



Handbook on Good Governance for Chairmen and Boards of Directors of Public Enterprises



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இலங்கையின் பிரதம அமைச்சர்
Prime Minister of Sri Lanka

MESSAGE FROM THE HON. PRIME MINISTER

The public sector embodies the Government's commitment towards transparency, accountability and good governance in delivering a high level of service to the public. Many initiatives have been undertaken in this connection.

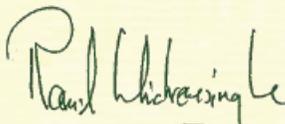
Introduction of the 19th amendment to the Constitution and the appointment of independent commissions, enactment of the Right to Information Act, Inland Revenue Act and the proposed National Audit Act, Public Finance Act and Public Enterprise Board Act are among such measures. It is vital for us to keep in mind that the national resources of Sri Lanka belong to the people and the public service and the elected politicians must manage them efficiently and effectively.

Public enterprises play a vital role in delivering optimum service levels that contribute directly and indirectly to the overall wellbeing of the nation, at a social and an economic level. Given the fact that such entities must therefore be professionally managed, the responsibility falls on the Government to ensure that individuals with professional expertise and acumen must be appointed to government institutions as chairpersons and board directors.

His Excellency the President has already appointed a committee that will evaluate and recommend nominations to the boards of public enterprises; guidelines that specify the eligibility of candidates for the appointment to such posts have already been established.

Concerns have been expressed with regard to the effective management of public enterprises – it is the obligation of chairpersons and directors serving on such boards to ensure good governance practices in delivering efficient service levels to the people.

I believe that this handbook on good governance aimed at chairpersons and directors serving on the boards of public enterprises would be useful and referred to in carrying out such duties.


Ranil Wickremesinghe
Prime Minister

28th November 2017

1. Public Enterprises in Sri Lanka

Public Enterprises in Sri Lanka refer to public corporations, boards or bodies which are established under any written law including companies incorporated under the Companies Act No. 7 of 2007 in which the Government or a public corporation or local authority directly or indirectly holds fifty percent or more of the shares of that company. This includes institutions converted under the conversion of Government Owned Business Undertakings into Public Corporations Act No. 22 of 1987 and conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act. No. 23 of 1987.

Public Enterprises play an important role in the public delivery system. Some of them are essentially infrastructure developers and related service providers. Their development expenditure essentially reflects Government vision and the public investment strategy. They are an integral part of the National Budget and as such, funding arrangements are met from both domestic and foreign sources. Some of the Enterprises are dominant players in the banking and financial services industry. They are trend setters in that sector. Some operate in other important areas such as education, health and social security whilst others are predominantly service providers in the agricultural industry, engineering, construction and trade. Their products and services need to be at fair price while ensuring profitability, viability and accountability of the Enterprise.

Since Public Enterprises are established under statutes, their performance has to be in compliance with such statutory requirements subject to the provisions of the Constitution and other laws as may be applicable.

1.1 Categories of Public Enterprises

1.1.1 Commercial Public Enterprises

A Commercial Public Enterprise is an Enterprise owned and controlled by the Government that generates its income from sales in the market as opposed to generating income through Government budgetary allocations. As such, commercial viability through effective management is essential for such Enterprises. These Enterprises are monitored and facilitated by the Department of Public Enterprises/Ministry of Public Enterprise Development.

1.1.2 Non-Commercial Public Enterprises

Non-Commercial Public Enterprises are public corporations established in terms of special Acts of Parliament that operate largely within Government budgetary provisions while the Department of National Budget monitors and facilitates such Enterprises.

Some Enterprises function as fully or predominantly Government owned companies under the purview of the Companies Act, thus ensuring that the Governance Framework in relation to all companies are compatible, whether it be private or public. In some cases, the Government's involvement is only as the golden shareholder or a minority shareholder.

Boards of Directors of Public Enterprises must be able to interface with all stakeholders. They must make sure that sufficient time is spent to deliberate Board papers, especially those in relation to specific development projects and related activities, so that timely implementation of such projects is assured. Further, the Board Secretary must be reminded to report regularly on the outcome of Standing Committees, Management Committees, Audit Committees, Risk Management Committees, Human Resource and Remuneration Committees, procurement related transactions and such other matters relating to financial management, performance assessment, on requests made pertaining to foreign travel on business related activities or to attend meetings and seminars, so as to ensure the relevance, compliance and cost effectiveness.

1.2 Applicability of this Handbook

1.2.1 Internationally accepted definition for Public Enterprises is an Enterprise owned and controlled by the Government that generates its income from sales as opposed to generating income through Government budgetary allocations.

1.2.2 This definition demands commercial viability, through effective management largely free from budgetary support, ensuring contribution to the National Economy.

1.2.3 This Handbook therefore applies mainly to Commercial Public Enterprises. Voluntary adoption of this Handbook by other Statutory Bodies is encouraged.

2. Need for Improving Governance in Public Enterprises

2.1 Absence of good governance practices has resulted in the following:

- Lack of transparency and accountability
- Lack of professional management of Public Enterprises
- Financial indiscipline, irregularities, manipulations and malpractices including large scale frauds and corporate failures
- Non-compliance with statutes, rules and regulations
- Inefficiencies leading to heavy losses
- Lack of proper management information systems
- Ineffective progress review and performance monitoring
- Ineffective internal controls, risk management practices and audit
- Delays in tabling annual reports and accounts to Parliament
- Inadequate disclosures in financial reporting
- Non-declaration of assets and liabilities by Directors
- Loss of public confidence in financial reporting and auditing.

2.2 Introduction of good governance practices and effective accountability arrangements sets the tone of the organization and brings about financial discipline.

2.3 It also paves the way for effective financial management practices ensuring orderly and efficient management of resources and improved operational performance.

3. Regulatory Framework Governing Public Enterprises

- 3.1 Overall financial management in the public sector (including Public Enterprises) falls within the purview of the Ministry of Finance. His Excellency the President, assigns the powers and functions relating to financial administration of State Corporations, Statutory Boards and Government Owned Companies and the implementation of Finance Act No. 38 of 1971 to the Minister of Finance in terms of Article 44 of the Constitution.
- 3.2 Secretaries to Ministries are appointed by the President in terms of Article 52 of the Constitution. Further, Secretaries, subject to the direction and control of the Ministers, are responsible to exercise supervision over the departments of Government and other institutions coming under the purview of their respective Ministries. Financial Regulations 124.2 stipulates that Secretaries to each Ministry function as the Chief Accounting Officer of the Ministry to oversee the financial transactions and performance of institutions coming under his or her purview.
- 3.3 Boards of Directors of Public Enterprises are appointed by the Government in terms of the relevant Acts of Parliament in respect of public corporations and Articles of Association in the case of companies registered under the Companies Act. As the custodian of public resources, the Board should exercise its mandated rights and responsibilities with integrity and in good faith, within the legal and regulatory framework governing Public Enterprises under directions and control of the Minister/Ministry of Finance or the Treasury (Department of Public Enterprises) under the direct supervision of the line Ministry.
- 3.4 The legal and regulatory framework governing Public Enterprises primarily consists of the following:
- The Constitution of the Democratic Socialist Republic of Sri Lanka – provisions relating to Public Finance
 - Enabling Acts of Parliament including the Companies Act No. 7 of 2007.
 - Other relevant statutes including Right to Information Act No 12 of 2016, Accounting and Auditing Standards Act No. 15 of 1995 and Finance Act No. 38 of 1971
 - Accounting and Auditing Standards
 - Relevant by-laws and procedure manuals
 - Government Procurement Guidelines
 - Relevant Government circulars issued from time to time.

4. Corporate Governance

Corporate Governance is often viewed as both the structure and the relationships which determine corporate direction and performance of an Enterprise. The Board of Directors is central to Corporate Governance. Its relationship with other participants, primarily shareholders and management as well as with employees, customers, suppliers and even creditors is critical. The Corporate Governance framework also depends on legal, regulatory and even the institutional structure impacting an Enterprise through which, the Board of Directors ensure inter alia transparency and accountability and facilitate value creation, resource allocation etc. of the Enterprise.

4.1 The Four Pillars of Corporate Governance

The foundation of trust among owners, Directors and managers consists of four Corporate Governance pillars:

Transparency – Ensuring timely and accurate disclosure of all material matters regarding the organization including the financial situation, performance, ownership and governance.

Accountability - Directors should be held accountable for their decisions and actions to the key stakeholders, submitting themselves to rigorous scrutiny.

Fairness - All stakeholders should receive equal, just and unbiased consideration by the Directors and management.

Responsibility - Directors should carry out their duties with honesty, probity and integrity.

4.2 Corporate Governance System

Corporate Governance entails the following:

- A well balanced Board with clearly defined roles and responsibilities of Directors
- Board commitment to well structured, regular meetings
- Planning, budgeting and monitoring of progress, accounting and reporting
- Independent internal audits and effective risk management practices
- Accurate and timely disclosure of financial and non-financial information
- Financials prepared as per Sri Lanka Accounting Standards
- Effective management of human resources and adherence to the Code of Conduct and Ethics
- Compliance with applicable rules, regulations, systems and procedures
- Prudent management of revenue and expenditure
- Policy on related party transactions
- Performance based evaluation and remuneration
- Measuring performance against objectives of the Enterprise
- Performance audits and obtaining audit opinions on controls.

4.3 Board of Directors and Board Practices

The Board of Directors is responsible to ensure that the Public Enterprise is managed effectively and run efficiently in line with applicable rules and regulations. In order to do so, the Board needs to provide entrepreneurial leadership to the management of the organization.

4.3.1 Board Tasks

In pursuing its key purpose, a Board faces a uniquely demanding set of responsibilities and challenges. The Board must:

- Seek to ensure the financial viability of the Enterprise
- Collectively direct the affairs of the Enterprise.
- Monitor and control executive management
- Meet its stakeholders' appropriate interests
- Ensure its moral and ethical commitment in areas such as bribery, corruption, political activity, gifts etc.

4.3.2 Directors' Duties

1. Duty to act within their Powers as a Director

All Directors have a strict duty to act only within their powers as a Director. They should not do anything that lies outside the capacity of the Enterprise as outlined in the Constitution. No Director may go beyond the powers conferred on them as a Director by the Constitution unless the shareowners approve it or subsequently ratify it.

2. Duty of Care

A Director has a "duty of care." This duty is to do with the degree of care, diligence and skill that a Director of an Enterprise is required to exercise in order not to be considered to have undertaken their legitimate duties negligently. A Director may not be an expert in all areas, but must diligently apply his knowledge and skills for the betterment of the Enterprise.

3. Fiduciary Duties

Directors are in a position of trust (a fiduciary position) in relation to the Enterprise. Directors must act in a faithful, trustful manner towards, or on behalf of the Enterprise. In his fiduciary capacity, a Director must:

- Act in good faith in the interests of the Enterprise
- Not make secret profits
- Avoid conflicts of interest
- Declare an interest in any matter pertaining to the Enterprise.

4.3.3 Avoiding Conflicts of Interest

Directors must not let their personal interest conflict with their duty to the Enterprise. If they put themselves in a position where there is a potential conflict between their personal interests and their duties to the Enterprise, they must always consider the interest of the Enterprise rather than their own. A Director must report to the Enterprise any benefits from transactions in which they have an interest. This is the case even if the Director took no part in the decision in question. A conflict of interest will arise where the Director deliberately exploits the assets of the Enterprise, particularly information gained through the Enterprise, for their own benefit.

4.3.4 Directors' Roles and Responsibilities

- Developing the purpose, Vision, Mission and values of the Enterprise.
- Guiding and approving the strategy of the Enterprise, major strategic recommendations, major capital expenditure, acquisitions, divestments, risk policy, annual budgets and business plans thus optimizing the allocation of available resources.
- Selecting, motivating, annually assessing and where necessary, replacing the CEO.
- Ensuring a succession plan is in place for key senior management positions.
- Ensuring that a performance management system is in place to ensure the management team possesses the required skills, knowledge and competencies as well as annually assessing the performance of senior management.
- Monitoring the Enterprise's Governance Framework, policies, procedures and practices of the Enterprise.
- Ensuring that an effective system of internal controls and risk management is in place
- Accurate and timely reporting to stakeholders on material financial and non-financial aspects relating to the organization.
- Appointing an Audit Committee, Remuneration Committee and such other committees.
- Introducing a Code of Conduct and Ethics and Corporate Governance Strategy.
- Ensuring Board accountability in conformity with relevant statutes, guidelines, circulars etc.
- Avoidance of any conflict of interest, or if unavoidable, divulging to the Board any such interest and abstaining from related voting.

4.3.5 Role of the Chairman

The Chairman has a key role in leadership. This entails getting all Directors involved in discussions and decisions and monitoring the contributions of individual Directors. The Chairman has to ensure that the Board's agenda is appropriate and focuses upon key tasks. In particular, the Chairman has to ensure that the Board monitors the progress of the Enterprise but does not slide into managing the business. Key responsibilities include:

- Chairing Board Meetings and ensuring that proper proceedings are followed.
- Taking action to ensure a well-balanced Board considering skill sets required, gender, age etc.
- Ensuring the prevalence of Corporate Governance.
- Treating all Directors equally and encouraging them to play a proactive role, rendering maximum input in their specialized areas of knowledge.
- Playing a supervisory role and refraining from engaging in operational activities (unless the Chairman is the Chief Executive Officer).
- Ensuring that the Board has total overall decision making power over activities of the Enterprise
- Ensuring a clear division of responsibilities and facilitate balance of power and authority.

4.3.6 Role of the CEO

CEO's key role is to assume the lead in putting the long-term strategy into operation and for effectively and efficiently managing the Enterprise. He is responsible for the effective implementation of policies and decisions taken by the Board of Directors. This role involves:

- Developing strategic operating plans that reflect the long term objectives and priorities established by the Board.
- Maintaining an ongoing dialogue with the Chairman of the Board.
- Putting in place adequate operational, planning and financial control systems.
- Closely monitoring the operating and financial results against plans and budgets.
- Taking remedial action where necessary and informing the Board of significant changes.

4.3.7 Role of the Board Secretary

- Ensuring that procedures governing Board Meetings are followed.
- Providing guidance on the responsibilities and rules and regulations impacting the operations of the Board.
- Providing advice and assisting all Board Members.
- Ensuring effective functioning of the Board.
- Convening and attending Board Meetings, facilitating the preparation of Board papers and maintaining accurate minutes of Board proceedings.
- Ensuring timely circulation of Board papers.
- Apprising the Board of relevant outcomes of Standing Committees, Audit Committees, Risk Management Committees etc.

4.3.8 Related Party Transactions

In certain situations, a Director or a senior manager may experience a conflict of interest between their own personal interest and their duty to the Enterprise. It is the responsibility of the Board to regularly ask for disclosures from those who can be involved in related party transactions in order to identify, review, take necessary action and report Related Party Transactions. A related party may include:

- Board members of the organization, its parent, affiliated or sister companies and associates
- A parent, subsidiary or affiliated Enterprise.
- The CEO, General Manager or key officers including anyone who directly reports to the Board or the CEO.
- The owner, having the ability to control or exercise a significant influence on the outcome of resolutions voted on by the Directors of the Enterprise, its parent, affiliated or associated companies.
- The parents, sons, daughters, husbands, wives, grandchildren, grandparents, sisters and brothers and spouses of any persons listed above.

4.4 Composition and Roles of Key Committees

4.4.1 Audit Committee

The Audit Committee of a Public Enterprise plays an important role facilitating oversight functions of its Board of Directors.

Ideally, all members of the Audit Committee are independent Directors. The Audit Committee should consist of a minimum of three Non-Executive Board Members,

including a Treasury Representative, one of whom should preferably possess financial management skills. A representative from the Auditor General's Department (External Auditors) could be invited to serve as an observer. The CEO, CFO and internal auditor should be mandatory attendees at the Audit Committee meeting as responsibility for organizational issues and commitment to take the necessary corrective actions will be shouldered by them.

All relations with the external auditor and internal auditor are handled by the Audit Committee. The internal auditor reports to the Board through this committee.

Detailed duties and responsibilities of an Audit Committee are included in the Code of Best Practice for Audit Committees' issued by the Institute of Chartered Accountants of Sri Lanka (www.icasrilanka.com). The Audit Committee -

- Understands and will be guided by the Terms of Reference (TOR)/Audit Committee Charter which needs to be issued by the Board of Directors. The TOR/Audit Committee Charter needs to articulate the composition of the Audit Committee, what actions come under its purview, how many times an year the committee will meet etc.
- Approves or recommends the approval of the appointment of internal auditors and oversees their work.
- Oversees the Enterprise's relationship with the External Auditor
- Monitors the effectiveness, impartiality of, and receives regular reports from, the internal audit function.
- Reviews financial statements, procedures and systems of internal control over financial reporting.
- Reviews arrangements for compliance with the requirements of regulators and receives reports on the operation of the "whistleblower" arrangements of the Enterprise.
- Reviews the internal/external Audit Reports, Management Letters and the recommendations of the Parliamentary Committee on Public Enterprises (COPE) to ensure remedial action is taken.
- Meets at least once in three months (as per the TOR/Audit Committee Charter) and reports its recommendations to the Board of Directors to facilitate taking of corrective measures.
- May also review the Risk Management Framework of the Enterprise.

While the internal auditor should assist the Audit Committee through the submission of relevant reports etc. to assist in the deliberations, the Board Secretary should function as the secretary to the committee.

4.4.2 Remuneration Committee

The Remuneration Committee is ideally composed entirely of independent Directors. The committee considers matters relating to Board and executive remuneration. The committee approves changes to incentive and benefit plans applicable to senior managers and may be involved with remuneration decisions for the entire Enterprise subject to obtaining clearance from the Treasury. Board remuneration can comprise of the following:

- A monthly fee or a variable fee per meeting.
- The Chairmen will normally be paid an allowance for their increased responsibility and workload.
- Board committee members will normally be paid an additional fee for their attendance.
- Reasonable travel costs and hotel accommodation will be reimbursed to attend board/ committee meetings where applicable.

The Remuneration Committee should (among other matters):

- Determine and agree with the Board on the framework or policy for the remuneration of the CEO, the Chairman of the Enterprise, and other senior members of executive management with the concurrence of the Treasury.
- Within the terms of the agreed policy, determine the total individual remuneration package of each executive Director including where appropriate, bonuses and incentive payments.
- Agree the policy for authorizing claims for expenses from the CEO and the Chairman
- Be exclusively responsible for establishing the selection criteria, selecting, appointing and setting the terms of reference for any remuneration consultants who advise the committee.

4.4.3 Risk Committee

The Board is responsible for determining the nature and extent of the risks it is willing to take in achieving its strategic objectives. In order to fulfill this requirement, the Board should ensure that sound risk management and internal control systems are maintained. It is mandatory for all financial institutions to have a Risk Committee. The committee is responsible for:

- Advising the Board on the overall risk appetite of the Enterprise, tolerance and strategy, taking account of the current and prospective macroeconomic and financial environment.

- Overseeing and advising the Board on the current risk exposures of the Enterprise and future risk strategy.
- Accurate and timely monitoring of large exposures and certain risk types of critical importance.
- Reviewing reports on any material breaches of risk limits and the adequacy of proposed action.
- Reviewing the effectiveness of the internal financial controls of the Enterprise, internal controls and risk management systems and reviewing and approving Board reports concerning internal controls and risk management.
- Reviewing the procedures of the Enterprise for detecting fraud
- Reviewing and monitoring the responsiveness of the management to the findings and the recommendations of the risk team.

4.4.4 Remuneration of Board and Committee Members

Remuneration of a Board Member is determined and dependent on the Board/Enterprise/Entity to which an appointment is made. The remuneration of a Board Member of a Board/Enterprise/ Entity is dependent on the basis of relevant Treasury circulars or decisions taken by such Boards with concurrence of the Treasury. In relation to a Board Member serving in joint ventures or predominantly privately owned and privately managed entities, remuneration is guided by respective corporate policies. Fees payable to the members of the Audit Committee could be on par with the amount that is paid to Non-Executive Directors and observers who attend Audit Committee Meetings.

5. Implementation of the Right to Information Act No. 12 of 2016

- 5.1 In terms of Section 23 of the Act, an Information Officer (2nd level officer) be appointed by every Public Authority.
- 5.2 In terms of Section 7 (1) of the Act, prepare and maintain information/records of the Institutions according to a specific directory or index.
- 5.3 In terms of Section 5, identify the information, not to be revealed by the Institutions.
- 5.4 Display the information which could be released to the public, through their websites or through Interactive schemes, prior to a request being made by the public for information
- 5.5 In terms of 8 (2) sub section (a) and (b), to publish Mid-Year Reports in an official language and be available in electronic form. Public should be provided access to inspect information and copies of such information should be made available to the public at a fee prescribed by the Commission. Such Information includes:
 - functions of institutions, organization's structure, role and functions of each post (duties assigned), details in relation to approved cadre, existing cadre and method of recruitment, all relevant laws, acts, regulations, guidelines, manuals and reports of any other sources, annual action plan of the institution, annual budgetary allocations, monetary powers assigned to each institution, budget details of special projects implemented, procedures to follow in obtaining public services, relevant demands, gazettes and how to reach such sources, facilities provided by the institutions for the public to obtain information and the names, designations and other details of officers appointed as Information Officers and the designated officer.
- 5.6 In terms of Sections 10 of the Act, Annual Reports to be published.

Refer Appendix 4 for the circular issued by the Ministry of Parliamentary Reforms and Mass Media on implementation of provisions.

6. Financial Management and Control Systems

6.1 Financial Management

- 6.1.1 Financial Management refers to managing finances in an orderly and efficient manner with a view to securing an adequate return on investment.
- 6.1.2 While managing finances, all assets belonging to the Enterprise has to be properly safeguarded, proper books of accounts maintained to secure reliable, accurate and complete reporting while ensuring public accountability.

6.2 Responsibility for Financial Management

- 6.2.1 Overall responsibility for financial management lies with the Board of Directors.
- 6.2.2 The Board of Directors is entrusted with public resources to deploy them exercising economy, efficiency and effectiveness to achieve the purpose for which the Enterprise is established and be accountable to the people (Parliament).
- 6.2.3 Accountability could be discharged only through effective financial management.
- 6.2.4 In carrying out financial management, they should be mindful of the regulatory framework governing Public Enterprises for compliance.
- 6.2.5 Public assets should be properly safeguarded keeping in mind the provisions of the Public property Act No 12 of 1982 and the amendments thereon.

6.3 Financial Management Process

- 6.3.1 The financial management process should commence with Policy formulation.
- 6.3.2 Public Enterprises are owned and operated by the Government on behalf of the public and policy formulation has to be based on the overall Policy Framework of the Government.
- 6.3.3 The process involves determination of financial objectives, planning, budgeting, budget implementation, procurement and management of assets, internal controls and audit, accounting and reporting.

6.3.4 Determination of financial objectives and planning should be based on the Policy Framework.

6.4 Planning and Budgeting

6.4.1 Planning and budgeting commences with the determination of financial objectives.

6.4.2 Each Enterprise should identify its strengths, weaknesses, opportunities and threats relating to its competitiveness for the purpose of making strategic decisions.

6.4.3 Strategic decisions should be made in consultation with the senior management of the organization.

6.4.4 Every Institution should have its strategic plan incorporating the following:

- Vision, Mission Statements and Objectives
- Current resources available in the Enterprise such as land and buildings, production and operating facilities, human resources and management skills, technical know-how, markets and suppliers, finance etc.
- Organization structure
- Strengths and weaknesses in the organization and the external threats and opportunities.
- Review of the past 3 years operating results.
- Strategic plans for the period under review.
- Action plan clearly identifying the responsibilities of managers with goals and targets to be achieved during the plan period.
- Performance indicators.

6.4.5 The strategic plan should cover at least a period of 3 to 5 years.

6.4.6 Annual action plan and the budget should be prepared based on the strategic plan before the commencement of each year.

6.4.7 Proper gap analysis should be carried out when the annual action plan and the budget is prepared and the strategic plan is updated annually as a rolling plan.

6.4.8 Updated strategic plan, annual action plan and the annual budget should be approved by the Board and forwarded to the line Ministry, Department of Public Enterprises and the Auditor General at least 15 days before the commencement of each financial year.

6.4.9 The annual budget should be used as an instrument of management control in achieving the targets set for the year ahead and ultimately, to achieve the long-term goals spelt out in the strategic plan.

- 6.4.10 The budget should therefore include realistic targets of income, expenditure, surplus, resources required and performance indicators.
- 6.4.11 Form and content of the budget should synchronize with the format in which the financial statements are prepared.
- 6.4.12 The budget should include statutory financial performance, position, cash flows, statement of changes in equity and the budget policies and notes.
- 6.4.13 The budget should also clearly indicate the capital expenditure requirements and the sources of finance.
- 6.4.14 The Budget should ideally adopt a zero- based approach, critically evaluating each activity to ascertain the need for continuity and set limits and targets accordingly.

6.5 Accounting and Reporting

- 6.5.1 The accounting system should facilitate the preparation and presentation of Financial Statements in compliance with Sri Lanka Accounting Standards.
- 6.5.2 Draft Annual Report and accounts to be handed over to the Auditor General within 60 days after the close of the financial year.
- 6.5.3 Financial Statements together with the Auditor General's report should form part of the Annual Report to be tabled in Parliament within 5 months after the close of the financial year.
- 6.5.4 Financial Reports and Accounts should provide a snapshot view of the performance and position of the Enterprise in a transparent manner disclosing all relevant information to reflect a true and fair view of the state of affairs.
- 6.5.5 The Annual Report should cover, inter alia the following: (refer key provisions of the Companies Act No. 7 of 2007 in Appendix 4 for the contents of the Annual Report)
 - Vision and Mission statements of the Enterprise
 - Brief profile of the Directors and senior management
 - Chairman's review
 - Director's report
 - Corporate Governance and sustainability report
 - Audit Committee report
 - Audited Financial Statements
 - Report of the Auditor General
 - Financial highlights of the past 5 years.

6.6 Control Systems

- 6.6.1 It is important that proper control systems are in place to ensure the smooth functioning of the Enterprise. The COSO (Committee of Sponsoring Organizations) Framework provides the following integrated components to form the Control Framework:
- Control environment
 - Control activities
 - Risk management
 - Information systems and communication
 - Progress monitoring.
- 6.6.2 Each Enterprise should have its own systems manual for all its operations. Introduction of a computer based ERP (Enterprise Resource Planning) system to cover the general ledger and procurement and asset management, should be explored. All procurement should be handled in compliance with Government Procurement Guidelines. Where necessary, entity specific Procurement Guidelines based on Government Procurement Guidelines could be formulated with the approval of the National Procurement Commission.
- 6.6.3 Human resource management should be given due consideration.
- 6.6.4 Each Enterprise should have a realistic cadre with appropriate skills and expertise to ensure maximum productivity.
- 6.6.5 Proper organization chart, approved cadre, methods of recruitment and promotion, comprehensive performance appraisal schemes should be incorporated in to the Manual of Procedure.

6.7 Internal Audit

- 6.7.1 Internal Audit is an independent, objective, assurance and consulting activity designed to add value and improve the organization's operations. It helps to accomplish its objectives by bringing a systematic and disciplined approach to evaluating and improving the effectiveness of the risk management, control and Governance processes.
- 6.7.2 Each Enterprise should therefore institute effective internal audit with wide scope mandated by an Internal Audit Charter/TOR.
- 6.7.3 Internal audit should be carried out in compliance with the International Institute of Internal Auditors (IIA) standards.

- 6.7.4 The Board should pay attention to qualifications and experience when recruiting the internal auditor.
- 6.7.5 The internal auditor should be given his due position with unrestricted scope, access to people and information.
- 6.7.6 Internal audit should be carried out under the supervision and guidance of the Audit Committee.
- 6.7.7 The internal audit report should be routed through the Audit Committee.

7. Organizational and Board Performance Management

Performance Management of Public Enterprises can contribute significantly to performance improvements on three levels: the organizational, Board and individual Director level.

7.1 Organizational Performance Management

- 7.1.1 Public Enterprises have multiple principles, stakeholders (Parliament, line Ministry, Treasury etc.) and multiple goals and conflicting objectives such as political, financial, social, equity, efficiency, viability etc.
- 7.1.2 The agreement of goals and objectives between the Government and the Enterprise is a pre-requisite to measure performance.
- 7.1.3 Enterprise Performance Management, is tuned toward optimization of overall business performance and achievement of business goals. It enables Public Enterprises to enhance the management of their business performance through the aid of reports, analytics, Key Performance Indicators (KPIs) etc. that help them measure and monitor efficiency and success of their business activities.
- 7.1.4 The Board should properly identify and document relevant KPIs which are measurable which demonstrate how effectively a Public Enterprise is achieving key business objectives.
- 7.1.5 The Board should continuously monitor the achievement of KPIs.
- 7.1.6 Corrective measures should be taken in cases where there are negative deviations.

7.2 Board Performance Management

- 7.2.1 As the decision makers of Public Enterprises, Boards of Directors are responsible for the actions and performance of the Enterprise.
- 7.2.2 Adding value to the Enterprise they govern is a challenge faced by each Board member of a Public Enterprise. Performance evaluation is a means by which Boards can ensure that they have the knowledge, skills and ability to meet this challenge.
- 7.2.3 Boards should continually monitor and improve their performance. This can be achieved through Board evaluation, which provides a powerful and valuable feedback mechanism for improving Board effectiveness, maximizing strengths and highlighting areas for further development.
- 7.2.4 Areas that could be considered in Board evaluation are:

- The mix of skills, experience, knowledge and diversity on the Board in the context of challenges faced by the Public Enterprise
- Clarity of, and leadership given to, the purpose, direction and values of the Public Enterprise.
- Succession and development plans.
- How the Board works together as a unit, and the tone set by the Chairman and CEO
- Key Board relationships, particularly, Chairman/CEO, Chairman/Secretary and Executive/Non-Executive
- Effectiveness of individual Non-Executive and Executive Directors.
- Effectiveness of Board committees and how they are connected with the main Board.
- Quality of the general information provided on the Enterprise and its performance.
- Quality of papers and presentations to the Board.
- Quality of discussions around individual proposals.
- The process the Chairman uses to ensure sufficient debate for major decisions or contentious issues.
- Effectiveness of the secretariat.
- Clarity of the decision making process and authority levels.
- Process to identify and review risks and
- How the Board communicates with, and listens and responds to, stakeholders.

7.2.5 Each Board should have procedures for assessing itself on its performance in discharging its responsibilities. This process should be carried out at least annually.

7.2.6 The outcome of a Board evaluation should be shared with the whole Board and feedback provided as appropriate.

7.3 Individual Director Performance Management

7.3.1 Each Enterprise should have in place a procedure for assessing, at least annually, the performance of individual Directors.

7.3.2 The Chairman of each Enterprise is responsible for the evaluation of the performance of individual Directors of the Board.

7.3.3 In the process of evaluating Directors, key issues such as strategic thinking, Corporate Governance, competence and independence, preparedness as a Director, personal attributes and awareness of the operational environment including stakeholders' interests may be considered.

8. Auditing and Oversight Functions

8.1 Auditor- General

In terms of Article 154 of the Constitution, the Auditor- General is inter alia required to audit the accounts of Public Enterprises.

8.2 Parliamentary Committee on Public Enterprises (COPE)

The Parliamentary Committee on Public Enterprises (COPE) established under the standing orders of Parliament, ensures the observance of financial discipline in Public Enterprises. The duty of the committee is to report to Parliament on accounts examined, budgets and estimates, financial procedures, performance and management of Public Enterprises. The accounts of these organizations which are audited by the Auditor- General, form the basis of the investigations of the committee. The committee can summon relevant officials and others it thinks fit to obtain evidence and call for documents. The committee has been regularly reporting its concerns to parliament on the basis of its examinations.

9. To be an Effective Member of the Board

9.1 Prior to attending Board Meetings

- Be familiar with statutory, regulatory and other relevant requirements applicable to Public Enterprises.
- Peruse and be familiar with the contents of all Board papers.
- Represent the best interest of the Enterprise on all issues

9.2 At Board Meetings

- Be mindful of ensuring an adequate return on investment to the Treasury.
- Ensure that the Board takes collective responsibility for the smooth operation of the Enterprise.

9.3 In General, ensure

- That there is a corporate plan and that the Board would make an annual review thereof.
- That there is an approved budget/action plan that the Board would review monthly.
- To function as Chairman/member of the subcommittee of the Board where necessary.
- That the Following key areas are considered at Board Meetings:
 - Profitability – monthly operating statements in comparison with the budget, including a variance analysis (actual vs. budget).
 - Liquidity and cash management – monthly cash flow statement and investment portfolio.
 - Debt management – debt collection, amount outstanding and follow up action.
 - Procurement and inventory management.
 - Capital investments.
 - Recruitment and remuneration.
 - Fixed asset management.

9.4 Active participation at Board Meetings

- ### **9.4.1**
- Be an active participant and not a silent observer, since silence would amount to implicit consent. Be disciplined and do not express your views outside the Boardroom subsequently or in passing. Be consistent and positive when making decisions. Make sure that you have a rationale for taking a particular stance.

10. Salient Features of the Companies Act No.07 of 2007

The Companies Act embodies the following salient provisions, relevant to Public Enterprises established under the Companies Act.

Articles of Association (Refer Section 486 and 487)

Articles of Association of an existing company will continue to apply. The Memorandum of Association of an existing company will form part of Articles of Association that will bind the company and its shareholders. The procedure to obtain a number for the company is set out in Section 487. For existing companies, the number assigned previously by the Registrar is the number of the company.

Rights of the Government (Refer Section 144)

Subject to provisions in the company's Articles:

- If the Secretary to the Treasury (ST) is the holder of more than 10% shares, he is entitled to appoint another person as his proxy to attend and vote instead of him and for every 10% or part thereof of the shares held. ST as the Golden Shareholder can appoint no more than three proxies on behalf of the Government as a Golden Shareholder to attend and vote on the same occasion (See Appendix: Section 139)
- 85% of the shareholders entitled to vote for a resolution at a meeting may pass a resolution without calling a meeting. ST's written consent is required for such a resolution, if he holds any share in the company.

Major Transactions (Refer Section 185)

- A major transaction refers to:
 - Acquisition, agreement to acquire assets greater than half the value of the Company before such acquisition.
 - Disposition or agreeing to dispose of assets of more than half the value of the Company
 - New liabilities or obligations, the value of which is more than 50% of the asset value of the Company.
 - Transactions which could substantially alter the nature of the business.
- The Company should not enter into a major transaction unless under a special resolution or with consent in writing by all shareholders or is expressly provided for in the Articles of Association at the time of incorporation.

A Transaction in which a Director is Interested (Refer Section 191)

- A Director of a Company should disclose his interest and have the same entered in the interest register
- Related remuneration and other benefits to the Directors should also be entered into the interest register
-

Solvency Test (Refer Section 57)

- "A Company should be able to pay its debts as they become due in the normal course of business, to satisfy a Solvency Test"

The value of the Company's assets must be greater than the total value of its liabilities and its stated capital.

The Board of a Company should be mindful and conscious of the solvency of the Company.

- A Solvency Test and the Audit Certificate of Solvency are required before dividends are distributed

Serious Loss of Capital (Refer Section 220)

- If the net assets of the Company are less than half of the stated capital, the Board should, within 20 working days from getting to know the same, call for an Extraordinary General Meeting to be held within 40 days from calling such meeting with a report containing information required to be notified. Failure to do so, will amount to Directors being guilty of an offence, liable for a fine up to Rs. 200,000/-. Therefore the Directors of a Company are required to be vigilant on the status of capital of the Company.

Powers of the Board of Management (Refer Section 184)

- The business and affairs of a Company is to be managed by or under the direction or supervision of the Board of the Company.
- The Board of a Company is to have all the powers necessary for managing, directing and supervising the management of such business of the Company.
- The Board should not enter into major transactions unless authorized by special resolution.

Delegation of Powers (Refer Section 186)

Subject to any restrictions specified in the Articles, the Board of a Company may delegate any one of its powers to a:

- Committee of Directors
- A Director
- An employee
- Any other person

The Board that delegates power is however responsible for the exercise of such power by the delegate as if the power has been exercised by the Board.

Duties of Directors (Refer Sections 187 – 190 and 192, 197, 200, 216 and 217)

- A Director of a Company should act in good faith and in the best interest of the Company
- A Director of a Company should act in a manner that does not contravene any provisions of the Companies Act or the Articles of Association of the Company
- When exercising powers or in performing his duties as a Director of a Company, he should not act in a reckless or negligent manner. He must exercise a degree of skill and care that may be ordinarily expected of a Director.
- A Director could rely on and use information and advice received from others designated only if he is acting in good faith, in making such inquiry since it is warranted and has no knowledge that calling for such information is unwarranted.
- When a Director is interested in a transaction with the Company it is his duty to disclose this to the Board of the Company by way of a disclosure of interests.
- A Director must protect and safeguard Private Company information. He should not disclose such information to outsiders or any third parties unless to the Company or when required by law.
- A Director who has a relevant interest in shares issued by the Company should report these particulars to the Board.

- Remuneration and other benefits to a Director should be divided according to the Articles or by ordinary resolution.
- The Company should act within parameters set out in the Act when providing a guarantee or security to a Director.
- A Director if aware that the company is unable to meet its debt, must convene a meeting of Directors and consider steps to be taken.

Accounting Records (Refer Section 148)

- Proper and up- to- date accounting records should be maintained to enable the determination of the financial position of the Company, to assist preparation of financial statements and to enable auditing.
- Accounting records should contain entries of money received and expended on a daily basis, the purpose of such expenditure and a record of assets and liabilities.
- If the Company is dealing with goods, a record of goods bought and sold and relevant invoices and the position of stocks must be noted.
- If the Company is providing services, a record of services with relevant invoices should be maintained.
- Failure to follow the guidelines above can result in a fine up to Rs.200,000/-

Group Financial Statements (Refer Section 529)

- A Company that has one or more subsidiaries on the Financial Year Balance Sheet should prepare all the financial statements in addition to group financial statements for a period of six months after the date of the Balance Sheet. The person responsible for the preparation of these statements as laid down by the Companies Act should certify the Group financial statements.
- Unless the Company has only one Director, Group financial statements should be dated and signed by two Directors on behalf of the Board.
- If the Company is a subsidiary of another Company as at the Balance Sheet date, the Group financial statements on a Balance Sheet date is not required.
- Any Director in default for non- compliance, is liable for a fine up to Rs.100,000/-
- Group financial statements mean the consolidated Balance Sheet, consolidated profit and loss account or consolidated income and expenditure statement together with any notes or documents with information relating to them.

- Group financial statements should give a true and fair view of the state of affairs of the Company for the accounting period ending on the date of the Balance Sheet.
- Group financial statements should comply with regulations made under the Companies Act which specify the form and contents and any requirements which apply to the Group financial statements under any other law.
- When a Company becomes a subsidiary during the accounting period to which the Group financial statements relate, the consolidated financial statements should incorporate the profit or loss of the subsidiary for the period during which it was a subsidiary.
- If the Balance Sheet date of the subsidiary comes before the Balance Sheet date of the Company by more than 3 months, interim financial statements must be prepared

Annual Report (Refer Sections 166, 167 and 168)

- The Annual Report of a company prepared by the Board Should be in writing, signed on behalf of the Board by two Directors of the Company, if it has only one Director, then that Director and the Company Secretary must sign.
- An Annual Report should be submitted within the 6 months following the Balance Sheet date.
- The Annual Report must be circulated to shareholders 15 working days prior to the date of the Annual General Meeting of Shareholders.
- The Company may in the first instance send the financial statements of the company in the prescribed summarized form, in consultation with the Institute of Chartered Accountants, Sri Lanka, informing the recipient that he is entitled to receive full statements if he so requires.
- Non- compliance would result in every Director who is in default being liable to a fine up to Rs. 100,000/-

Contents of an Annual Report (Refer Section 168)

An Annual Report should contain the following information:

- The nature of the business of the Company or any of its subsidiaries.
- The classes of business in which the Company has an interest as a shareholder or in any other manner.
- Financial statements and Group financial statements as prescribed, completed and signed.
- The Auditors' Report on the financial statements of the Company, and the Group financial statement.
- A description of changes in accounting policies during the accounting period.
- Details of entries in the interests register made during the accounting period.

- Directors' remuneration and other benefits, including Directors' interest.
- Total donations made during the accounting period.
- A list of Directors holding office and of those who have ceased to hold office, during the accounting year.
- Audit fees payable to the auditors and fees for any other services provided by them.
- The auditor's relationship with the Company or its subsidiaries other than as the auditor.

Subsidiary (Refer Section 529)

A Company shall be deemed to be a subsidiary of another, if the Parent Company either:

- Controls the composition of its Board of Directors
- Is In a position to exercise or control exercise of more than half the maximum number of votes that can be exercised at a meeting of the Company.
- Holds more than half (1/2) of issued shares of the Company as prescribed.
- Is entitled to receive more than half (1/2) the dividend paid on issued shares as prescribed.

Monitoring and Evaluation of Performance of Subsidiaries and Other Investments

The Parent Company is duty bound to:

- Meet at least once in six months to discuss the performance of its subsidiaries.
- Forward at least half yearly performance reports to the Department of Public Enterprises/General Treasury.
- Make sure that dividends are received on a regular basis when profits are made.
- Make arrangements to monitor its associates and other investments.
- Ensure that investments in subsidiaries, associates and other investments are accounted for and shown in the Annual Reports and Accounts in accordance with Sri Lanka Accounting standards on "Accounting for Subsidiaries, Associates and Other Investments"

11. Salient Features of the Finance Act No.38 of 1971.

Salient features of Finance Act No. 38 of 1971 relating to Financial Control of Public Corporations are as follows:

Corporate Plan and Budget (Refer Section 7 and 8)

- A Corporate Plan that explains the operational profitability and sectional objectives and targets should be introduced
- An Annual Budget approved by the governing body in the form and manner determined by the Minister after discussing with the Minister of Finance, should be prepared.
- A capital expenditure exceeding the stipulated amount should be approved by the Line Minister and the Minister of Finance.

Appropriation of Net Surplus Revenue (Refer Section 10)

- After defraying changes on the revenue of a Public Corporation, the net surplus for any year may be appropriated.

Investments of money of Public Corporations (Refer Section 11)

- Investments of money of Public Corporations should be done with the required approvals.

Submission of Accounts to Auditor General (Refer Section 13 (6))

- Annual Financial Accounts need to be submitted to the Auditor- General within 4 months after the end of each year.

Steps to be taken on Audit Report (Refer Section 13(7))

- Consideration of the audit report and reporting on action thereon should be completed within 3 months from the Auditor General's report.

Submission of Draft Annual Report (Refer Section 14(1))

- A draft Annual Report should be submitted to the appropriate Minister, Minister of Finance, Minister of Finance and Planning and the Auditor General within 4 months after the end of the financial year.

Tabling Annual Report in Parliament (Refer Section 14(3))

- Accounts and Reports should be placed before Parliament within 10 months from the end of each financial year.

This Act is under consideration for review.

Appendix 1

Appendix 1 - 19th Amendment to the Constitution – Key Provisions relating to the Auditor General, Audit Services Commission and National Procurement Commission

153 (1) Appointment of Auditor- General

There shall be an Auditor-General who shall be a Qualified Auditor, and subject to the approval of the Constitutional Council, be appointed by the President and shall hold office during good behavior.

153 A (1) Audit Service Commission

There shall be an Audit Service Commission which shall consist of the Auditor-General who shall be the Chairman of the Commission, and the following members appointed by the President on the recommendation of the Constitutional Council:-

- (a) two retired officers of the Auditor-General's Department, who have held office as a Deputy Auditor-General or above;
- (b) a retired judge of the Supreme Court, Court of Appeal or the High Court of Sri Lanka; and
- (c) a retired Class I Officer of the Sri Lanka Administrative Service

154 Duties and Functions of Auditor- General

- (1) The Auditor-General shall audit all departments of the Government, the Office of the Secretary to the President, the Office of the Secretary to the Prime Minister, the Officers of the Cabinet of Ministers, the Judicial Services Commission, the Constitutional Council, the Commissions referred to in the Schedule to Article 41B, the Parliamentary Commissioner for Administration, the Secretary-General of Parliament, local authorities, public corporations, business and other undertakings vested in the Government under any written law and companies registered or deemed to be registered under the Companies Act, No. 7 of 2007 in which the Government or a public corporation or local authority holds fifty per centum or more of the shares of that company including the accounts thereof.)

- (2) Notwithstanding the provisions of paragraph (1) of this Article, the Minister in charge of any such (public corporation, business or other undertaking or a company referred to in paragraph (1) may, with the concurrence of the Minister in charge of the subject of Finance and in consultation with the Auditor-General, appoint a qualified auditor or auditors to audit the accounts of such (public corporation, business of or other undertaking or a company referred to in paragraph (1)). Where such appointment has been made by the Minister, the Auditor-General may, in writing, inform such auditor or auditors that he proposes to utilize his or their services for the performance and discharge of the Auditor-General's duties and functions in relation to such (public corporation, business or other undertaking or a company referred to in paragraph (1) and thereupon such auditor or auditors shall act under the direction and control of the Auditor-General.
- (3) The Auditor-General shall also perform and discharge such duties and functions as may be prescribed by Parliament by law.
- (4) (a) The Auditor-General may for the purpose of the performance and discharge of his duties and functions engage the services of a qualified auditor or auditors who shall act under his direction and control.
- (b) If the Auditor-General is of the opinion that it is necessary to obtain assistance in the examination of any technical, professional or scientific problem relevant to the audit, he may engage the services of
- (i) a person not being an employee of the department, body or authority the accounts of which are being audited or
 - (ii) any technical or professional or scientific institution not being an institution which has any interest in the management of the affairs of such department, body or authority,
- And such person or institution shall act under his direction and control.
- (5) (a) The Auditor-General or any person authorized by him shall in the performance and discharge of his duties and functions be entitled –
- (i) to have access to all books, records, returns and other documents;
 - (ii) to have access to stores and other property; and
 - (iii) to be furnished with such information and explanations as may be necessary for the performance of such duties and functions.

- (b) Every qualified auditor appointed to audit the accounts of (any public corporation, business or other undertaking or a company referred to in paragraph (1), or any person authorized by such auditor, shall be entitled to the same access, information and explanations in relation to such public corporation, or business or other undertaking.
- (6) The Auditor-General shall within ten months after the close of each financial year and as and when he deems it necessary, report to Parliament on the performance and, discharge of his duties and functions under the Constitution.
- (7) Every qualified auditor appointed under the provisions of paragraph (2) of the Article shall submit his report to the Minister and also submit a copy thereof to the Auditor-General.
- (8) In this Article, “qualified auditor” means –
- (a) an individual who, being a member of the Institute of Chartered Accountants of Sri Lanka, or of any other Institute established by law, possesses a certificate to practice as an Accountant issued by the Council of such Institute; or
- (b) The provision of sub-paragraph (a) of paragraph (8) shall apply to the Auditor-General appointed under Article 153 (1).

156 B National Procurement Commission

- (1) There shall be a National Procurement Commission (in this Chapter referred to as the “Commission”) consisting of five members appointed by the President on the recommendation of the Constitutional Council, of whom at least three members shall be persons who have had proven experience in procurement, accountancy, law or public administration. The President shall, on the recommendation of the Constitutional Council, appoint one member as the Chairman of the Commission.
- (2) Every member of the Commission shall hold office for a period of three years from the date of appointment, unless such member earlier resigns from office by a writing addressed to the President or is removed from office by the President for causes assigned with the approval of the Constitutional Council or is convicted by a court of law for an offence involving moral turpitude or is elected a member of Parliament or a member of a Provincial Council or of a local authority or if a resolution for the imposition of a civic disability on him is passed in terms of Article 81.

- (3) The Chairman and every member of the Commission shall be paid such allowances as may be determined by a resolution of Parliament. Such allowances shall be charged on the Consolidated Fund and shall not be diminished during the term of office of such Chairman or the member.

156 C Functions of the Commission

- (1) It shall be the function of the Commission to formulate fair, equitable, transparent, competitive and cost effective procedures and guidelines, for the procurement of goods and services, works, consultancy services and information systems by Government institutions and cause such guidelines to be published in the Gazette and within three months of such publication, to be placed before Parliament.
- (2) Without prejudice to the generality of paragraph (1), it shall be the function of the Commission to:-
- (a) monitor and report to the appropriate authorities, on whether all procurement of goods and services, works, consultancy services and information systems by Government institutions are based on procurement plans prepared in accordance with previously approved action plans:
 - (b) monitor and report to the appropriate authorities on whether all qualified bidders for the provision of goods and services, works, consultancy services and information systems by Government institutions are afforded an equal opportunity to participate in the bidding process for the provision of those goods and services, works, consultancy services and information systems:
 - (c) monitor and report to the appropriate authorities on whether the procedures for the selection of contractors, and the awarding of contracts for the provision of goods and services, works, consultancy services and information systems to Government institutions, are fair and transparent:
 - (d) report on whether members of procurement Committees and Technical Evaluation Committees relating to the procurements, appointed by Government institutions are suitably qualified: and
 - (e) Investigate reports of procurements made by Government institutions outside established procedures and guidelines, and to report the officers responsible for such procurements to the relevant authorities for necessary action.

156 D Powers of the Commission

- (1) The Commission may, by Notice in writing, require any person to –
 - (a) attend before the Commission to be questioned by the Commission:
 - (b) Produce to the Commission, any document or thing in the possession or control of that person and specified in such Notice.
- (2) Every person who –
 - (a) Fails, without reasonable cause to appear before the Commission when required to do so by Notice sent to him under paragraph (1).
 - (b) appears before the Commission in compliance with such a Notice, but refuses without reasonable cause, to answer any questions put to him by the Commission: or
 - (c) Fails or refuses, without reasonable cause, to produce any document or thing which he has required to produce by Notice sent to him under paragraph (1).

Shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand rupees or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.

- (3) Every High Court established under Article 154p of the Constitution shall have jurisdiction to hear and determine any matter referred to in paragraph (2).

Appendix 2

Appendix 2 - Implementation of Provisions relating to the Right to Information Act – Circular No. RT1/01/2016 issued by the Ministry of Parliamentary Reforms and Mass Media

To all Secretaries to Ministries / Chief Secretaries to Provincial Councils and Heads of Departments

Implementation of Provisions of the Right to Information Act No 12 f 2016

As per above Act passed in the Parliament of Sri Lanka on 04th August, 2016, it is the responsibility of all Public Authorities to implement provisions of the Right to Information Act. Therefore, you are kindly informed to make aware all institutions under your purview and to issue relevant directives in the light of decisions arrived at the workshop for Secretaries to Ministries and Chief Secretaries to Provincial Councils in order to initiate preliminary activities in implementing the provisions of the Right to Information Act.

1. In terms of Section 23 of the act, appointment of an Information Officer by every Public Authority

Accordingly, to nominate one or more Information Officers for your Ministry and each institution (including Provincial and District Institutions) coming under your purview. A second Level Executive Officer or Officers of the said institution should be selected as Information Officers. Since the Head of the Institution have to act as the Designated Officer in relation to appeals, Second Level Officers should be nominated as Information Officers. Accordingly, please make arrangements to submit details of the Information Officers nominated for all institutions coming under your purview prepared according to Annexe 1 to reach this Ministry on or before 31.10.2016.

2. Archiving and maintenance of information / records in prescribed formats

In terms of Section 7 (1) of the Right to Information act, each Public Authority

- i. Should prepare and maintain information / records of the institution according to a specific Directory or an index;
- ii. Should identify information not to be revealed by the institution as per Section 5 of the Act;
- iii. Should display information, which could be revealed, to the public through their websites or interactive screens prior to requests made by the public for information.

3. Mid-year Reports to be issued by Public Authorities

- i. To arrange institutions to publish a mid-year report in terms of sub-sections (a) and (b) of Section 8 (2) containing the following;

Functions of the institution, organizational structure, role and functions of each post (Assignment of duties), details in relation to approved cadres, existing cadres and Schemes of Recruitment, all relevant Laws, Acts, Regulations, Guidelines, Manuals and reports of any other source, annual Action Plan of the Institution, annual budgetary allocations / monetary powers assigned to each institution, budget details of special projects implemented, procedures to follow in obtaining public services, relevant documents, Gazettes and how to reach such sources, facilities provided by the institution for the public to obtain information and the names, designations and other details of officers appointed as Information Officers and the Designated Officer.

- ii. As per Sub-sections (a) and (b) this information should be published in official languages and should be available in electronic formats. The public should be provided access to inspect information and in future, copies of such information should be made available to public at a fee prescribed by the Commission.

This Ministry expects to make Heads of Institutions and Information Officers aware on implementing provisions of this act, and therefore, you are kindly requested to submit details of Information Officers nominated for your institution and institutions coming under your purview as mentioned in 01 above to reach this Ministry on or before 31.10.2016.

Nimal Bopage
Secretary
Ministry of Parliamentary Reforms and Mass Media

Annex 1 to the circular

Data Sheet of Information Officers

Ministry / Department:

Name of the Institution/Dept./Office	Name of the Information Officer	Designation	Office Address	Tel. No.

I appoint the above officer/officers as the information officer/officers of this Ministry/Dept./Institution.

.....

Signature, Name and Designation of Head of the Department

Rubber Stamp

Appendix 3

Appendix 3 - Key Provisions relating to the Offences Against Public Property Act

Relevant provisions of Offences Against Public Property Act (No. 12 of 1982) / Offences Against Public Property (Amendment) Act (No. 76 of 1988) / Offences Against Public Property (Amendment) Act (No. 28 of 1999)

Section 2 - Mischief to public property

Any person who commits the offence of mischief to public property shall be guilty of an offence and shall upon conviction be punished with imprisonment of either description for a term not less than one year but not exceeding twenty years, and with a fine of one thousand rupees or three times the amount of the loss or damage caused to such property, whichever amount is higher.

Section 3 - Theft of public property

Any person who commits the offence of theft of public property shall be guilty of an offence and shall upon conviction be punished with imprisonment of either description for a term not less than one year but not exceeding twenty years, and with a fine of one thousand rupees or three times the value of the property in respect of which such offence was committed, whichever amount is higher.

Section 4 - Robbery of public property

Any person who commits the offence of robbery of public property shall be guilty of an offence and shall upon conviction be punished with imprisonment of either description for a term not less than one year but not exceeding twenty years, and with a fine of one thousand rupees or three times the value of the property in respect of which such offence was committed, whichever amount is higher.

Section 5 - Dishonest misappropriation, criminal breach of trust, cheating, forgery and falsification of accounts.

(i) Any person who dishonestly misappropriates or converts to his own use any movable public property or commits the offence of criminal breach of trust of any movable public property shall be guilty of an offence and shall upon conviction be punished with imprisonment of either description for a term not less than one year but not exceeding twenty years, and with a fine of one thousand rupees or three times the value of the property in respect of which such offence was committed, whichever amount is higher.

(ii) Any person who commits the offence of cheating, forgery or falsification of accounts in relation to public property shall be guilty of an offence and shall upon conviction be punished with imprisonment of either description for a term not less than one year but not exceeding twenty years and with a fine of one thousand rupees or three times the amount in relation to which such offence was committed, whichever amount is higher.

(iii) Any person who dishonestly receives or retains any stolen property being public property, knowing or having reason to believe the same to be stolen property, shall be guilty of an offence and shall upon conviction be punished with imprisonment of either description for a term not less than one year but not exceeding twenty years and with a fine of one thousand rupees or three times the value of the property in respect of which such offence was committed, whichever amount is higher.

5A. Where in any proceedings relating to an offence referred to in this Act, it is proved that the property in respect of which that offence is alleged to have been committed bears any letter, mark or inscription set out in the Schedule hereto, it shall be presumed until the contrary is proved that such property is public property."

Section 6 - Recovery of fine by forfeiture of property

Where any fine imposed on any person under sections 2, 3, 4, 5 or 10 is in default, the court may order all such property of the defaulter, movable or immovable, as it considers equivalent in value to the amount of such fine to be forfeited to the Republic, and any sum realized on the sale of such property which is in excess of the amount of such fine shall be refunded to such person.

Section 7 - Community service order

Where the forfeiture of property under section (6 is impracticable or inexpedient, the court may, in lieu of making such order of forfeiture, make a community service order under section 18 of the Code of Criminal Procedure Act, No. 15 of 1979.

Section 10 - Attempts to commit offences

Any person who attempts to commit an offence punishable under this Act, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall be punished with such imprisonment of either description as is provided for the offence and with such fine, as is provided for the offence.

Section 12 - Interpretation

In this Act unless the context otherwise requires, " bank " means

(a) any agency or institution acting on behalf of the Government (whether established under any written law or otherwise) which grants loans, advances or investments, or accepts deposits of money from the public; and

(b) any other person or body of persons declared by the Minister in charge of the subject of Finance by Order published in the Gazette to be a bank for the purposes of this Act;

"cheating" has the same meaning as in the Penal Code; " co-operative society" means any society registered or ' : deemed to be registered under the Co-operative Societies Law, No. 5 of 1972, or under any law in force for the time being in relation thereto; " co-operative union" means any union registered or deemed to be registered under the Co-operative-Societies Law, No. 5 of 1972, or under any law in force for the time being in relation thereto; "criminal breach of trust" has the same meaning as in the Penal Code; "dishonestly" has the same meaning as in the Penal Code; " falsification" has the same meaning as in the Penal. Code; " forgery " has the same meaning as in the Penal Code ; " mischief " has the same meaning as in the Penal Code;. "public corporation" means any corporation, Board or' other body which was or is established by or under any written law other than the Companies Ordinance with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise ; "public property " means the property of the Government, any department, statutory Board, public corpora-ration, bank, co-operative society or co-operative-union ;"robbery" has the same meaning as in the Penal Code; "theft" has the same meaning as in the Penal Code; "'stolen property ' has the same meaning as in the Penal Code;'

Appendix 4

Appendix 4 - Key Provisions relating to the Companies Act No. 7 of 2007

Companies Act No. 7 of 2007

Provisions Relating to Articles of Existing Companies

Section 486

- (1) The model articles shall not apply to an existing company unless it resolves that they shall apply, under subsection (1) of paragraph (b) of section 15.
- (2) The memorandum of association of an existing company shall be deemed to form part of the articles of the Company.
- (3) The articles of an existing company shall continue to be the articles of such company for the purposes of this Act, and where such articles have adopted all or any of the rules set out in Table A, of the First schedule to the Companies Act No. 17 of 1982, those rules shall be deemed to be incorporated in such articles of the company, as if set out in full in those articles.

Section 487

- (1) Subject to the provisions of subsection (2), the number which an existing company has been assigned by the Registrar for administrative purposes, shall be the company number of that company.
- (2) Within a period of twelve months from the coming into operation of this Act, all existing companies shall apply to the Registrar to assign a new number as its company number. In a form as may be prescribed by the Registrar. The new number so assigned shall be entered in the register and also on the fresh certificate of incorporation to be issued under the provisions of subsection (6) of section 485.
- (3) Where an existing company fails to comply with the requirements imposed under subsection (2) of this section within the time specified therein, the Registrar shall cause to be published the name of such company in a daily newspaper in the Sinhala, Tamil and English Languages, and where such company continues to fail to comply with those requirements thereafter, the Registrar shall, within six months of the publication of its name in the newspapers, strike off the name of such company from the register maintained by him under the provisions of section 473.
- (4) During the period of six months referred to in subsection (3), in addition to a director of the company, a shareholder of such company or a person who has registered a charge under section 102 or a person who has a money claim

pending before a court or in arbitration proceedings, shall also be entitled to apply to the Registrar to have a new number assigned to such company under subsection (2).

- (5) Where a company's name is struck off from the register under subsection (3), all property and rights whatsoever vested in or held on trust for the company immediately before the date on which the name is struck off, (including leasehold property but not including property held by the company on trust for any other person), shall vest in and be at the disposal of the State.

Rights of the Government

Proxies

Section 139

- (1) Any shareholder of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a shareholder or not) as his proxy to attend and vote instead of him. A proxy so appointed shall have the same right as the shareholder to vote on a show of hands or on a poll and to speak at the meeting:

Provided that unless the articles otherwise provide, a shareholder shall not be entitled to appoint more than one proxy to attend on the same occasion.

- (2) Notwithstanding anything in this act, where the Secretary to the Treasury is the holder of more than ten per centum of the shares, the Secretary to the Treasury shall be entitled to appoint another person as his proxy for every ten per centum or part thereof of the shares held by the Secretary to the Treasury:

Provided where the Secretary to the Treasury is a holder of a Golden Share in a company in terms of its articles, notwithstanding anything in this act, the Secretary to the Treasury as the Golden Shareholder thereof shall be entitled to appoint not more than three other persons as his proxies to attend on the same occasion.

- (3) In every notice calling a meeting of a company, there shall appear with reasonable prominence a statement that a shareholder entitled to attend and vote is entitled to appoint proxy to attend and vote instead of him and that a proxy need not also be a shareholder. Where default is made in complying with the provisions of this subsection as respects any meeting, every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

- (4) Any provisions contained in company's articles shall be void in so far as it would have the effect of requiring the instrument appointing a proxy or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than forty-eight hours before a meeting or adjourned meeting, in order that the appointment may be effective there at.
- (5) Where for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the Company's expense to some only of the shareholders entitled to be send a notice of the meeting and to vote there at by proxy, every officer of the company who knowingly and willfully authorizes and permits their issue as aforesaid, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees:

Provided that an officer shall not be liable under the provisions of this subsection by reason only of the issue to a shareholder at his request in writing of a form of appointment naming the proxy or of a list of persons willing to act as proxy, if the form or list is available on request in writing to every shareholder entitled to vote at the meeting by proxy.

- (6) The provisions of this section shall apply to meetings of any class of shareholders of a company as it applies to general meetings of the company.
- (7) Every shareholder of the company or a proxy holder shall be entitled to inspect the proxies received under the provisions of this section at least three hours before the commencement of the meeting or adjourned meeting at which the proxy is to be used.

Resolution in Lieu of a Meeting

Section 144

- (1) Subject to the provisions contained in the company's articles, a resolution in writing signed by not less than eighty-five per centum of the shareholders who would be entitled to vote on that resolution at a meeting of shareholder, who together hold not less than eighty-five per centum of the votes entitled to be cast on that resolution, shall be as valid as if it had been passed at a meeting of those shareholders.
- (2) Subject to the provisions contained in the company's articles, a resolution in writing that;

- (a) relates to a matter that is required by this Act or by the articles to be decided at a meeting of the shareholders of a company; and
- (b) is signed by the shareholders specified in subsection (1).

is deemed to be made in accordance with the provisions of this Act or the articles of the company.

- (3) It shall not be necessary for a company to hold an annual general meeting of shareholders under section 133, if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with this section.
- (4) Within five working days of a resolution being passed under this section, the company shall send a copy of the resolution to every shareholder who did not sign the resolution.
- (5) A resolution may be signed under subsection (1) or subsection (2) without any prior notice being given to shareholders.
- (6) Where a company fails to comply with the requirements of subsection (4):
 - (a) The company shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees; and
 - (b) Every officer who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.
- (7) A person who is registered as the holder of parcels of shares having different beneficial owners, may expressly sign a resolution under this section in respect of shares having one beneficial owner and refrain from signing the resolution in respect of shares having another beneficial owner.
- (8) Notwithstanding any provision in this Act, where the Secretary to the Treasury is the holder of a share of a company, any resolution referred to in this section shall not be valid unless the consent in writing of the Secretary to the Treasury as a holder of the share is also obtained in favour of such resolution.

Major Transactions

Section 185

- (1) A company shall not enter into any major transaction, unless such transaction is;
 - (a) approved by special resolution;
 - (b) contingent on approval by special resolution;
 - (c) consented to in writing by all the shareholders of the company; or
 - (d) a transaction which the company is expressly authorized to enter into by a provision in its articles, which was included in it at the time the company was incorporated.

- (2) In this section the reference to “assets” includes property of any kind, whether corporal or incorporeal, “major transaction,” means;
- (a) the acquisition of or an agreement to acquire whether contingent or not, assets of a value which is greater than half the value of the assets of the company before the acquisition;
 - (b) the disposition of an agreement to dispose of, whether contingent or not, the whole or more than half by value of the assets of the company;
 - (c) a transaction which has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities of a value which is greater than half the value of the assets before the acquisition; or
 - (d) a transaction or series of related transactions which have the purpose or effect of substantially altering the nature of the business carried on by the company.
- (3) Nothing in this section shall apply to;
- (a) a transaction under which a company gives or agrees to give a floating charge over all or any part of the property of the company;
 - (b) a transaction entered into by a receiver appointed pursuant to an instrument creating a floating charge over all or any part of the property of a company;
 - (c) a transaction entered into by an administrator or liquidator of a company.

Solvency Test

Section 57

- (1) A company shall be deemed to have satisfied the solvency test, if;
- (a) it is able to pay its debts as they become due in the normal course of business; and
 - (b) the value of the company’s assets is greater than;
 - (i) The value of its liabilities; and
 - (ii) The company’s stated capital.
- (2) In determining whether a company satisfies the solvency test, the board;
- (a) shall take into account the most recent financial statements of the company prepared in accordance with section 151 of the Act;
 - (b) shall take into account circumstances the directors know or ought to know which affect the value of the company’s assets and liabilities;
 - (c) may take into account a fair valuation or other method of assessing the value of assets and liabilities

Powers of the Board of Management

Section 184

Subject to the provisions contained in the articles of a company;

- (a) the business of affairs of a company shall be managed by or under the direction or supervision of the board of the company;
 - (b) the board of a company shall have all the powers necessary for managing and for directing and supervising the management of, the business and affairs of the company.
- (1) A company shall not enter into any major transaction, unless such transaction is;
- (a) approved by special resolution;
 - (b) contingent on approval by special resolution;
 - (c) consented to in writing by all the shareholders of the company; or
 - (d) a transaction which the company is expressly authorized to enter into by a provision in its articles, which was included in it at the time the company was incorporated.
- (2) In this section the reference to “assets” includes property of any kind, whether corporal or incorporeal; “major transaction,” means;
- (a) the acquisition of or an agreement to acquire whether contingent or not, assets of a value which is greater than half the value of the assets of the company before acquisition;
 - (b) the disposition of an agreement to dispose of, whether contingent or not, the whole or more than half by value of assets of the company;
 - (c) a transaction which has or likely to have the effect of the company acquiring rights of interests incurring obligations or liabilities of a value which is greater than half the value of the assets before the acquisition; or
 - (d) a transaction or series of related transactions which have the purpose or effect of substantially altering the nature of the business carried on by the company.
- (3) Nothing in this section shall apply to;
- (a) a transaction under which a company gives or agrees to give a floating charge over all or any part of the property of the company;
 - (b) a transaction entered into by a receiver appointed pursuant to an instrument creating a floating charge over all or any part of the property of a company;
 - (c) a transaction entered into by an administrator or liquidator of a company.

Delegation of Powers

Section 186

- (1) Subject to any restrictions contained in the provisions of the articles of the company, the board of a company may delegate to a committee of directors, a director or employee of the company or any other person, anyone or more of its powers other than its powers under any of the sections of this Act specified in the **Sixth Schedule**.
- (2) A board that delegates a power under subsection (1) shall be responsible for the exercise of the power by the delegate as if the power had been exercised by the board, where;
 - (a) The board had reason to believe before the exercise of the power, that the delegate would not exercise the power in conformity with the duties imposed on directors of the company by this Act and the company's articles; or
 - (b) The board has failed to monitor by means of reasonable methods properly used, the exercise of the power by the delegate.

Sixth Schedule

Provisions which confer powers on the board which may not be delegated:

Section 51 (Issue of shares)

Section 52 (Consideration for issue of shares)

Section 56 (Distributions)

Section 58 (2) and (3) (Stated capital)

Section 59 (4) Reduction of stated capital)

Section 64 (Purchase of own shares)

Section 67 (Redemption option of company)

Section 70 (Restrictions on giving financial assistance)

Section 114 (Charge of registered office)

Section 241 (Approval of amalgamation proposal)

Section 242 (Short form amalgamation)

Section 401 (Power of the Board to appoint Administrator)

Section 415 (Vacancy in office of Administrator)

The Duties of Directors

Section 187

- (1) A person exercising powers or performing duties as a director of a company shall act in good faith, and subject to subsection (2), in what that person believes to be in the interests of the company.
- (2) A director of a company which is a wholly owned subsidiary of another company may, if expressly permitted to do so by the company's articles, act in a manner which he believes is in the interest of that other company even though it may not be in the interests of the company of which he is a director.

Section 188

A director of a company shall not act or agree to the company acting, in a manner that contravenes any provisions of this Act, or the provisions, contained in the articles of the company.

Section 189

A person exercising powers or performing duties as a director of a company;

- (a) shall not act in a manner which is reckless or grossly negligent; and
- (b) shall exercise the degree of skill and care that may reasonably be expected of a person of his knowledge and experience.

Section 190

- (1) Subject to the provisions of subsection (2), a director of a company may rely on reports, statements and financial data and other information prepared or supplied, and on professional or expert advice given by any of the following persons;
 - (a) an employee of the company;
 - (b) a professional adviser or expert in relation to matters which the director believes to be within the person's professional or expert competence;
 - (c) any other director or committee of directors in which the director did not serve, in relation to matters within the directors or committee's designed authority.
- (2) Provisions of subsection (1) shall apply to a director, if, and only if, the director;
 - (a) acts in good faith;
 - (b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and
 - (c) has no knowledge that such reliance is unwarranted.

- (3) The provisions contained in this Act are in addition to and not in derogation of any provisions contained in any other law relating to the duty or liability of directors or officers of a company.

A Transaction in which a Director is interested

Section 191

- (1) Subject to the provisions of subsection (2), for the purposes of this Act a director of a company is interested in a transaction to which the company is a party if, and only if, the director;
- (a) is a party to or will or may derive a material financial benefit from the transaction;
 - (b) has a material financial interest in another party to, the transaction;
 - (c) is a director, officer or trustee of another party to or person who will or may derive a material financial benefit from the transaction, not being a party or person that is;
 - (i) the company's holding company being a holding company of which the company is a wholly-owned subsidiary;
 - (ii) a wholly owned subsidiary of the company; or
 - (iii) a wholly-owned subsidiary of a holding company of which the company is also a wholly-owned subsidiary;
 - (d) is the parent, child, or spouse of another party to or person who will or may derive a material financial benefit from the transaction; or
 - (e) is otherwise directly or indirectly materially interested in the transaction.
- (2) A director of a company is not deemed to be interested in a transaction to which the company is a party, if the transaction comprises only of the giving by the company of security to a third party which has no connection with the director at the request of the third party, in respect of a debt or obligation of the company for which the director or another person has personally assumed responsibility in whole or in part under a guarantee, indemnity or by the deposit of a security.

Disclosure of Interest

Section 192

- (1) A director of a company shall, forthwith after becoming aware of the fact that he is interested in a transaction or proposed transaction with the company, cause to be entered in the interests register and if the company has more than one director, disclosed to the board of the company, the nature and extent of that interest.

- (2) For the purposes of subsection (1), a general notice entered in the interests register or disclosed to the board to the effect that director is a shareholder, director, officer or trustee of another named company or other person or is otherwise connected with another named company or other person, and is to be regarded as interested in any transaction which may after the date of the entry or disclosure be entered into with that company or person, shall be a sufficient disclosure of interest in relation to any transaction with that company or person.
- (3) A failure by a director to comply with the requirements of subsection (1) shall not affect the validity of a transaction entered into by the company or the director.
- (4) Every director who fails to comply with the requirements of subsection (1) shall be guilty of an offence, and be liable on conviction to a fine not exceeding two hundred thousand rupees.

Avoidance of a Transaction

Section 193

- (1) A transaction entered into by the company in which a director of the company is interested, may be avoided by the company at any time before the expiration of six months after the transaction, and the director's interest in it have been disclosed to all the shareholders (whether by means of the company's annual report or otherwise).
- (2) A transaction shall not be avoided under this section if the company receives fair value under it.
- (3) For the purposes of subsection (2), the question whether a company receives fair value under a transaction shall be determined on the basis of the information known to the company and to the interested director, at the time the transaction is entered into.
- (4) If a transaction is entered into by the company in the ordinary course of its business and on usual terms and conditions, the company shall be presumed to have received fair value under the transaction.
- (5) For the purposes of this section;
 - (a) A person seeking to uphold a transaction and who knew or ought to have known of the director's interest at the time the transaction was entered into, shall have the burden of establishing fair value; and

(b) In any other case, the company shall have the burden of establishing that it did not receive fair value.

(6) A transaction in which a director is interested shall not be avoided on the ground of the director's interest, other than pursuant to this section or the company's articles.

Effects on Third Parties

Section 194

The avoidance of a transaction under section 193 shall not affect the title or interest of a person in or to property which that person has acquired, if the property was acquired.

- (a) From a person other than the company;
- (b) For valuable consideration; and
- (c) In good faith without notice of the circumstances as a consequence of which the transaction becomes voidable

Exceptions

Section 195

Nothing contained in sections 192 and 193 shall apply in relation to;

- (a) Remuneration or any other benefit given to a director in accordance with section 216; or
- (b) An indemnity given or insurance provided in accordance with section 218.

Instances in which an interested Director May Vote

Section 196

Subject to the provisions contained in the articles of the company, a director of a company who is interested in a transaction entered into or to be entered into by the company, may;

- (a) Vote on a matter relating to the transaction;
- (b) Attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum;
- (c) Sign a document relating to the transaction on behalf of the company; and
- (d) Do any other thing in his capacity as a director in relation to the transaction, as if the director were not a party interested in that transaction.

Use of Company Information

Section 197

- (1) A director of a company who has information in his capacity as a director or employee of the company which would not otherwise be available to him, shall not disclose that information to any person or make use of or act on the information, except;
 - (a) For the purposes of the company;
 - (b) As required by law;
 - (c) In accordance with subsection (2); or
 - (d) In any other circumstances in which the company's articles authorize the director to do so

- (2) A director of a company may disclose, make use of or act of information, if;
 - (a) The director is first authorized to do so by the board under subsection (3); and
 - (b) Particulars of the authorization are entered in the interests register.

- (3) The board authorizes a director to disclose, make use of or act on information, if it is satisfied that to do so will not be likely to prejudice the company.

Meaning of Relevant Interest

Section 198

- (1) For the purposes of section 200, a director of a company has a relevant interest in a share issued by a company (whether or not the director is registered in the share register as the holder of it) if the director;
 - (a) Is a beneficial owner of the share;
 - (b) Has the power to exercise any right to vote attached to the share;
 - (c) Has the power to control the exercise of any right to vote attached to the share;
 - (d) Has the power to acquire or dispose of the share;
 - (e) Has the power to control the acquisition or disposition of the share by another person; or
 - (f) Under or by virtue of any trust, agreement, arrangement or understanding relating to the share (whether or not that person is a party to it) may at any time have the power to.
 - (i) Exercise any right to vote attached to the share.
 - (ii) Control the exercise of any right to vote attached to the share;
 - (iii) Acquire or dispose of the share; or
 - (iv) Control the acquisition or disposition of the share by another person

- (2) Where a person (whether or not a director of the company) has a relevant interest in a share by virtue of subsection (1), and
- (a) That person or its directors are accustomed or under an obligation, whether legally enforceable or not, to act in accordance with the directors, instructions, or wishes of a director of the company in relation to;
 - (i) The exercise of the right to vote attached to the share;
 - (ii) The control of the exercise of any right to vote attached to the share;
 - (iii) The acquisition or disposition of the share; or
 - (iv) The exercise of the power to control the acquisition or disposition of the share by another person.
 - (b) A director of the company has the power to exercise the right to vote attached to twenty per centum or more of the shares of that person;
 - (c) A director of the company has the power to control the exercise of the right to vote attached to twenty per centum or more of the shares of that person;
 - (d) A director of the company has the power to acquire or dispose of twenty per centum or more of the shares of that person; or
 - (e) A director of the company has the power to control the acquisition or disposition of twenty per centum or more of the shares of that person, that director has a relevant interest in the share.
- (3) A person who has or may have a power referred to in paragraphs (b) to (f) of subsection (1), has a relevant interest in a share, regardless of whether the power is;
- (a) Expressed or implied;
 - (b) Direct or indirect;
 - (c) Legally enforceable or not;
 - (d) Related to a particular share or not;
 - (e) Subject to restraint or restriction or is capable of being made subject to restraint or restriction;
 - (f) Exercisable presently or in the future;
 - (g) Exercisable along or jointly with another person or persons
- (4) A power referred to in subsection (1) exercisable jointly with another person or persons, is deemed to be exercisable by either or any of those persons.
- (5) A reference to a power in this section includes a reference to a power that arises from or is capable of being exercised as the result of a breach of any trust, agreement, arrangement or understanding or any of them, whether or not it is legally enforceable.

Relevant Interests to be Dis-regarded in Certain Cases

Section 199

- (1) For the purposes of section 200, no account shall be taken of a relevant interest of a person in a share, if;
 - (a) The ordinary business of the person who has the relevant interest consists of or includes the lending of money or the provision of financial services or both, and that person has the relevant interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of that person;
 - (b) That person has the relevant interest by reason only of acting for another person to acquire or dispose of that share on behalf of the other person;
 - (c) That person has the relevant interest solely by reason of being appointed as a proxy to vote at a particular meeting of members or of a class of members;
 - (d) That person;
 - (i) is a trustee corporation or a nominee company; and
 - (ii) has the relevant interest by reason only of acting for another person in the ordinary course of business of that trustee corporation or nominee company; or
 - (e) The person has the relevant interest by reason only of the fact that the person is a trustee of a trust to which the share is subject.
- (2) For the purposes of paragraph € of the subsection (1), a person may be a trustee notwithstanding that he is entitled as a trustee to be remunerated out of the income or property of the trust.

Disclosure of Share Dealings by Directors

Section 200

- (1) A person who;
 - (a) is a director of a company on the appointed date; or
 - (b) becomes a director of a company thereafter, and who has a relevant interest in any shares issued by the company, shall forthwith;
 - (c) disclose to the board the number and class of shares in which the relevant interest; and
 - (d) ensure that the particulars disclosed to the board under paragraph (c) are entered in the interests register.

- (2) A director of a company who acquires or disposes of a relevant interest in shares issued by the company shall, forthwith after the acquisition or disposition;
- (a) disclose to the board;
 - (i) the number and class of shares in which the relevant interest has been acquired or the number and class of shares in which the relevant interest was disposed of, as the case may be;
 - (ii) the nature of the relevant interest;
 - (iii) the consideration paid or received; and
 - (iv) the date of the acquisition or disposition; and
 - (b) ensure that the particulars disclosed to the board under paragraph (a) are entered in the interests register.

Directors' Remuneration and Other Benefits

Section 216

- (1) Subject to the provisions of section 217, the board of a company may, if authorized to do so by the articles or by an ordinary resolution, approve;
- (a) the payment of any remuneration or the provision of other benefits by the company to a director for services as a director in any other capacity;
 - (b) the payment by the company to a director or former director, of compensation for loss of office;
 - (c) the entering into of a contract to do any one of the things referred to in paragraphs (a) or (b).
- if the board is satisfied that to do so is fair to the company.
- (2) The board shall ensure that forthwith after approving the making of the payment or the provision of the benefit or the entering into of the contract, as the case may be, particulars of the payment or benefit or contract are entered in the interests register.
- (3) The payment of remuneration or the giving of any other benefit to a director in accordance with a contract authorized under subsection (1), shall not be required to be separately authorized under that subsection.
- (4) The directors who vote in favour of approving a payment, benefit, or contract under subsection (1), shall sign a certificate stating that in their opinion, the making of the payment or the provision of the benefit or the entering into of the contract is fair to the company, and the reasons for reaching that opinion.

- (5) Where a payment is made or other benefit provided to which subsection (1) applies, and either;
- (a) the provision of subsections (1) and (4) have not been complied with or
 - (b) reasonable grounds did not exist for the opinion set out in the certificate given under subsection (4), the director or former director to whom the payment is made or the benefit is provided, shall be personally liable to the company for the amount of the payment or the monetary value of the benefit, except to the extent to which he proves that the payment or benefit was fair to the company at the time it was made or provided.
- (6) Nothing in this section shall prevent the articles of a company from providing for the authorization by shareholders of payment of remuneration or the giving of other benefits to directors, and the provisions of subsections (1) to (5) of this section shall not apply to the payment of remuneration or the giving of any other benefit approved by shareholders pursuant to such a provision in the company's articles.

Restrictions on Loans to Directors

Section 217

- (1) Subject to the provisions of section 31, and subsection (2) of this section, a company shall not;
- (a) give a loan to a director of the company or of a related company; or
 - (b) enter into any guarantee or provide any security in connection with a loan made by any person to a director of the company or of a related company
- (2) The provisions of subsection (1) shall not prevent a company from;
- (a) giving a loan to a director, where the aggregate of the amounts advanced to the director by the company does not exceed twenty-five thousand rupees or such higher sum as may be prescribed by the Minister from time to time, on the recommendation of the Advisory Commission constituted under Part XIX of this Act.
 - (b) giving a loan to a related company or entering into a guarantee or providing security in connection with a loan given by any person to a related company;
 - (c) providing a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him to perform his duties as an officer of the company; or giving a loan in the ordinary course of the business of lending money, where that business is carried on by the company.

- (3) Where any loan is given in contravention of the provisions of subsection (1), the loan shall be voidable at the option of the company and the loan shall be immediately repayable upon being avoided by the company, notwithstanding the terms of any agreement relating to the loan.
- (4) Where a transaction other than giving a loan to a director is entered into by a company in contravention of subsection (1);
- (a) the director shall be liable to indemnify the company for any loss or damage resulting from the transaction; and
 - (b) the transaction shall be voidable at the option of the company, unless;
 - (i) the company has been indemnified under paragraph (a) for any loss or damage suffered by it; or
 - (ii) any rights acquired by a person other than the director in good faith and for value, without actual notice of the circumstances giving rise to the breach of this section, would be affected by its avoidance.
- (5) Where a company fails to comply with the provisions of subsection (1);
- (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees; and
 - (b) every director of the company who authorizes or permits the company to enter into the relevant transaction, shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

Duty of Directors on Insolvency

Section 219

- (1) A director of a company who believes that the company is unable to pay its debts as they fall due, shall forthwith call a meeting of the board to consider whether the board should apply to court for the winding up of the company and appointment of a liquidator or an administrator or carry on further the business of the company.
- (2) Where a director referred to in subsection (1) fails to comply with the requirement of that subsection and at the time of that failure the company was unable to pay its debts as they fell due, and the company is subsequently placed in liquidation, the court may on the application of the liquidator or of a creditor of the company, make an order that the director shall be liable for the whole or any part of any loss suffered by creditors of the company as a result of the company continuing to carry on its business.

- (3) If;
- (a) At a meeting called under subsection (1) the board does not resolve to apply to court for the winding up of the company and for the appointment of a liquidator or an administrator;
 - (b) At the time of that meeting there were no reasonable grounds for believing that the company was able to pay its debts as they fell due; and
 - (c) The company is subsequently placed in liquidation.

the court may, on the application of the liquidator or of a creditor of the company, make an order that the directors, other than those directors who attended the meeting and voted in favour of applying to court for the winding up of the company and for the appointment of the liquidator or an Administrator, shall be liable for the whole or any part of any loss suffered by creditors of the company as a result of the company continuing to carry on its business.

Duty of Directors on Serious Loss of Capital

Section 220

- (1) If at any time it appears to a director of a company that the net assets of the company are less than half of its stated capital, the board shall within twenty working days of that fact becoming known to the director, call an extraordinary general meeting of shareholders of the company for the purposes of this section, to be held not later than forty working days from that date of calling of such meeting.
- (2) The notice calling a meeting under this section shall be accompanied by a report prepared by the board, which advises shareholders of;
 - (a) the nature and extent of the losses incurred by the company;
 - (b) the cause or causes of the losses incurred by the company;
 - (c) the steps, if any, which are being taken by the board to prevent further such losses or to recoup the losses incurred.
- (3) The business of a meeting called under this section shall be to discuss the report prepared by the directors and the financial position of the company. The chairperson of the meeting shall ensure that shareholders have a reasonable opportunity to ask questions in relation to and to discuss and comment on the report and the management of the company generally.
- (4) Where the board of a company fails to comply with subsection (1), every director who knowingly and willfully authorizes or permits the failure or permits the failure to continue, shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

Accounting Records

Section 148

- (1) Every company shall keep accounting records which correctly record and explain the company's transactions, and will;
 - (a) at any time enable the financial positions of the company to be determined with reasonable accuracy;
 - (b) enable the directors to prepare financial statements in accordance with this Act; and
 - (c) enable the financial statements of the company to be readily and properly audited.

- (2) Without limiting the provisions contained in subsection (1), the accounting records shall contain;
 - (a) entries of money received and expended each day by the company and the matters in respect of which such money was spent;
 - (b) a record of the assets and liabilities of the company;
 - (c) if the company's business involves dealing in goods;
 - (i) a record of goods bought and sold, except goods sold for cash in the ordinary course of carrying on a retail business that identifies both the goods and buyers and sellers and the relevant invoices;
 - (ii) a record of stock held at the end of the financial year together with records of any stock takings during the year;

 - (d) if the company's business involves providing services, a record of services provided and relevant invoices.

- (3) Where a company fails to comply with the requirements of this section;
 - (a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees; and
 - (b) every officer of the company who is in default shall be guilty of an offence, and be liable on conviction to a fine not exceeding two hundred rupees.

Interpretation

Section 529

- (1) "Subsidiary:" a company shall be deemed to be a subsidiary of another, if and only if:
 - (a) that other company either:
 - (i) controls the composition of its board of directors;

- (ii) Is in a position to exercise or control the exercise of more than half the maximum number of votes that can be exercised at a meeting of the company;
 - (iii) Holds more than half of the issued shares of the company, other than shares that carry no right to participate beyond a specified amount in a distribution of profits or capital;
 - (iv) Is entitled to receive more than half of every dividend paid on shares issued by the company, other than shares that carry no right to participate beyond a specified amount in a distribution of profits or capital; or
- (b) the first-mentioned company is a subsidiary of any company which is that other company's subsidiary. For the purpose of this definition, the composition of a company's board of directors shall be deemed to be controlled by another company if, and only if, that other company by the exercise of any power exercisable by it without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and that other company shall be deemed to have power to appoint a director, if;
- (i) a person cannot be appointed as a director without the exercise in his favour by that other company, of a power to so appoint; or
 - (ii) a person's appointment as a director follows necessarily from his appointment as a director of that other company.

In determining whether one company is a subsidiary of another;

- (a) any shares held or power exercisable by a company in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to the provisions of paragraphs (c) and (d), any shares held or power exercisable;
 - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity); or
 - (ii) by or by a nominee for a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity, shall be treated as held or exercisable by that other;
- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company, or of a trust deed for securing any issue of such debentures, shall be disregarded;
- (d) any shares held or power exercisable by or by a nominee for that other or its subsidiary (not being held or exercisable as referred to in paragraph (c)), shall be treated as not held or exercisable by that other, if the ordinary

business of that other or its subsidiary, as the case may be, includes the lending of money, and the shares are held or the power is exercisable by way of security only, for the purposes of a transaction entered into in the ordinary course of that business.

For the purpose of this definition “company” includes a body corporate; and “working day” means a day other than Saturday, Sunday or a public holiday.

(2) For the purposes of this Act;

(a) a company is related to another company, if;

- (i) that company is the subsidiary or holding company of the other company;
- (ii) the holding company of that company is also a holding company of the other company; or
- (iii) that company is related to a company which is related to the other company;

(b) where any section of this Act provides that an officer of a company who is in default shall be liable to a penalty, the expression “officer who is in default” means any director, manager, secretary or other officer of the company, who knowingly and willfully authorizes or permits the default, refusal or contravention referred to in that section;

(c) (i) one or more groups may exist in relation to any action or proposal; and

(ii) if;

- (A) action is taken in relation to some holders of shares in a class and not others; or
- (B) a proposal expressly distinguishes between some holders of shares in a class and other holders of shares of that class.

Holders of shares in the same class, may fall into two or more interest groups.

(3) Any reference in this Act;

- (a) (i) to the shareholders of a company includes, in relation to a company which has only one shareholder, a reference to that shareholder;
- (ii) to the directors of a company includes, in relation to a company which has only one director, a reference to that director;

- (b) to a body corporate or to a corporation, shall be construed as not including a corporation sole but as including a company incorporated outside Sri Lanka;
 - (c) unless the context otherwise requires, to a person by whom, or in whose interests a receiver was appointed, includes a reference to a person to whom the rights and interests under any deed or agreement by or under which the receiver was appointed, have been transferred or assigned.
- (4) Where public notice of any matter is required to be given under this Act, that notice shall be given by publishing a notice of that matter;
- (a) in at least one issue of the Gazette; and
 - (b) in at least one issue of a daily newspaper in the Sinhala, Tamil and English languages, circulating in the area in which;
 - (i) the company's place of business;
 - (ii) if the company has more than one place of business, the company's principal place of business; or
 - (iii) if the company has no place of business or the location of neither its principal place of business nor any other place of business is known to the person required to give the notice, the company's registered office, is situated.

Obligation to Prepare an Annual Report

Section 166

- (1) The board of every company shall within six months after the balance sheet date of the company, prepare an annual report on the affairs of the company during the accounting period ending on that date.
- (2) Where the board of a company fails to comply with subsection (1), every director of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

Annual Report to be sent to Shareholders

Section 168

- (1) The board of a company shall cause a copy of the annual general meeting report to be sent to every shareholder of the company not less than fifteen working days before the date fixed for holding the annual general meeting of shareholders;

Provided that a company may in the first instance, send every shareholder the financial statement in the summarized form as may be prescribed, in consultation with institute of Chartered Accountants of Sri Lanka, together with the annual report;

Provided further the company shall inform each shareholder that he is entitled to receive full financial statement if he so requires, within a stipulated period of time.

- (2) Where the board of a company fails to comply with subsection (1), every director of the company shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees.

Contents of the Annual Report

Section 168

- (1) The annual report of the board shall be in writing and be dated, and subject to subsection (2), shall;
- (a) describe so far as the board believes is material for the shareholders to have an appreciation of the state of the company's affairs and will not be harmful to the business of the company or of any of its subsidiaries, any change during the accounting period in;
 - (i) the nature of the business of the company or any of its subsidiaries; or
 - (ii) the classes of business in which the company has an interest, whether as shareholder of another company or otherwise;
 - (b) include financial statements for the accounting period completed and signed in accordance with section 151, and any group financial statements for the accounting period completed and signed in accordance with section 152;
 - (c) where an auditor has been appointed by the company, include that auditor's report on the financial statements and any group financial statements;
 - (d) describe any change in accounting policies made during the accounting period;
 - (e) state particulars of entries in the interest register made during the accounting period;
 - (f) state the remuneration and other benefits of directors during the accounting period;

- (g) state the total amount of donations made by the company during the accounting period;
 - (h) state the names of the persons holding office as directors of the company as at the end of the accounting period and the names of any person who ceased to hold office as directors of the company during the accounting period;
 - (i) state the amounts payable by the company to the person or firm holding office as auditor of the company as audit fees and as a separate item, fees payable by the company for other services provided by that person or firm;
 - (j) state the particulars of any relationship (other than that of auditor), which the auditor has with or any interests which the auditor has in, the company or any of its subsidiaries; and
 - (k) be signed on behalf of the board by;
 - (i) two directors of the company or if the company has only one director, by that director; and
 - (ii) the secretary of the company.
- (2) A company that is required to include group financial statements in its annual report shall include in relation to its subsidiaries, the information specified in paragraphs (b) to (j) of subsection (1);
- (3) The annual report of a company need not comply with of paragraph (a) and paragraphs (d) to (j) of subsection (1), if all shareholders agree in writing that in need not do so. Any such agreement shall be noted in the annual report.

Obligation to Prepare Group Financial Statements

Section 152

- (1) Subject to the provisions of subsection (2), the board of a company that has on the balance sheet date of the company one or more subsidiaries, shall, in addition to complying with section 150, ensure that within the time specified in that section, group financial statements that comply with section 153 are;
- (a) completed in relation to that group and that balance sheet date;
 - (b) certified by the person responsible for the preparation of the financial statements that it is in compliance with the requirements of this Act; and
 - (c) dated and signed on behalf of the directors by two directors of the company or if the company has only one director, by that director.

- (2) Group financial statements and a balance sheet date shall not be required in relation to a company, if the company is at that balance sheet date the wholly owned subsidiary of another company.
- (3) Where the board fails to comply with the requirements specified in subsection (1), every director of the company who is in default shall be guilty of an offence, and be liable on conviction to a fine not exceeding one hundred thousand rupees.

Contents and Form Group Financial Statements

Section 153

- (1) The financial statements of a group shall give a true and fair view of;
 - (a) the state of affairs of the company and its subsidiaries as at the balance sheet date; and
 - (b) the profit or loss or income and expenditure, as the case may be, of the company and its subsidiaries for the accounting period ending on that balance sheet date.
- (2) Without limiting the provisions contained in subsection (1), the financial statements of a group shall comply with;
 - (a) any regulations made under this Act which specifies the form and content of group financial statements; and
 - (b) any requirements which apply to the group financial statements under any other law.
- (3) Where a subsidiary became a subsidiary of a company during the accounting period to which the group financial statements relate, the consolidated profit and loss statement or the consolidated income and expenditure statement for the group, shall relate to the profit or loss of the subsidiary for each part of that accounting period during which it was a subsidiary, and not to any other part of that accounting period.
- (4) Subject to the provisions of subsection (3), where the balance sheet date of a subsidiary of a company is not the same as that of the company, the group financial statements shall;

- (a) if the balance sheet date of the subsidiary does not precede that of the company by more than three months, incorporate the financial statements of the subsidiary for the accounting period ending on that date, or incorporate interim financial statements of the subsidiary completed in respect of a period that is the same as the accounting period of the company; or
 - (b) in any other case, incorporate interim financial statements of the subsidiary completed in respect of a period that is the same as the accounting period of the company.
- (5) Subject to the provisions of subsections (3) and (6), group financial statements shall incorporate the financial statements prepared in accordance with section 151, of every subsidiary of the company.
- (6) Subject to the provisions of subsection (7) group financial statements prepared by a company need not incorporate the financial statements of a subsidiary of that company, where the board of the company is of the opinion that;
 - (a) it is impracticable to do so or would be of no real value to the shareholders of the company in view of the insignificant amounts involved, or would involve expense or delay out of proportion to the value to shareholders;
 - (b) the result would be misleading or harmful to the business of the company or any of its subsidiaries; or
 - (c) the business of the company and that of the subsidiary are so different, that they cannot reasonable be treated as a single undertaking.
- (7) Group financial statement prepared by a company may not omit the financial statements of a subsidiary of that company under subsection (6), without the prior approval in writing of the Registrar, which may be given on such terms or conditions as the Registrar thinks fit.

Appendix 5

Appendix 5 - Key Provisions relating to the Finance Act No. 38 of 1971

Financial Obligations of a Public Corporation

Section 7

- (1) It shall be the duty of the governing body of a public corporation to conduct the business of the corporation so that the ultimate surpluses on revenue accounts shall at least be sufficient to cover the ultimate deficits on such account over a period of five years or such other period as may be determined by the Minister of Finance. In determining the ultimate surplus or ultimate deficit for each year under this section, there shall be charged against the revenue account the charges specified in section 9 and the appropriations specified in section 10.
- (2) Subsidies which may be received by a public corporation from the Government in terms of section 17 shall be included in the revenue of the corporation in arriving at the surplus or deficit in any year.

Preparation of Budgets of Public Corporations

Section 8

- (1) Every public corporation shall prepare a budget in respect of every financial year and such budget shall be approved by the governing body of such corporation not later than three months prior to the commencement of the financial year to which the budget relates.
- (2) Notwithstanding the approval of the budget by the governing body of public corporation, no commitments of capital expenditure provided in such budget in excess of five hundred thousand rupees shall be incurred by such corporation except,
 - (a) in any case where the appropriate Minister is the Minister of Planning, with the prior approval of the appropriate Minister given with the concurrence of both the Minister Finance; or
 - (b) in any case where the appropriate Minister is not the Minister of Planning, with the prior approval of the appropriate Minister given with the concurrence of both the Minister of Planning and the Minister of Finance.
- (3) The budget of public corporation shall give projections of revenue and expenditure both recurrent and capital, financial resources, investments of funds, cash resources and other relevant information. Such budget shall show a

budgeted profit and loss account or income and expenditure account for each financial year and a projected balance sheet showing the position at the end of that year. The form and manner in which the budget shall be prepared, and the minimum information that budget shall contain, shall be as determined in any case where;

- (a) the appropriate Minister is the Minister of Finance, by the appropriate Minister, or
 - (b) the appropriate Minister is not the Minister of Finance, by the appropriate Minister with the concurrence of the Minister of Finance.
- (4) A public corporation shall forward copies of its budget to the Ministry of the appropriate Minister, the Ministry of Finance and the Ministry of Planning immediately after the budget has been approved by the governing body of the corporation.

Appropriate of Net Surplus Revenue

Section 10

- (1) Subject to the provisions of subsection (3), the net surplus for any year, if any, out of the revenue of a public corporation after defraying the charges mentioned in section 9 may be appropriated by the corporation for all or any of the purposes to which the provisions of this sub-section apply.
- (2) The provisions of sub-section (1) shall apply to the following purposes:
- (a) writing off the whole or any part of any accumulated losses brought forward;
 - (b) writing off the whole or any part of the preliminary expenses incurred in the formation of the corporation;
 - (c) writing off the whole or any part of any unproductive expenditure or loss not properly chargeable to revenue account;
 - (d) transfers to a loan redemption reserve which the corporation is hereby authorized to establish and maintain; and
 - (e) transfers to other reserves.
- (3) No appropriation shall be made by a public corporation under the preceding provisions of this section except;
- (a) in any case where the appropriate Minister is the Minister of Finance, with the approval of the appropriate Minister so, however, that, if the purpose for which such appropriation is to be made is the purpose mentioned in paragraph (e) of subsection (2), no such approval shall be given without the concurrence of the Minister of Planning; or

- (b) in any case where the appropriate Minister is not the Minister of Finance, with the approval of the appropriate Minister given with the concurrence of the Minister of Finance so, however, that, if the purpose for which the appropriation is to be made is the purpose mentioned in paragraph (e) of subsection (2) no such approval shall be given without the concurrence also of the Minister of Planning.
- (4) No debts against or transfers out of any of the reserves mentioned in paragraphs (d) and (e) of subsection (2) shall be made by a public corporation except,
 - (a) in any case where the appropriate Minister is the Minister of Finance, with the approval of the appropriate Minister given with the concurrence of the Minister of Planning; or
 - (b) in any case where the appropriate Minister is not the Minister of Finance, with the approval of the appropriate Minister given with the concurrence of both the Minister of Finance and the Minister of Planning.
- (5) All sums remaining out of the net surplus revenue of a public corporation in any year after the appropriations mentioned in subsection (1) have been made shall be paid to the Consolidated Fund.

Investment of Moneys of the Public Corporation

Section 11

No moneys of the public corporation shall be invested except:

- (a) in any case where the appropriate Minister is the Minister of Finance, with the approval of the appropriate Minister; or
- (b) in any case where the appropriate Minister is not the Minister of Finance, with the approval of the appropriate Minister given with the concurrence of the Minister of Finance.

provided, however, that any temporary surpluses of cash of public corporation shall be deposited by the corporation in the General Treasury, and shall be refundable on demand made by the corporation.

Rendering of Accounts and Audit

Section 13

- (1) The Auditor General shall be the auditor for every public corporation. For the purpose of assisting him in the audit, the Auditor General may, if he thinks it necessary to do so, employ the services of any qualified auditor or auditors who shall act under his direction and control.
- (2) For the purpose of meeting the expenses incurred by him in the audit of the accounts of a public corporation, the Auditor General shall be paid by the corporation such remuneration as the appropriate Minister may, with the concurrence of the Minister of Finance, determine. Any remuneration received from the corporation by the auditor General shall, after deduction of any sums paid by him to any qualified auditor or auditors employed by him for the purposes of such audit, be credited to the Consolidated Fund.
- (3) The Auditor General shall inspect the accounts, the finances, the management of the finances and the property of a public corporation. The Auditor General shall as far as possible, and as far as necessary, examine;
 - (a) Whether the organization, systems, procedures, books, records and other documents have been properly and adequately designed from the point of view of financial control purposes and from the point of view of the presentation of information to enable a continuous evaluation of the activities of the corporation, and whether such systems, procedures, books, records and other documents are in effective operation;
 - (b) Whether the conduct of the corporation has been in accordance with the law, rules and regulations relevant to the corporation and whether there has been fairness in the administration of the corporation.
 - (c) Whether there has been economy and efficiency in the commitment of funds and utilization of such funds;
 - (d) Whether systems of keeping moneys and the safeguarding of property are satisfactory;
 - (e) Whether the accounts audited have been so designed as to present a true and fair view of the affairs of the corporation in respect of the period under consideration due regard being had to principles of accountancy, financing and valuation; and
 - (f) Any such other matters as he may deem necessary.
- (4) The Auditor General shall at his discretion determine the nature and extent of the audit that shall be carried out in any particular period in respect of any particular public corporation, and may at his discretion dispense with the audit of any particular aspect or aspects relevant to particular public corporation in the period under review.

- (5) The Auditor General shall have;
- (a) The right of access to any books, records, documents and any type of information which is directly or indirectly related to the activities of a public corporation under audit as he deems necessary;
 - (b) The right to call for such information, documents, explanation, reports or other material at any time as in his opinion are necessary for the purposes of the audit;
 - (c) The right to summon any person for examination, and for the production of any documents where such examination or production is considered necessary for the purposes of the audit;
 - (d) The right to require the corporation to settle its minimum internal audit programmes by agreement with the Auditor General, and the right to give any directions to the corporation with regard to the conduct of the minimum internal audit programmes and the manner of reporting by the internal audit.

The corporation or any person shall comply with any request made by the Auditor General in the exercise of his above mentioned rights.

- (6) The accounts of a public corporation for each financial year shall be submitted to the Auditor General for audit within four months after the close of that year along with any report on the accounts which the Auditor General may require to be submitted in the manner specified by him. Any such corporation which contravenes or fails to comply with the preceding provisions of this subsection shall be guilty of an offence under this Act and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees.
- (7) (a) The Auditor General shall submit a report to the Chairman of each public corporation within eight months after the close of the financial year to which the report relates dealing with the results of the audit including a report on the accounts examined in the year. Copies of such report shall be forwarded by him where;
- (i) The appropriate Minister is the Minister of Finance, to the appropriate Minister; or
 - (ii) The appropriate Minister is not the Minister of Finance, to both the appropriate Minister and the Minister of Finance.
- (c) The Auditor General may, if he thinks it necessary to do so, also submit to the Chairman of each public corporation interim reports at any time dealing with matters arising from the audit.

- (c) The Auditor General shall, within ten months after the close of the financial year, submit a report to the House of Representatives on the results of the audit carried out in respect of each public corporation drawing attention to matters which in his opinion would be of interest to the House of Representatives.
- (8) The reports referred to in paragraph (a) and (b) of subsection (7) shall be considered by the governing body of a public corporation and after such consideration that body shall inform the Auditor General of the steps that they propose to take with regard to the matters pointed out in the audit reports within three months of the submission of the reports to the corporation.
- (9) For the purposes of this section, the expression “qualified auditor” means;
- (a) an individual who, being a member of the Institute of Chartered Accountants of Sri Lanka, possesses a certificate to practice as an Accountant, issued by the Council of that Institute; or
 - (b) a firm of Chartered Accountants each of the partners of which being a member of that Institute, possesses a certificate to practice as an Accountant, issued by the Council of that Institute; and includes.
 - (i) a person, not being an employee of the public corporation under audit or directly or indirectly associated with the direction and management of the affairs of such corporation, who may be engaged by the Auditor General to assist him in the examination of any technical, professional or scientific problem relevant to the audit; or
 - (ii) any technical or professional or scientific institution, not being an institution which has any interest in the management and affairs of such corporation, whose services the Auditor General may obtain to assist him in the examination of any technical, professional or scientific problem relevant to the audit.
- (10) Where a public corporation is guilty of an offence under this Act by reason of a contravention of the provisions of sub-section (6), every member of the governing body of that corporation shall be deemed to be guilty of that offence;
- Provided, however, that a member of the governing body of such corporation shall not be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Section 14

- (1) A public corporation shall, immediately after the end of each financial year of the corporation, prepare and draft annual report on the exercise, discharge and performance by the corporation of its powers, functions and duties during that year and of its policy and programme. Such report shall set out any directions given by the appropriate Minister to the corporation during the year. Copies of such report shall, within four months after the end of that year, be submitted to the appropriate Minister and to the Minister of Finance (if he is not the appropriate Minister), the Minister of Planning and the Auditor General.
- (2) A public corporation shall, on receipt of the audited accounts in respect of any year, cause a copy of each of the following documents relating to that year to be transmitted to the appropriate Minister;
 - (a) the audited balance sheet;
 - (b) the audited operating and profit and loss accounts;
 - (c) any comments or observations made by the Auditor General which the Auditor General considers should be published with the annual report of the corporation;
 - (d) the statement of accounts and statistics prepared under section 12; and
 - (e) the annual report of the corporation referred to in subsection (1) in its final form.
- (3) The appropriate Minister shall lay copies of the documents referred to in subsection (2) to be printed before the House of Representatives before the end of ten months following the year to which such report and accounts relate.

A public corporation shall cause copies of the documents referred to in subsection (2) to be printed at the expense of the corporation and to be made available for purchase by the public at such price as shall be determined by the corporation.

Appendix 6

Appendix 6 - Key Provisions relating to the Accounting and Auditing Standards Act No. 15 of 1995

Section 2 Adoption of Sri Lanka Accounting Standards

- (1) The Institute of Chartered Accountants of Sri Lanka (hereinafter referred to as the "Institute") shall, from time to time, adopt such accounting standards (hereinafter referred to as "Sri Lanka Accounting standards") as may be necessary for the purpose of maintaining 'a uniform and a high standard in the preparation and presentation of accounts of business Enterprises.'
- (2) The Sri Lanka Accounting Standards adopted under subsection (1) shall be published in the Gazette and shall become effective from and after the date of such publication or such later date as may be specified therein.

Section 3 Adoption of Sri Lanka Auditing Standards

- (1) The Institute shall, from time to time, adopt appropriate auditing standards (hereinafter referred to as " Sri Lanka Auditing Standards ") as may be necessary to govern the conduct of the audit of accounts of business Enterprises.
- (2) The Sri Lanka Auditing Standards adopted under subsection (1) shall be published in the Gazette and shall become effective from and after the date of such publication or such later date as may be specified therein.

Section 4 Power to vary and amend standards

- (1) The Institute shall, whenever necessary revise, alter and amend the Sri Lanka Accounting Standards and Sri Lanka Auditing Standards adopted by it under this Act and shall cause such revised, altered or amended standards to be published in the Gazette, and such revisions, alterations and amendment shall become effective from and after the date of such publication or such later date as may be specified therein.
- (2) The Institute shall notify the public of the Sri Lanka Accounting Standards and the Sri Lanka Auditing Standards and of the revisions, alterations and amendments made thereto, by notice published in the Gazette or in such other manner as is calculated to give publicity thereto.

Section 5 Application of Standards

The standards adopted by the Institute under sections 2 and 3 of this Act shall be applicable to all business Enterprises specified in the Schedule to this Act (hereinafter referred to as "specified business Enterprises").

Section 6 Duty to comply with Standards Adopted

- (1) It shall be the duty of every specified business Enterprise to prepare its accounts in compliance with the Sri Lanka Accounting Standards and take all necessary measures to ensure that its accounts are audited in accordance with the Sri Lanka Auditing Standards with the object of presenting a true and fair view of the financial performance and financial condition of such Enterprise.
- (2) Any specified business Enterprise which acts in contravention of the provisions of subsection (1) shall be guilty of an offence under this Act.

Section 7 Auditing of accounts of specified business Enterprises to be done by qualified Auditors

- (1) The accounts of every specified business Enterprise shall be audited by professionally qualified auditors who shall be members of the Institute holding a certificate to practice, issued by the Institute, and it shall be the duty of such auditors to certify in their audit report that the audit has been conducted in accordance with the Sri Lanka Auditing Standards and that accounts have been prepared and presented in accordance with the Sri Lanka Accounting Standards.
- (2) Where any qualified auditor fails to comply with the Sri Lanka Accounting standards and the Sri Lanka Auditing Standards as required by subsection (1), he shall specify clearly the deviations made and give reasons for such deviations.

Section 8 Accounting Standards Committee

- (1) An Accounting Standards Committee consisting of such members as are specified in subsection (2) is hereby established and such Committee shall make recommendations and otherwise assist the Institute in the adoption of accounting standards under section 2 of this Act.
- (2) The Accounting Standard Committee shall consist of-
 - (a) the President of the Institute and five other members of the Institute nominated by the Council of such Institute ;

(b) one member nominated by the Sri Lanka Division of the Chartered Institute of Management Accountant of the United Kingdom :

(c) the Registrar of Companies;

(d) the Director-General of the Securities and Exchange Commission of Sri Lanka ;

(e) one member to represent the Central Bank nominated by the Governor of the Central Bank;

(f) one member who shall be a Director of a company or person having extensive experience at senior managerial level in a specified business Enterprise, nominated by the Ceylon Chamber of Commerce; and

(g) one member who shall be a Director of a company or a person having extensive experience at a senior level in a specified business Enterprise, nominated by the Federation of Chambers of Commerce and Industry of Sri Lanka,

(3) Notwithstanding the provisions of subsection (1), the Accounting Standards Committee shall, where it is called upon to make recommendations regarding accounting standards to be adopted in respect of licensed commercial banks or other financial institutions coming within the supervisory control of the Central Bank, consult the Central Bank and obtain its concurrence, before making such recommendations.

Section 9 Auditing Standards Committee

(1) An Auditing Standards Committee consisting of such members as are specified in subsection (2) is hereby established and such Committee shall make recommendations and otherwise assist the Institute in the adoption of Auditing Standards under section 3 of this Act.

(2) The Auditing Standards Committee shall consist of eight members of the Institute nominated by the Council of such Institute, at least four of whom shall be members of the Accounting Standards Committee nominated under paragraph (a) of subsection (2) of section 8.

- (3) Notwithstanding the provisions of subsection (2), the Institute may, as and when it considers necessary, co-opt any person with special experience in the field of auditing to serve in the Auditing Standards Committee.

Section 11 Establishment of Accounting and Auditing Standards Monitoring Board

- (1) There shall be established a Board which shall be called and known as the " Sri Lanka Accounting and Auditing Standards Monitoring Board". (hereinafter referred to as " the Board ".)
- (2) The Board shall by the name assigned to it by section (1) be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

Section 23 Function of the Board

The function of the Board shall be to monitor the compliance with the Sri Lanka Accounting Standards and the Sri Lanka Auditing Standards, by specified business Enterprises.

Section 25 Copy of annual accounts furnished to the Board

- (1) It shall be the duty of every specified business Enterprise to submit to the Board a copy of the annual accounts of such Enterprise to enable the Board to determine whether the accounts have been prepared in compliance with the Sri Lanka Accounting Standards.
- (2) For the purpose of enabling the Board to perform its duty under subsection (1), the Board or any person authorized in that behalf by the Board may by notice in writing issued not later than one year after a specified business Enterprise has submitted its relevant accounts to the Board, require such specified business Enterprise or its auditors to furnish to the Board or to the person authorized by the Board, within such time, as shall be specified in the notice, any information pertaining to its accounts and it shall be the duty of such specified business Enterprise or its auditors, as the case may be, to comply with such requirement within the time specified in the notice.
- (3) The Board shall have the power for the purpose of performing its duties under subsection (1) to summon and question any Director, officer or auditor of any specified business Enterprise on any matter pertaining to the preparation or presentation of its accounts.

Section 26 Board to carry out Investigation

The Board or any person duly authorized in that behalf may carry out such investigations or hold such inquiries as it may by notice in writing consider necessary or expedient for the performance of its duties under this Act, and for such purpose may summon and call upon any Director, officer or auditor of any specified business Enterprise to appear before it at any such investigation or inquiry or to produce any such books or documents in the possession or control of such Director, officer or auditor as are required for the purpose of such investigation or inquiry,

Section 27 Offences

- (1) Every-
 - (a) person who fails to comply with, or contravene, the provisions of section 6 or section 7 or subsection (1) of section 25;
 - (b) person who fails to comply with any requirement imposed on him under subsection (2) of section 25 or knowingly furnishes any false information in compliance with any such requirement;
 - (c) director, officer or auditor of a specified business Enterprise who fails to appear before the Board when required to do so under subsection (3) of section 25 or section 26, or who refuses to answer any question put to him by the Board or a person duly authorized by the Board or who refuses to produce any book or document in his possession or control when required to do so by the Board or a person duly authorized by the Board or knowingly gives any false answer to any question put to him by the Board or a person duly authorized by the Board,
- (2) Where a person is convicted of an offence under this Act and the court holds that the act constituting such offence was done with the intention of misleading the shareholders of a specified business Enterprise or any financial institution dealing with such specified business Enterprise or the Inland Revenue Department or where a licensed commercial bank, is convicted of an offence under this Act and the court holds that the act constituting the offence was done with the intention of misleading the depositors of such bank, the court may sentence the offender to imprisonment of either description for a term not exceeding five years.

- (3) Where an offence under this Act, is committed by a body corporate, any person who is at the time of the commission of the offence, a Director, manager, secretary or other similar officer of that body corporate, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge or connivance and that he exercised all such diligence to prevent the commission of that offence as he ought to have exercised having regard to the nature of his functions and all the circumstances of the case.

Section 28 Compounding of offences

- (1) The Board may, having regard to the circumstances in which offence under this Act is committed compound such offence for a sum of money not exceeding one-third of the fine imposable for such offence and all sums of money received by the Board in the compounding of an offence under this section shall be credited to the Fund of the Board.
- (2) Where the Board is satisfied that a specified business Enterprise or an auditor has contravened any provision of this Act and that such contravention is not of a serious nature it may-
 - (a) direct such specified business Enterprise to have its accounts reedited or where such accounts have been published, to republish them or to include suitable correction in its accounts for the following year; or
 - (b) where such specified Business Enterprise is a public company, direct such public company to send a notification in writing to all its shareholders explaining the reason for such non-compliance and the financial effect of such non-compliance on the accounts of such public company and where such specified business Enterprise is a public company listed in a stock exchange licensed by the Securities and Exchange Commission of Sri Lanka, to send in addition, a copy of such notification to such Commission and such stock exchange.

Section 29 Board to inform professional institute of any violation

Where any accountant of any specified business Enterprise violates any provision of this Act, it shall be the duty of the Board to bring such violation to the notice of any professional body of which such accountant is a member for the purpose of enabling such body to take appropriate action against such accountant.

Section 30 Board to inform regulatory authority and Inland Revenue Department

Where any specified business Enterprise has failed to act in compliance with provisions of this Act, it shall be the duty of the Board to bring such fact to the notice-

- (a) of any authority which is empowered by law to regulate or supervise the activities of such specified business Enterprise; and
- (b) of the Inland Revenue Department, if the Board considers that such non-compliance has resulted in a substantial reduction of the tax liabilities of such specified business Enterprise.

Schedule (Section 5)

Specified Business Enterprises

Companies licensed under the Banking Act No.30 of 1988.

Companies authorized under the Control of Insurance Act, No.25 of 1962, to carry on insurance business.

Companies carrying on leasing business.

Factoring companies.

Companies registered under the Finance Companies Act, No.78 of 1988.

Securities and Exchange Commission of Sri Lanka Act, No.36 of 1987 as amended, issue license to stock exchanges, stock brokers, stock dealers, investment managers, margin providers, credit rating agencies, underwriters, clearing houses and unit trust management companies.

Acknowledgements

Good governance holds the key to future success and sustainability of Public Enterprises.

This **Handbook on Good Governance for Chairmen and Boards of Directors of Public Enterprises** provides insights on how to deliver value and makes governing boards more transparent and accountable.

It will also be a stepping stone for the establishment of good governance in the country. This book will provide a platform to arrest heavy losses and reduce the burden on the Treasury through professional management of Public Enterprises.

The existing guide was reviewed and updated at short notice by the Committee appointed by the Ministry of National Policies and Economic Affairs, taking into account the current developments and new initiatives.

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Dinesh Weerakkody
Chairman, NHRDC