
 - (c) a public company incorporated under the Companies Act, No. 17 of 1982 having such minimum issued and paid up capital as may be prescribed.
4. (1) An application for registration under this Act, shall be made to the Director in such form as may be provided for that purpose by the Director, and shall be accompanied by—
 - (a) in the case of a licensed commercial bank or a licensed specialised bank, a certified copy of the licence issued to such bank by the Monetary Board under the Banking Act, No. 30 of 1988 and in force on the date of making the application;
 - (b) in the case of a finance company, a certified copy of the licence issued by the Monetary Board under the Finance Companies Act, No. 78 of 1988 and in force on the date of making the application;
 - (c) in the case of a public company—
 - (i) a certified copy of the Memorandum and Articles of Association of the Company; and
 - (ii) a certified copy of the Certificate of Incorporation of the Company;
 - (d) a certified copy of the operating manual containing the particulars specified in section 7;
 - (e) the application fee as prescribed; and
 - (f) certified copies of such other documents as may be prescribed.
 - (2) The Director may, where he considers it necessary, require an applicant to furnish such further information or particulars for the determination of the application.
 - (3) A person who makes any statement in an application made or in any document submitted under subsection (1), or any information or particulars furnished under subsection (2), which to the person's knowledge is false or misleading in any material particular, shall be guilty of an offence under this Act.
5. (1) Where the Director, on a consideration of the information contained in an application made and the documents, information and particulars furnished under Section 4 and after such investigation as the

Director may deem necessary, is satisfied that the applicant is fit and competent to carry on finance leasing business, the Director may having regard to the interests of the national economy—

- (a) register the applicant; and
 - (b) issue a certificate of registration to the applicant.
- (2) Every person registered under subsection (1) shall be referred to as a “registered finance leasing establishment” (hereinafter referred to as a “registered establishment”).
- (3) Every registered establishment shall exhibit the certificate of registration issued to it in a conspicuous place at the principal place of business of such establishment.
- (4) The Director shall keep and maintain in the prescribed form, a register of every registered establishment.
6. Every registered establishment shall pay the Director an annual registration fee as may be prescribed, within two months of the end of each calendar year.
7. The operating manual to be submitted under paragraph (d) of subsection (1) of section 4, shall contain particulars relating to—
- (a) the period of duration of a finance lease;
 - (b) the method of recovery of the payments due on the finance lease;
 - (c) the protection by the lessor of the right of the lessee against claims in respect of the equipment provided under the finance lease;
 - (d) the disposal of such equipment after the expiration of the finance lease; and
 - (e) such other particulars as may be prescribed.
8. Except with the prior written approval of the Director, a registered establishment shall not—
- (a) alter or deviate from the particulars contained in the operating manual submitted under paragraph (d) of subsection (1) of section 4; or
 - (b) where such establishment is a company, alter its Memorandum and Articles of Association.
9. (1) The registration of a registered establishment may be suspended or cancelled by the Director on any one or more of the following grounds:—
- (a) failure to commence business within twelve months after registration;
 - (b) ceasing to carry on finance leasing business;
 - (c) proposing to make, or making any composition or arrangement with its creditors or going into liquidation or being wound up or otherwise dissolved;
 - (d) carrying on its business in a manner likely to be detrimental to the interests of its lessees;
 - (e) inability to meet its obligations to its lessees, creditors or suppliers, as the case may be;
 - (f) acting in contravention of any provisions of this Act, or any regulations made thereunder, or any condition imposed or any directions given by the Director under this Act, or such regulation;
 - (g) furnishing false, misleading or inaccurate information or concealing or failing to disclose material facts, in its application for registration; or
 - (h) where such establishment is a licensed commercial bank, licensed specialised bank or a licensed finance company, the licence issued to such establishment has been revoked by the authority issuing the same, under the Banking Act, No. 30 of 1988 or the Finance Companies Act, No. 78 of 1988, as the case may be.
- (2) The Director may, for one or more of the grounds specified in subsection (1)—

- (a) suspend the registration of a registered establishment for such period as may be specified, which shall not exceed three months, and the establishment shall not during the period of suspension enter into any finance lease; or
 - (b) cancel the registration of registered establishment and the establishment shall not thereafter carry on any finance leasing business except such business as it had entered into before the date on which the cancellation takes effect, and the establishment shall for the purpose of completing such business be deemed to be a registered establishment.
10. (1) The Director shall, before suspending or cancelling the registration of a registered establishment on any one or more of the grounds specified in Section 9, serve a notice in writing on the establishment, informing it of such fact and specifying the grounds for the proposed suspension or cancellation.
- (2) A registered establishment may, within fourteen days of receipt of a notice under subsection (1), show cause as to why its registration should not be cancelled or suspended.
- (3) Where a registered establishment fails to show cause within the period specified in subsection (2), the Director may suspend or cancel, as the case may be, the registration.
- (4) Where the registered establishment in compliance with notice issued to it under subsection (1) shows cause within the specified period, the Director may, after considering the reasons submitted—
- (a) refrain from suspending or cancelling the registration, if he is satisfied that the establishment has shown sufficient cause as to why its registration should not be suspended or cancelled; or
 - (b) suspend or cancel the registration, if he is satisfied that the establishment has not shown sufficient cause as to why its registration should not be suspended or cancelled.
- (5) The decision of the Director under subsection (3) or subsection (4), shall be served on the registered establishment and shall take effect on the date on which such decision is served on the establishment.

PART II

DUTIES OF LESSORS, LESSEES AND SUPPLIERS

11. (1) Subject to the provisions of subsection (2), a lessee has a right to the undisturbed and peaceful possession of the equipment provided to the lessee under a finance lease, and it shall be the duty of a lessor to ensure the protection of such right.
- (2) The provisions of subsection (1) shall not apply where a lessee has, by reason of any act or omission of the lessee, ceased to be entitled to the right to undisturbed and peaceful possession of the equipment.
12. It shall be the duty of a lessee to—
- (a) take proper care of the equipment provided under the finance lease;
 - (b) use it for the purpose for which it is provided; and
 - (c) subject to fair wear and tear and to any modifications agreed to by the parties to the finance lease, keep it in the condition in which it was delivered to the lessee.
13. (1) Where an equipment specified in a finance lease has not been delivered to a lessee at or before the time fixed under such lease for its delivery, or has been delivered after such time, or where the equipment delivered does not conform to the terms, conditions, warranties or specifications in the supply agreement relating to such equipment, the lessee may, subject to the provisions of subsection (2), reject the equipment and terminate such finance lease.
- (2) Where a lessee terminates a finance lease under subsection (1), the lessee may withhold the payment under such finance lease and further shall be entitled to recover from the lessor any money paid under the finance lease, less any reasonable sum withheld by the lessor in respect of—

- (a) any benefits derived by the lessee prior to the termination;
 - (b) any expenses incurred by the lessor in connection with the lease; and
 - (c) any loss in value of the equipment arising from a default or negligence of the lessee.
- (3) Where an equipment specified in a finance lease delivered to a lessee within the time fixed for its delivery, does not conform to the terms, conditions, warranties or specifications in the supply agreement relating to such equipment, or where the lessor has reason to believe that the equipment may not be supplied within the time fixed for its delivery, the lessor may supply to the lessee another equipment in conformity with the terms, conditions, warranties or specifications in the supply agreement and the lessee shall unless the finance lease provides otherwise, accept the equipment as if the lessee had agreed to accept delivery of the equipment from the lessor.
- (4) Where a lessee has accepted an equipment specified in a finance lease notwithstanding that it has not been delivered within the time specified for its delivery, or it had been delivered after such time, or does not conform to the terms, conditions, warranties or specifications in the supply agreement relating to such equipment, the lessee shall not thereafter have the right under subsection (1) to either reject the equipment or terminate the lease, as the case may be.
- (5) The lessor shall not except as provided for in this section, incur any liability to the lessee by reason of the non-delivery or late delivery of an equipment by a supplier or of the non-conformity of such equipment with the terms, conditions, warranties or specifications in the supply agreement, unless such non-delivery, late delivery or non-conformity was due to an act or omission on the part of the lessor.
14. Where a lessee accepts the equipment provided under a finance lease, the terms and conditions of the lease shall be irrevocable thereafter and it shall be the duty of the lessee to observe all such terms and conditions including the terms and conditions relating to payments under the lease.
15. Upon the expiration of the period of a finance lease or its prior termination under this Act, the lessee shall return the equipment to the lessor in such condition as is specified in paragraph (c) of Section 12, unless the lessee had acquired a right to purchase the equipment or retain it for a further period. Where the lessee fails to return the equipment, the lessor shall have a right to recover possession of the same.
16. (1) A lessee shall not terminate or rescind a supply agreement without the consent of the lessor.
- (2) The rights conferred on a lessee under this Act, in relation to a supply agreement, shall not be affected by any variation of a term, condition, warranty or specification in such agreement, unless the lessee has consented in writing to such variation.
17. (1) A lessor shall not enter into a supply agreement with a supplier for the supply of an equipment under a finance lease, until the lessee agrees in writing with the terms, conditions, warranties and specifications specified in such agreement.
- (2) Where a lessor has entered into a supply agreement in accordance with the provisions of subsection (1) and the equipment specified in the agreement is delivered at or before the time fixed under such agreement, the lessee shall accept the equipment supplied, if the equipment conforms to the terms, conditions, warranties and specifications specified in the agreement.
18. (1) Where a lessor enters into a supply agreement for the supply of an equipment to a lessee, the lessee shall also have the right to enforce such agreement as if the lessee were a party to it.
- (2) Where the supplier discharges the liability under a supply agreement to either the lessor or lessee, the supplier shall be released from the liability to the other, and the provisions of subsection (1) shall not be construed as imposing on the supplier, any liability to both the lessor and the lessee in respect of the same matter or thing under such agreement, in such instance.
19. (1) A lessor shall not incur any liability to the lessee for any loss suffered by the Lessee in respect of the equipment provided under the finance lease, except to the extent of any loss arising out of the lessee's reliance on the lessor's skill and judgement on the selection of the equipment or in the lessor's intervention in the selection of the supplier or in the specification of the equipment.

- (2) Subject to the provisions of subsection (1), the lessor shall not, in the capacity of a lessor, be liable to any person for any loss suffered by death, personal injury or damage to property caused by any equipment provided under the finance lease or its use.
 - (3) The provisions of subsection (2), shall not affect the liability of a lessor for the loss referred to in that subsection, in a capacity other than as a lessor.
20. Where a lessee fails to comply with certain terms and conditions of the finance lease in such circumstances as would amount to a substantial failure of such lease, the lessor may, subject to the provisions of Section 21—
- (a) require the lessee to make accelerated payment of the monies due under the lease, where the lease so provides; or
 - (b) where a lessee fails to make accelerated payments as required under paragraph (a), terminate the finance lease and—
 - (i) recover possession of the equipment provided; and
 - (ii) recover such damages as would place the lessor in a position the lessor would have been in if the lessee had complied with the provisions of the finance lease in accordance with its terms and conditions.
21. (1) A lessor shall, prior to enforcing the right to accelerated payment or to the termination of a finance lease under Section 20, serve by registered post a notice on the lessee—
- (a) specifying the circumstances which had caused a substantial failure of the lease within the meaning of the finance lease;
 - (b) appointing a date, not being a date less than twenty one days after the receipt of the notice, for remedying the failure referred to in paragraph (a).
- (2) Where a Lessee fails to remedy the failure specified in a notice served under subsection (1) on or before the date appointed in the notice, or fails to give a reasonable cause for such failure, the lessor may act in accordance with the provisions of Section 20.
22. A finance lease may provide for the manner in which damages recoverable under this Act, may be computed and such provision shall be enforceable between the lessor and the lessee, unless the damages so computed, would be substantially in excess of those provided under subparagraph (ii) of paragraph (b) of section 20.
23. A lessor shall not be entitled to recover under subparagraph (ii) of paragraph (b) of Section 20, such damages which the lessor could have on a consideration of the circumstances of the case, avoided in the exercise of due diligence.
24. (1) A lessor may, with written notice to the lessee, transfer or assign all or any of the lessor's rights under a finance lease or in relation to an equipment provided under such lease, to any other registered establishment.
- (2) A transfer or assignment under subsection (1) shall not relieve the transferor or assignor of its duties—
- (a) under the finance lease or in any way alter its nature or its legal effect; or
 - (b) in relation to an equipment provided under the finance lease.
25. (1) A lessee shall not, except with the written permission of the lessor and subject to any rights of third parties, transfer the right to the possession and use of an equipment under a finance lease to any other person.
- (2) For the purposes of subsection (1), a "third party" means a person who is not a party to the finance lease in relation to the equipment.
26. (1) The rights of a lessor under this Act, may be enforced against a trustee in bankruptcy of the lessee, or against any creditor of a lessee, including any creditor who has obtained an attachment in execution of such equipment.
- (2) For the purposes of subsection (1), "a trustee in bankruptcy" includes a liquidator, administrator or other person appointed to administer the estate of a lessee for the benefit of the lessee's creditors.

27. A lessor who becomes entitled to recover possession of an equipment under this Act, or under a provision of a finance lease, may—
- (a) notify such right to the officer-in-charge of the police station for the area within which the equipment is found;
 - (b) obtain the assistance of a police officer of that police station to prevent a breach of the peace in the exercise of that right; and
 - (c) recover possession of the equipment from the place where it is found, if possession could be obtained without resistance from the person in possession of the equipment or where it is not in the possession of any particular person, without resistance from any person.
28. (1) Where a lessor fails to recover possession of an equipment under Section 27, or where a lessor has reasonable grounds to believe that it is impracticable to obtain possession under that section, the lessor may make an application to the District Court within whose jurisdiction the finance lease had been entered into, for an order of possession of the equipment.
- (2) An application under subsection (1), shall be made by way of petition and affidavit to which the lessee shall be made a respondent, and which shall contain the following information—
 - (a) the date of the finance lease;
 - (b) the payments, if any, made under the lease; and
 - (c) the circumstances constituting the default by the lessee.
 - (3) The petition shall be accompanied by a certified copy of the finance lease.
 - (4) The District Court on consideration of the petition and affidavit and the documents attached thereto, and being satisfied that the petitioner is *prima facie* entitled to obtain possession of the equipment, shall make an interim order of possession compelling the respondent to deliver possession of the equipment to the petitioner.
 - (5) A copy of the interim order made under subsection (4) shall be served on the respondent and—
 - (a) where the respondent fails to show sufficient cause within fourteen days after the service of the order as to why the order should not be made permanent, the court shall make the order permanent; or
 - (b) where the respondent shows sufficient cause within fourteen days after the service of the order as to why the order should not be made permanent, the court shall set aside the interim order.
 - (6) A permanent order made under subsection (5), shall be executed in the same manner as if it were a decree for the recovery of movable property.
29. (1) In an application under Section 28, a lessor may, in addition to praying for an order of possession, also pray for an order for recovery of any monies due under the finance lease, and in that event shall specify in the petition and affidavit filed the sum due and such other facts as may be necessary for the determination of such matter.
- (2) The provisions of subsections (4) and (5) of Section 28 shall, *mutatis mutandis*, apply to an order under subsection (1) of this section, and the court may in the interim order and the permanent order made under those subsections, include an order for recovery of the sum of money sought to be recovered.
 - (3) A permanent order made under subsection (2), shall be executed in the same manner as if it were a decree for the recovery of money.
30. The provisions of Sections 27, 28 and 29 shall be in addition to and not in derogation of any other remedy that may be available to a lessor in law, for the recovery of possession of any equipment or any money due under a finance lease.
31. The parties to a finance lease may provide in such lease for the non-applicability of the provisions of this Part of this Act, other than the provisions contained in Sections 11, 16, 22 and 24, to a finance lease entered into between them.

PART III

POWERS OF THE DIRECTOR AND OFFICERS

32. (1) The Director or any officer authorised by the Director may require by notice issued in that behalf to any person whom the Director has reason to believe is carrying on finance leasing business without obtaining a registration under this Act, to furnish such information including the production of any documents as the Director may consider necessary, in order to ascertain such fact.
- (2) Where the Director or the officer authorised, after considering the information furnished and inspecting any documents furnished under subsection (1), is satisfied that the person concerned is carrying on finance leasing business without being registered under this Act, the Director shall by written notice issued in that behalf, require that person to immediately cease carrying on such finance leasing business.
- (3) Where a person to whom a notice is issued under subsection (2) fails to comply with the requirements of the notice within the time specified therein, the Director may take necessary measures to—
- (a) prosecute such person for an offence under this Act; and
 - (b) apply to the High Court of the Province in which such person is carrying on finance leasing business to obtain an order for an injunction restraining such person from continuing to carry on finance leasing business, until a valid registration is obtained for that purpose under this Act.
- (4) Every such application shall be made by petition in writing addressed to such High Court and shall be heard and determined in accordance with the procedure laid down in Chapter XXIV of the Civil Procedure Code.
- (5) The High Court of the Province shall after consideration of an application made under subsection (3) and where it is satisfied that the person concerned is carrying on finance leasing business without being registered under this Act, issue an injunction restraining such person from continuing to carry on such business until a valid registration is obtained by him under this Act, for that purpose.
33. (1) The Director or any officer authorised by the Director shall have the power to, examine the books and accounts of a registered establishment, at such time and place as may be specified by him.
- (2) For the purposes of exercising the power under subsection (1), the Director or the authorised officer may require a registered establishment to produce for inspection at such place as may be notified, any books, records or documents relating to the affairs of the establishment and any registered establishment which fails to comply with such requirement shall be guilty of an offence under this Act.
34. The Director shall have the power to issue such general directions, as he may consider necessary for the purpose ensuring that registered establishments maintain efficient standards in carrying out their duties, including directions on the following matters:—
- (a) maximum rate of payments to be levied by registered establishments;
 - (b) matters concerning the method of collecting payments;
 - (c) form and manner in which the books of accounts or other records or documents are to be maintained;
 - (d) terms and conditions of finance leases;
 - (e) minimum paid up capital and the reserves a registered establishment shall have, having regard to the value of its finance leases;
 - (f) having regard to the paid up capital and the reserves of a registered establishment, the maximum value of finance leases that may be granted to any one person, group of persons, or category of persons as may be specified by the Director;
 - (g) capital and reserves of registered establishments;
 - (h) minimum initial payment required to be made by a lessee for any equipment or different categories of equipment, such minimum to be expressed as a percentage of the value of the equipment; or
 - (i) provisions for bad and doubtful debts.

35. (1) The Minister may make regulations in respect of any matter required by this Act, to be prescribed or in respect of which regulations are authorised by 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 publication or on such later date as may be specified in the regulation.
- (3) Every regulation made by the Minister shall as soon as convenient after its publication in the *Gazette* be brought before Parliament for approval. Any such regulation which is not so approved shall be deemed to be rescinded as from the date of its disapproval but without prejudice to any thing previously done thereunder.
- (4) Notification of the date on which any regulation made by the Minister is so deemed to be rescinded shall be published in the *Gazette*.
36. A suit or prosecution shall not lie against the Director or any officer authorised by the Director for any act which is in good faith done or purported to be done by the Director or such officer under this Act.
37. The Director or any officer authorised by the Director shall not disclose any information or matter acquired in the discharge of his duties under this Act, except—
- (a) when required to do so—
- (i) by a court of law;
- (ii) by the person to whom such information or matter relates;
- (b) in the performance of his duties under this Act; or
- (c) in order to comply with any of the provisions of this Act or any other law.

PART IV

MISCELLANEOUS

38. Every registered establishment shall be deemed to be a lending institution within the meaning of and for the purposes of the Credit Information Bureau of Sri Lanka Act, No. 18 of 1990.
39. Every person who acts in contravention of any provision of this Act, or any regulations made thereunder or fails to comply with any direction or notice issued thereunder shall be guilty of an offence under this Act.
40. Any person who, being a director, manager, officer or employee of a registered establishment—
- (a) wilfully makes, or causes to be made, a false entry in any book or record of office registered establishment;
- (b) wilfully omits to make an entry in any book or record of a registered establishment or wilfully causes any such entry to be omitted; or
- (c) wilfully alters, abstracts, conceals or destroys an entry in any book or record of the registered establishment or wilfully causes any such entry to be altered, abstracted, concealed or destroyed,
- shall be guilty of an offence under this Act.
41. (1) Any person who is found guilty of an offence under this Act shall be liable on conviction after summary trial by a Magistrate, to imprisonment of either description for a term not exceeding two years or to a fine not less than rupees ten thousand and not exceeding rupees two hundred and fifty thousand or to both such imprisonment and fine.
- (2) Where an offence under this Act, is committed by a body of persons, then—
- (a) if that body of persons is a body corporate, every director, manager or secretary of that body corporate;
- (b) if that body of persons is an unincorporated body, every individual who is a member of such body; and
- (c) if that body of persons is a firm, every partner of that firm,

shall be guilty of the offence unless such director, manager, secretary, individual or partner, as the case may be, proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

42. (1) The Director may with the approval of the Monetary Board and having regard to the circumstances in which an offence under this Act, was committed, compound such offence for a sum of money not exceeding one hundred thousand rupees.

(2) The compounding of any offence under this section shall have the effect of an acquittal of the accused.

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

“close relation”, in relation to an individual, means the spouse, or dependant child of that individual;

“Director” means the head of the department of the Central Bank of Sri Lanka to which the subject of supervision of finance leasing companies under this Act, has been assigned by the Monetary Board;

“equipment” means any tangible asset which has an economically useful life of more than one year and does not include land, any improvements made to land other than fixtures or immovable property attached to land which can be removed from the land without substantial destruction to such fixture or immovable property;

“finance lease” means an agreement between a lessor and a lessee—

- (a) for the possession and use by the lessee for an initial period of not less than one year from the date of the agreement, of an equipment specified by the lessee and either provided by the lessor or a supplier selected by the lessee;
- (b) for the payment by the lessee to the lessor for possession and use of such equipment of such sums to be calculated so as to take into account in particular the amortization of the whole or substantial part of the cost of the equipment;
- (c) which, after the acceptance of the equipment by the lessee, is not terminable by the lessee during the initial period set out in paragraph (a); and
- (d) which, though not a hire purchase agreement within the meaning of the Consumer Credit Act, No. 29 of 1982, may or may not provide for the extension of the initial period set out in paragraph (a) or for the purchase by the lessee of the equipment after the expiration of the initial period set out in paragraph (a) or the period extended under this paragraph;

“finance leasing business” means the business of investing money for the provision of equipment under a finance lease;

“lessor” in relation to a finance lease, means the person who transfers the right to possession and use of a equipment under lease to a lessee;

“lessee”, in relation to a finance lease, means a person who acquires a right to possession and use of an equipment under the lease;

“Monetary Board” means the Monetary Board of the Central Bank of Sri Lanka established under the Monetary Law Act;

“supplier” means a person who supplies an equipment for the purpose of a finance lease, but does not include a lessee where the lessee supplies such equipment; and

“supply agreement”, means an agreement entered into by a lessor with a supplier for the supply of an equipment by the supplier under a finance lease.

44. (1) Every person who is carrying on finance leasing business on the appointed date, may, notwithstanding the provisions of Section 2 of this Act, continue to carry on such business for a period not exceeding one year from such appointed date, but shall within that period apply for and obtain a certificate of registration under this Act to carry on such finance leasing business.

(2) Where a person referred to in subsection (1)

- (a) is registered under this Act, all finance leases entered into by such person before such registration shall be deemed to be finance leases entered into under this Act, and the provisions of this Act shall, accordingly apply to and in relation to every such lease; or
- (b) does not apply for registration, or is refused registration under this Act, only such finance leases entered into by that person before the expiration of the period referred into subsection (1) or the date of refusal, as the case may be, shall remain valid for the periods for which they are entered into.

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