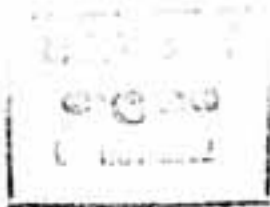




Exchange Control Act

(Incorporating Amendments up to 31st December, 1985)



1986

FOREWORD

THIS reprint of the Exchange Control Act incorporates all amendments made up to 31st December, 1955. It is, however, not a Statutory reprint. It is only issued for purposes of convenience.

I must express my gratitude to the Legal Draftsman, Mr. N. J. Abeyskera, for having made available the services of Mr. I. A. W. Perera, Publications Assistant, for incorporating the amendments and reading the proofs.

WARHANENA HASAPITIRANA,
GOVERNOR,
Central Bank of Sri Lanka.

EXCHANGE CONTROL ACT

AN ACT TO MAKE PROVISION CONFERRING POWERS, AND IMPOSING DUTIES AND RESTRICTIONS, IN RELATION TO GOLD, CURRENCY, PAYMENTS, SECURITIES, DEBTS, AND THE IMPORT, EXPORT TRANSFER AND SETTLEMENT OF PROPERTY, TO AUTHORIZE THE CENTRAL BANK TO ADMINISTER THE PROVISIONS AFORESAID, AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

Acts
Nos.24 of 1953,
35 of 1956,
47 of 1957,
17 of 1971.
Laws
Nos.14 of 1972,
39 of 1973,
4 of 1977,
13 of 1977.

[15th August, 1953.]

1. This Act may be cited as the Exchange Control Act.

Short title.

2. (1) The Central Bank of Ceylon shall, as agent of the Government, be responsible for carrying out the provisions of this Act, and it shall be the duty of the Monetary Board to cause those provisions to be carried out in accordance with such directions as may from time to time be issued in that behalf by the Minister.

Administration
of Act by
Central Bank.

(2) The Monetary Board shall establish for the purposes of this Act a Department of Exchange Control of the Central Bank to which the board shall have the power to appoint or assign such officers and servants as the board may consider necessary for the purpose of carrying out the provisions of this Act; every such officer or servant shall, for the purpose of the application of the provisions of the Monetary Law Act relating to officers and servants, be deemed to be employed for the performance of duties under that Act.

3. Wherever by any provision of this Act any power, duty or function is authorised or required to be exercised or performed by the bank, such power, duty or function shall be exercised or performed, subject to the direction and control of the Governor of the bank, by the officer designated as the head of the Department of Exchange Control or on his behalf by any other officer designated as an assistant to him:

Exercise of
powers, &c.
under the Act.

Provided, however, that any permission, which by any such, provision is authorised to be granted by the bank, may be granted on behalf of the head of the department by an authorised dealer, if he is for the time being empowered, by directions issued by the head of the department, to grant such permission.

Any directions given by the head of the department under this section may specify the circumstances in which and the conditions and restrictions subject to which an authorised dealer may grant the permission to which the directions relate.

PART I

GOLD AND FOREIGN CURRENCY

Authorised dealers in gold or foreign currency.

4. The Minister may authorise any commercial bank to act for the purposes of this Act as an authorised dealer in relation to gold or any foreign currency.

Dealings in gold and foreign currency. [§ 2, Law 39 of 1973.]

5. (1) Except with the permission of the Bank—

(a) no person other than an authorised dealer, shall in Sri Lanka buy, borrow or accept any gold or foreign currency from, or sell or lend any gold or foreign currency to, or exchange any foreign currency with, any person other than an authorised dealer, and

(b) no person resident in Sri Lanka, other than an authorised dealer, shall, outside Sri Lanka, buy or borrow any gold or foreign currency from, or sell or lend any gold or foreign currency to, any person other than an authorised dealer:

Provided that the preceding provisions of this subsection shall not prohibit the sale and purchase at any post office in Sri Lanka, in accordance with such directions as may be given by the bank in regard thereto, of any foreign currency in the form of postal orders or money orders.

(2) Except with the previous general or special permission of the bank, no person, whether an authorised dealer or not, shall enter into any transaction which involves the conversion of Sri Lanka currency into foreign currency or foreign currency into Sri Lanka currency at rates of exchange other than the rates for the time being authorised by subsection (3) of section 76 of the Monetary Law Act.

Surrender of gold and of specified foreign exchange. [§ 2, 17 of 1971.]

6. (1) The foreign exchange to which this section applies is such foreign exchange (hereafter in this Act referred to as the “specified foreign exchange”) as may be prescribed.

(2) The bank may require any person in, or resident in, Sri Lanka—

(a) who owns or holds any specified foreign exchange to offer it or cause it to be offered for sale to an

authorised dealer at a price determined by the Monetary Board, or

- (b) who is entitled to assign any right to receive any specified foreign exchange to transfer such right to the Deputy Secretary to the Treasury on payment of such consideration as the Monetary Board may fix,

unless the bank consents to his retention and use of such foreign exchange or he disposes of such foreign exchange to any person with the permission of the bank.

(3) If a person who has obtained the consent of the bank to his retention and use of any gold or any specified foreign exchange and has stated in an application for the consent that he requires it for a particular purpose, no longer requires that gold or exchange for that purpose, subsection (2) shall thereupon apply to him in relation to that gold or exchange as if the bank had revoked the consent. [§ 2, 17 of 1971.]

(4) A person who acquires any gold or any specified foreign exchange from an authorised dealer shall be treated for the purposes of this section as if the bank had consented to the retention and use by him of that gold or exchange, and as if any statement made by him in an application for that gold or exchange as to the purpose for which he requires it had been made by him in an application for the consent of the bank to his retention and use thereof. [§ 2, 17 of 1971.]

(5) Where a person has become bound under this section to offer or cause to be offered any gold or any specified foreign exchange for sale to an authorised dealer he shall not be deemed to comply with that obligation by any offer made or caused to be made by him, if the offer is an offer to sell at a price exceeding that authorised by the Monetary Board, or without payment of any usual and proper charges of the authorised dealer, or otherwise on any unusual terms. [§ 2, 17 of 1971.]

(6) Where a person has become bound under this section to offer or cause to be offered any gold or any specified foreign exchange for sale to an authorised dealer and has not complied with that obligation, the Secretary to the Treasury may direct that that gold or exchange shall vest in the Deputy Secretary to the Treasury, and where the Secretary to the Treasury so directs, it shall vest in the Deputy Secretary to the Treasury free from any mortgage, pledge, or charge, and the Deputy Secretary to the Treasury shall deal with or dispose of it in such manner as the Minister may direct, but the Deputy Secretary to the Treasury or any officer authorised in that behalf by such Deputy Secretary shall pay to that person such sum as he would have received for that gold or exchange if he had [§ 2, 17 of 1971.]

sold it to an authorised dealer in pursuance of an offer made under this section at the time when the vesting occurred. Any money required for any payment under this subsection is hereby charged upon the Consolidated Fund.

[§ 2, 17 of 1971.]

(7) In any proceedings in respect of a failure to comply with the provisions of this section, it shall be presumed, until the contrary is proved, that the gold or exchange in question has not been offered for sale to an authorised dealer.

Possession of foreign currency. [§ 3, 17 of 1971.]

6A. Except with the permission of the bank, no person shall have in his possession any foreign currency.

PART IA

CONTROL OF FOREIGN ASSETS

Accounts in foreign banks. [§ 4, 17 of 1971.]

6AA. (1) No person in, or resident in, Sri Lanka shall, except with the permission of the bank,—

- (a) open an account with any bank or institution doing any kind of banking business outside Sri Lanka (hereinafter referred to as a “foreign bank”);
- (b) continue to maintain, or operate on, an account which has already been opened in any foreign bank; or
- (c) close an account with any foreign bank.

(2) Where an account maintained by a person in, or resident in, Sri Lanka with any foreign bank is closed, such person shall not dispose of the funds to his credit at such foreign bank at the time of closing of such account, except in accordance with such directions as may from time to time be given to him by the Central Bank.

Foreign assets. [§ 4, 17 of 1971.]

6AB. Every person in, or resident in, Sri Lanka who, on the date of commencement of this Act, holds, or who, after such date, acquires by way of purchase, gift, testamentary disposition or otherwise, any foreign assets—

- (a) shall, within one month of the commencement of this Act or the acquisition of the assets, as the case may be, render to the bank a return in such manner and giving such particulars with respect to the assets as may be prescribed; and

- (b) shall not dispose of such assets or part thereof in any manner whatsoever except in accordance with such directions as may be given to him by the bank.

PART II

PAYMENTS

7. Except with the permission of the bank no person shall in Sri Lanka—

Payments in
Sri Lanka.
[§ 3, Law 39
of 1973.]

- (a) make any payment to or for the credit of a person resident outside Sri Lanka, or
- (b) make any payment to or for the credit of a person resident in Sri Lanka by order or on behalf of a person resident outside Sri Lanka, or
- (c) place or hold any sum to the credit of any person resident outside Sri Lanka:

Provided that where a person resident outside Sri Lanka has paid a sum in or towards the satisfaction of a debt due from him, paragraph (c) of this section shall not prohibit the acknowledgment or recording of the payment.

8. (1) Except with the permission of the bank, no person resident in Sri Lanka shall, subject to the provisions of this section, make any payment outside Sri Lanka to or for the credit of a person resident outside Sri Lanka.

Payments
outside Sri
Lanka.

(2) Nothing in this section shall prohibit the doing of anything otherwise lawful by any person with any foreign currency obtained by him in accordance with the provisions of Part I of this Act or retained by him with the consent of the bank.

9. (1) Except with the permission of the bank no person shall in Sri Lanka, and no person resident in Sri Lanka shall outside Sri Lanka, make any payment to or for the credit of a person resident in Sri Lanka as consideration for or in association with—

Compensation
deals.

- (a) the receipt by any person of a payment made outside Sri Lanka, or the acquisition by any person of property which is outside Sri Lanka, or
- (b) the transfer to any person, or the creation in favour of any person, of a right (whether present or future, and whether vested or contingent) to

receive a payment outside Sri Lanka or to acquire property which is outside Sri Lanka.

(2) Nothing in this section shall prohibit the making of any payment in accordance with the terms of a permission or consent granted under this Act.

PART III

SECURITIES

Issue of securities.

10. (1) Except with the permission of the bank, no person shall in Sri Lanka issue any security or, whether in Sri Lanka or elsewhere, issue any security which is registered or to be registered in Sri Lanka, unless the following requirements are fulfilled:—

- (a) neither the person to whom the security is to be issued nor the person, if any, for whom he is to be a nominee is resident outside Sri Lanka, and
- (b) the prescribed evidence is produced to the person issuing the security as to the residence of the person to whom it is to be issued and that of the person, if any, for whom he is to be a nominee.

(2) The subscription of the memorandum of association of a company to be formed under the Companies Ordinance by a person resident outside Sri Lanka, or by a nominee for another person so resident, shall, unless he subscribes the memorandum with the permission of the bank, be invalid in so far as it would on registration of the memorandum have the effect of making him a member of the company, so, however, that this subsection shall not render invalid the incorporation of the company, and if by virtue of this subsection the number of the subscribers of the memorandum who on its registration become members of the company is less than the minimum required to subscribe the memorandum, the provisions of the said Ordinance relating to the carrying on of business of a company the number of whose members is reduced below the legal minimum shall apply to the company as if the number of its members had been so reduced.

Transfer of securities and coupons.

11. (1) No person shall, except with permission granted by the bank, transfer any security, either on his own behalf or on behalf of any other person, unless—

- (a) the holder of the security and, if the holder is a nominee, the person for whom he is acting as nominee, are resident in Sri Lanka; and

- (b) the transferor has produced to the person to whom the security is to be transferred or his agent such evidence of the facts aforesaid as may be prescribed;

and no person shall, except with such permission as aforesaid, acquire any security, either on his own behalf or on behalf of any other person, unless such evidence as aforesaid has been produced to him or to his agent.

(2) No person shall, except with permission granted by the bank—

- (a) transfer any registered security, either on his own behalf or on behalf of any other person, to any person resident outside Sri Lanka or to any person acting as the nominee of any person so resident, or
- (b) transfer any bearer security, either on his own behalf or on behalf of any other person, unless the bank is satisfied that the person to whom the security is to be transferred and, if that person is a nominee, the person for whom he is to act as nominee, are resident in Sri Lanka.

(3) Except with the permission of the bank, no coupon shall be transferred—

- (a) in Sri Lanka, if either the transferee or the person, if any, for whom he is a nominee is resident outside Sri Lanka;
- (b) outside Sri Lanka, if either the transferor or the transferee, or the person, if any, for whom the transferor or the transferee is or is to be a nominee, is resident in Sri Lanka.

12. Except with the permission of the bank, no person shall, in Sri Lanka, and no person resident in Sri Lanka shall, outside Sri Lanka, issue any bearer certificate or coupon or so alter any document that it becomes a bearer certificate or coupon.

Issue of
bearer
certificates
and coupons.

13. Except with the permission of the bank, no person in or resident in Sri Lanka shall do any act with intent to secure—

- (a) that a security which is—
- (i) registered in Sri Lanka, or
- (ii) transferable by means of a bearer certificate in Sri Lanka,

Substitution of
securities and
certificates
outside Sri
Lanka.

becomes, or is replaced by, a security registered outside Sri Lanka or a security transferable by means of a bearer certificate outside Sri Lanka, or

- (b) that, in substitution for or in addition to any such certificate of title to the first-mentioned security as is in, or is or has been lost or destroyed in, Sri Lanka, a certificate of title to any other security is issued outside Sri Lanka.

Payment of capital moneys outside Sri Lanka.

14. Except with the permission of the bank, no person resident in Sri Lanka shall do any act with intent to secure that capital moneys payable on a security registered in Sri Lanka are paid outside Sri Lanka, or that, where the certificate of title to a security is in Sri Lanka, capital moneys payable on the security are paid outside Sri Lanka without production of the certificate to the person making the payment.

Duties of persons keeping registers.

15. Except with the permission of the bank, no person concerned with the keeping of any register in Sri Lanka shall—

- (a) enter in the register the name of any person in relation to any security unless there has been produced to him the prescribed evidence that the entry does not form part of a transaction which involves the doing of anything prohibited by this Act, or
- (b) enter in the register, in respect of any security, an address outside Sri Lanka, except for the purpose of any transaction for which the permission of the bank has been granted with the knowledge that it involves the entry of that address, or
- (c) do any such act in relation to the register as recognises or gives effect to any act appearing to him to have been done with the intent mentioned in section 13 or section 14, whether done by a person in or resident in Sri Lanka or not.

Additional provisions as to nominee holdings.

16. (1) Where the holder of a security is a nominee, then, except with the permission of the bank, neither he, if he is resident in Sri Lanka, nor any person resident in Sri Lanka through whose agency the exercise of all or any of the holder's rights in respect of the security is controlled, shall—

- (a) do any act whereby he recognises or gives effect to the substitution of another person as the person from whom he directly receives his

instructions unless both the persons previously instructing him and the person substituted for that person were, immediately before the substitution, resident in Sri Lanka and not elsewhere, or

- (b) do any act whereby he ceases to be a person bound to give effect to the instructions of another person in relation to the security, unless the person who theretofore instructed him is resident in Sri Lanka and not elsewhere.

(2) Where the holder of a security is not a nominee and is resident in Sri Lanka, then, except with the permission of the bank, he shall not do any act whereby he becomes the nominee of another person in respect of the security, unless that other person is resident in Sri Lanka and not elsewhere.

(3) Where the holder of a security transferable by means of a bearer certificate is resident in Sri Lanka and is a nominee for a person resident outside Sri Lanka, then, except with the permission of the bank, he shall not deliver the certificate into the possession of any person, whether the delivery amounts to a transfer or not.

17. (1) This section shall apply to prescribed securities on which any capital money, dividend or interest is payable in any foreign currency or as respects which the holder has an option to require payment of any capital money, dividend or interest thereon in any foreign currency.

Special provisions as to dealings in prescribed securities. [§ 5, 17 of 1971.]

(2) Except with the permission of the Minister, no person shall, in Sri Lanka, and no person resident in Sri Lanka shall, outside Sri Lanka, acquire, hold or transfer any security to which this section applies or do anything which affects his rights or powers in relation to any such security.

[§ 5, 17 of 1971.]

(3) The bank may in writing direct any person resident in Sri Lanka by whom or to whose order a security to which this section applies is held in or outside Sri Lanka to render a return to the bank, in such manner and within such period as may be specified in the direction, giving such particulars with respect to that security as may be so specified.

(4) The Minister may direct any person resident in Sri Lanka by whom or to whose order a security to which this section applies is held in or outside Sri Lanka—

- (a) to sell or procure the sale of the security, and thereafter to offer or cause to be offered the net

foreign exchange proceeds of sale to the bank, directly or through an authorised dealer; or

- (b) to transfer the security to the Deputy Secretary to the Treasury on behalf of the Government at a price which in the opinion of the Deputy Secretary to the Treasury is not less than the market value of the security on the date of the giving of the direction.

Any direction under this subsection may be given either generally, with respect to specified securities and the holders thereof by notice published in the *Gazette*, or specially to any holder by notice in writing.

Validation of certain transfers.

18. (1) The title of any person to a security for which he has given value on a transfer thereof, and the title of all persons claiming through or under him, shall, notwithstanding that the transfer, or any previous transfer, or the issue of the security, was by reason of the residence of any person concerned other than the first-mentioned person prohibited by the provisions of this Act relating to the transfer or issue of securities, be valid unless the first-mentioned person had notice of the facts by reason of which it was prohibited.

(2) Without prejudice to the provisions of subsection (1), the bank may issue a certificate declaring in relation to a security, that any such acts done before the issue of the certificate as purport to effect the issue or transfer of the security, being acts which were prohibited by this Act, are to be, and are always to have been, as valid as if they had been done with the permission of the bank, and the said acts shall have effect accordingly.

(3) Nothing in this section shall affect the liability of any person to prosecution for any offence against this Act.

Application of Part III to secondary securities.

19. (1) This Part of this Act shall, with any modification which may be prescribed in relation to any document mentioned in subsection (2), apply as if the document created, and were the certificate of title to, a security (hereafter in this Act referred to as a “secondary security”).

(2) The documents referred to in subsection (1) are any letter of allotment which may be renounced, any letter of rights, any warrant conferring an option to acquire a security, any deposit certificate in respect of securities, and such other documents conferring, or containing evidence of, rights as may be prescribed.

Interpretation of Part III.

20. (1) In this Part of this Act—

“registered” includes inscribed;

“registered in Sri Lanka” and “registered outside Sri Lanka” mean respectively, registered in a register in, and registered in a register outside, Sri Lanka;

“a register” includes any book, file or index in which securities are registered; and

“holder”—

- (a) in relation to a security transferable by means of a bearer certificate or to a coupon, includes the person having physical custody of the certificate or coupon:

Provided that where the certificate or coupon is deposited with any person in a locked or sealed receptacle from which he is not entitled to remove it without the authority of some other person, that other person shall be deemed for the purposes of this provision to have the physical custody of the certificate or coupon; and

- (b) in relation to a security which is registered in the name of a deceased person, or of any person who, by reason of insolvency, unsoundness of mind or any other disability, is incapable of transferring the security, means the executor of the last will or the administrator of the estate of the deceased, the assignee of the insolvent's estate, or any other person entitled to transfer the security.

(2) For the purposes of any provision of this Part of this Act prohibiting the transfer of securities, a person shall be deemed to transfer a security if he executes any instrument of transfer thereof, whether effective or not, and shall be deemed to transfer it at the place where he executes the instrument.

(3) The holder of a security or coupon shall be deemed for the purposes of this Part of this Act to be a nominee in respect of that security or coupon if he is not entitled to exercise any right relating to that security or coupon except in accordance with instructions given by some other person, and references in this Part of this Act to the person for whom the holder of a security or coupon is a nominee shall be construed as references to the person who is entitled to give instructions, either directly or through the

agency of one or more persons, as to the exercise of any right relating to the security or coupon and is not in so doing himself under a duty to comply with instructions given by some other person:

Provided that—

- (a) a person shall not, by reason only that he has a controlling interest in a body corporate, be deemed for the purposes of this subsection to be entitled to give instructions to that body as to the exercise of any right relating to any security or coupon of which that body is the holder, and
- (b) a person shall not be deemed to hold a security or coupon as a nominee by reason only that he holds it as trustee if he is entitled to transfer the security or coupon without permission from any other person.

PART IV

IMPORT AND EXPORT

Restriction on
import.

21. (1) No person shall, except with the permission of the bank, import into Sri Lanka—

- (a) any notes of a class which are or have at any time been legal tender in Sri Lanka; or
- (b) any such other notes as may be prescribed being notes issued by a bank or notes of a class which are or have at any time been legal tender in any territory; or
- (c) any gold.

(2) The bringing or sending into any port or other place in Sri Lanka of any gold intended to be taken out of Sri Lanka without being removed from the vessel or aircraft in which that gold is being carried shall, for the purpose of this section, be deemed to be the importation of that gold.

(3) In this section, “note” includes part of a note.

Restriction on
export.

22. (1) No person shall, except with the permission of the bank, export from Sri Lanka—

- (a) any Sri Lanka currency;
- (b) any foreign currency;

- (c) any Treasury Bills;
- (d) any savings certificate expressed in Sri Lanka or any foreign currency;
- (e) any gold;
- (f) any of the following documents (including any such document which has been cancelled):—
 - (i) any certificate of title to a security and any coupon;
 - (ii) any policy of assurance;
 - (iii) any document certifying the destruction, loss or cancellation of any of the documents aforesaid; or
- (g) any such article exported on the person of a traveller or in a traveller's baggage as may be prescribed.

(2) In subsection (1)—

“note” includes part of a note;

“security” includes a secondary security; and

“coupon” shall be construed in accordance with the meaning of “security”.

(3) The Minister may by Order published in the *Gazette* provide that no goods shall, except with the permission of the bank, be exported from Sri Lanka to any destination specified in the Order.

[§ 4, Law 39 of 1973.]

(4) In granting permission under subsection (3) in respect of the exportation of goods for the purposes of sale, the bank shall satisfy itself—

[§ 4, Law 39 of 1973.]

- (a) that payment for the goods has been made to a person resident in Sri Lanka by such means and in such manner as may be prescribed in relation to goods of that class or description exported to the destination, or is to be so made not later than six months after the date of exportation; and
- (b) that the amount of the payment that has been made or is to be made represents such a return for the goods as is in all the circumstances satisfactory in the national interest:

Provided that the bank may direct that, in cases to which the direction applies, paragraph (a) of this subsection shall have effect as

if for the reference to six months there were substituted a reference to such longer or shorter period as may be specified in the direction, or as if the words “ or is to be so made not later than six months after the date of exportation ” were omitted.

(5) Where, on the authority of permission granted under subsection (3), a person is about to export goods from Sri Lanka and the bank has reason to suspect that any declaration made by that person, in his application for the permission, as to the ultimate destination of the goods is untrue in any material particular, the Principal Collector of Customs shall, on the advice of the bank, detain the goods until the bank is satisfied as to the truth of that declaration and, if the bank is not so satisfied, the goods shall be forfeited and shall be dealt with or disposed of in such manner as the Minister may direct.

(6) Where, at any time after the grant of permission under subsection (3), the bank has reason to believe that the amount of the payment that has been made or is to be made for the goods to which the permission relates is not in accord with paragraph (b) of subsection (4), the bank may direct the person holding the shipping documents relating to the goods to retain possession thereof until such time as the person to whom the permission has been granted has made arrangements to receive as payment for the goods an amount which, in the opinion of the bank, accords with the aforesaid paragraph (b).

*(8) Any reference in this section to the destination of any goods includes a reference to the ultimate destination thereof.

(9) The preceding provisions of this section shall be in addition to and not in substitution or derogation of the provisions of any other written law prohibiting, restricting or regulating the exportation of goods from Sri Lanka.

Application of
Customs
Ordinance and
Post Office
Ordinance.

23. (1) The Customs Ordinance shall apply in relation to anything the importation or exportation of which into or from Sri Lanka is restricted by any of the provisions of this Part of this Act in like manner as that Ordinance applies in relation to articles the importation or exportation of which into or from Sri Lanka is restricted by any enactment; and section 24 of the Post Office Ordinance shall, in relation to any such things as aforesaid, have effect as though, for the words “ received from beyond seas ” and the word “ imported ” occurring in that section, there were substituted respectively the words “ addressed to or received from any place outside Sri Lanka ” and the words “ imported or exported ”.

* Subsection (7) is repealed by Law No. 39 of 1973.

(2) Where anything in relation to which the Customs Ordinance applies by virtue of subsection (1) is forfeited under that Ordinance, such thing shall, notwithstanding any contrary provision in that Ordinance, be dealt with or disposed of in such manner as the Minister may direct.

(3) The importer or exporter of any such forfeited thing as is referred to in subsection (2) may, in accordance with such directions as may be given by the Minister either generally or specially in the circumstances of any particular case, be paid in Sri Lanka currency an amount not exceeding the value in Sri Lanka currency of that thing.

(4) Payment to any importer or exporter under subsection (3) shall be made by the Deputy Secretary to the Treasury or by any officer authorised in that behalf by such Deputy Secretary; and any money required for any such payment is hereby charged upon the Consolidated Fund.

(5) In this section, “importer” and “exporter”, with reference to any postal article, mean respectively the addressee and the sender of that article.

PART V

MISCELLANEOUS

24. (1) Except with the permission of the bank no person who has a right (whether present or future and whether vested or contingent) to receive any foreign currency, or to receive from a person resident outside Sri Lanka a payment in rupees, shall do, or refrain from doing, any act with intent to secure—

Duty to collect certain debts.

- (a) that the receipt by him of the whole or part of that currency or, as the case may be, of that payment in rupees is delayed, or
- (b) that the currency or payment ceases, in whole or in part, to be receivable by him :

Provided that nothing in this subsection shall, unless the bank otherwise directs, impose on any person any obligation, in relation to any debt arising in the carrying on of any trade or business, to procure the payment thereof at an earlier time than is customary in the course of that trade or business.

(2) Where a person has contravened the provisions of subsection (1) in relation to any foreign currency or any payment in rupees—

- (a) the bank may give to him or to any other person in or resident in Sri Lanka who appears to the bank to be in a position to give effect thereto such directions as appear to the bank to be expedient for the purpose of obtaining or expediting the receipt of the currency or payment in question, and,
- (b) without prejudice to the preceding provisions of this subsection, the Secretary to the Treasury may direct that there shall be assigned to the Deputy Secretary to the Treasury the right to receive the currency or payment or enforce any security for the receipt thereof.

Duty not to delay sale or importation of goods.

25. (1) Where any statement or declaration has been made under any provision of this Act that any goods are to be sold outside Sri Lanka, no person who is entitled to sell or procure the sale of those goods shall, except with the permission of the bank, do or refrain from doing any act with intent to secure—

- (a) that such sale is delayed to an extent which is unreasonable having regard to the ordinary course of trade, or
- (b) that, on such sale, any payment made for the goods is not made in the manner indicated by the statement or declaration.

(2) Where any permission or consent has been granted under this Act subject to a condition providing that, or on the faith of an application stating an intention that, any goods should be imported into Sri Lanka, no person who is entitled to procure the importation of those goods shall do, or refrain from doing, any act with intent to secure that the importation thereof is delayed to an extent which is unreasonable having regard to the ordinary course of trade.

(3) Where in any such case as is specified in subsection (1) or subsection (2)—

- (a) the goods have not been sold or imported as indicated by the statement, declaration, condition or application within the time thereby indicated or, if no time is thereby indicated, a reasonable time or (in either case) within such further time as may be allowed by the bank, or
- (b) it appears to the bank that the goods cannot be sold or imported as indicated by the statement, declaration, condition or application,

the Secretary to the Treasury may give to any person who appears to him to be in a position to give effect thereto such directions as

appear to him to be expedient as to the manner in which the goods are to be dealt with.

(4) Without prejudice to the provisions of subsection (3), the Secretary to the Treasury may in any case to which those provisions apply give directions that the goods shall be assigned to the Deputy Secretary to the Treasury.

26. (1) Where a person—

- (a) has made any payment which is prohibited by this Act, or
- (b) being bound under this Act to offer or cause to be offered any specified foreign exchange to an authorised dealer, has otherwise disposed of that exchange,

Property obtained by infringement of Act.

[§ 6, 17 of 1971.]

the Secretary to the Treasury may direct him to sell or procure the sale of any property which he is entitled to sell or of which he is entitled to procure the sale, being property which represents, whether directly or indirectly, that payment or that specified foreign exchange, as the case may be, and may by the same or a subsequent direction specify the manner in which, the persons to whom, and the terms on which the property is to be sold.

[§ 6, 17 of 1971.]

(2) Without prejudice to the provisions of subsection (1), the Secretary to the Treasury may in any case to which those provisions apply give directions that the property shall be assigned to the Deputy Secretary to the Treasury.

27. (1) Where, under the preceding provisions of this Part of this Act, the Secretary to the Treasury has power to give directions that any right to receive any currency or any payment in rupees or to enforce any security for the receipt thereof, any goods, or any other property shall be assigned to the Deputy Secretary to the Treasury, the Secretary to the Treasury shall also have power to direct that the right, goods, or property shall vest in the Deputy Secretary to the Treasury, and in any such case it or they shall vest in the Deputy Secretary to the Treasury free from any mortgage, pledge, or charge, and the Deputy Secretary to the Treasury shall deal with or dispose of it or them in such manner as the Minister may direct.

Provisions supplemental to preceding provisions of Part V.

(2) Where, in pursuance of directions under the preceding provisions of this Part of this Act, any right, goods, or property is or are assigned to the Deputy Secretary to the Treasury, or any right, goods, or property vests or vest in the Deputy Secretary to the Treasury in pursuance of directions given under subsection (1), the

Deputy Secretary to the Treasury or any officer authorised in that behalf by such Deputy Secretary shall pay the net sum recovered by the Deputy Secretary to the Treasury in respect of the right, goods, or property to the person making the assignment or, in the case of any right, goods, or property vested in the Deputy Secretary to the Treasury under subsection (1), to the person, who, but for the directions, would be entitled to the right, goods or property.

Transfer of policies of assurance.

28. (1) Except with the permission of the bank, no person resident in Sri Lanka shall transfer to a person who is resident outside Sri Lanka or is a nominee for a person resident outside Sri Lanka, any right to the sums assured by any policy of assurance, so, however, that where the person liable for the sums so assured makes any payment thereof to a person resident in Sri Lanka and not elsewhere, or makes with the permission of the bank, any payment thereof to any other person—

- (a) he shall not be bound to inquire as to the residence of any person other than the person to whom, and (if it is not the same person) the person to whose order, the payment is made; and
- (b) the payment shall, to the extent of the sums paid, discharge him from his liability under the policy, notwithstanding that the payment is made to or to the order of a person who was not entitled thereto otherwise than by virtue of a transfer prohibited by this subsection.

(2) Subsections (2) and (3) of section 18 shall apply in relation to any transfer prohibited by this section as they apply in relation to a transfer prohibited by this Act of a security.

(3) In this section, “nominee”, in relation to any policy of assurance, has the same meaning as is assigned to it by subsection (3) of section 20 in relation to a security.

Settlements.

29. (1) Except with the permission of the bank, no person resident in Sri Lanka shall—

- (a) settle, otherwise than by will, any property upon any trust under which an interest in that property is conferred on a person who, at the time of the settlement, is resident outside Sri Lanka, or
- (b) exercise, otherwise than by will, any power of appointment (whether created by will or otherwise) in respect of any property in favour

of a person who, at the time of the exercise of such power, is resident outside Sri Lanka.

(2) A settlement or an exercise of a power of appointment shall not be invalid by reason that it is prohibited by this section, except so far as it purports to confer an interest in any property on any person who, at the time of the settlement or the exercise of the power of appointment, is resident outside Sri Lanka.

(3) Subsections (2) and (3) of section 18 shall apply in relation to a settlement or the exercise of a power of appointment prohibited by this section as they apply in relation to a transfer prohibited by this Act of a security.

(4) For the purposes of this section—

- (a) any reference to settling property includes a reference to the making of any disposition, covenant, agreement or arrangement whereby the property becomes subject to a trust, or (in the case of a resettlement) to a different trust;
- (b) a person shall be deemed to have an interest in property if he has any beneficial interest therein, whether present or future and whether vested or contingent, or falls within a limited class of persons in whose favour a discretion or power in respect of the property is exercisable; and
- (c) the expression “will “ includes any testamentary disposition.

29A. No person shall operate or maintain any tourist, airline or shipping service or carry on business as shipping agent or airline agent except in accordance with such conditions and requirements as may be imposed from time to time by the bank.

Tourist services, shipping agencies and airline agencies. [§ 5, Law 39 of 1973.]

29B. No person in, or resident in, Sri Lanka shall perform any prescribed service for a person resident outside Sri Lanka except in accordance with such conditions and requirements as may be imposed by the bank by Notification published in the *Gazette*.

Prescribed services to be performed in accordance with conditions and requirements imposed by the bank. [§ 5, Law 39 of 1973.]

29C. Notwithstanding anything contained in any other provision of this Act, a company (other than a banking company) which is not incorporated under any law in force in Sri Lanka or which is controlled directly or indirectly by any person or persons resident outside Sri Lanka, or any branch or office of any such

Restriction of appointment of certain companies and firms as agents or technical

advisers in Sri Lanka.
[§ 5, Law 39 of 1973.]

company in Sri Lanka, or a firm consisting wholly or in part of persons resident outside Sri Lanka, shall not accept appointment as—

- (a) agent in Sri Lanka of any person, company or firm in the trading or commercial transactions thereof; or
- (b) technical or management adviser in Sri Lanka of any person, company or firm,

except with the general or special permission of the bank; and where such appointment is accepted without such permission, it shall be void.

Certain provisions relating to foreign companies.
[§ 6, Law 39 of 1973.]

30. (1) Where there is served on any person resident in Sri Lanka a notice in writing that the bank wishes any such requirements as are hereinafter mentioned to be complied with by any foreign company, and that person can by doing or refraining from doing any act—

- (a) cause the foreign company to comply with any of the requirements; or
- (b) remove any obstacle to the foreign company complying with any of the requirements; or
- (c) render it in any respect more probable that the foreign company will comply with any of the requirements,

then, except so far as permission to the contrary may be given by the bank, that person shall do or, as the case may be, refrain from doing that act.

(2) The requirements with respect to which a notice under subsection (1) may be given are as follows, that is to say, the foreign company shall—

- (a) furnish to the bank such particulars relating to the assets and business of such company as may be mentioned in the notice;
- (b) sell or procure the sale to an authorised dealer of any foreign exchange mentioned in the notice, being foreign exchange which it is entitled to sell or to which it is entitled to procure the sale;
- (c) declare and pay such dividends as may be mentioned in the notice;
- (d) realise any of its assets mentioned in the notice in such manner as may be so mentioned;

- (e) refrain from selling, or transferring, or doing anything which affects its rights or powers in relation to, any such instrument or securities as may be mentioned in the notice.

(3) Except with the general or special permission of the bank, no person resident in Sri Lanka shall do any act whereby any business which is controlled by persons resident in Sri Lanka ceases to be so controlled.

(4) Notwithstanding anything contained in any other law, no transfer of any interest in any business in Sri Lanka made by a person resident outside Sri Lanka to any person also resident outside Sri Lanka shall be valid unless such transfer is confirmed by the bank on an application made to it for such confirmation by the transferor or the transferee. The preceding provisions of this subsection shall not apply to the transfer of any share in a company.

(5) Except with the general or special permission of the bank, no person resident in Sri Lanka shall transfer any interest in any business in Sri Lanka, or create any interest in any such business, to or in favour of a citizen of a foreign State.

(6) Except with the general or special permission of the bank, no person resident in Sri Lanka shall give a guarantee in respect of any debt or any other obligation or liability of a person resident outside Sri Lanka.

(7) Except with the general or special permission of the bank, no person resident in Sri Lanka shall lend any money either to any firm or company (other than a banking company) which is controlled directly or indirectly by persons resident outside Sri Lanka.

(8) In this section, "foreign company" means a company not incorporated under any law in force in Sri Lanka and in the case of which any of the following conditions is fulfilled:—

- (a) that the company is by any means controlled (directly or indirectly) by any person or persons resident in Sri Lanka; or
- (b) that more than half of the sums which, on a liquidation thereof, would be receivable by holders of share or loan capital, would be receivable directly or indirectly by, or for the benefit of, persons resident in Sri Lanka; or

- (c) that more than one-half of the assets which, on a liquidation thereof, would be available for distribution after the payment of creditors or would be receivable directly or indirectly by, or for the benefit of, any person or persons resident in Sri Lanka; or
- (d) that more than one-half—
 - (i) of the interest payable on its loans and loan capital, if any, or
 - (ii) of the dividends payable on its preference share capital, if any, or
 - (iii) of the dividends payable on its share capital, if any, not being preference share capital,

is receivable directly or indirectly by, or for the benefit of, any person or persons resident in Sri Lanka.

For the purposes of this subsection, where the identity of the person or persons by whom or for whose benefit, any sum, assets, interest or dividends are directly or indirectly receivable depends on the exercise by any person resident in Sri Lanka of a power vested in him in that behalf, the sum, assets, interest or dividends shall be deemed to be receivable directly or indirectly by, or for the benefit of, any person or persons resident in Sri Lanka.

PART VI

SUPPLEMENTAL

Blocked
accounts.
[§ 7, Law 39
of 1973.]

***31.** (1) Where any person applies for the permission of the bank for the making of a payment, or the placing of any sum, to the credit of any person resident outside Sri Lanka, the bank may direct that the sum payable or to be credited shall be paid or credited to a blocked account only. Where such direction is given by the bank such person shall pay or credit such sum to a blocked account.

(2) Where the bank directs that a payment shall be made to a blocked account only,—

- (a) the manner in which the payment may be made shall be either—
 - (i) to the banker, with a direction that the payment shall be credited to a blocked account of the person to whose credit the payment is made, which direction may, in the case of a payment

by means of a cheque or warrant, be made by marking the cheque or warrant with the words “ blocked account of ” (naming that person) or words to the same effect, or

- (ii) by a crossed cheque or warrant drawn in favour of that person, marked with the words “ payable only to blocked account of payee ” or words to the same effect; and

- (b) the sum collected shall be credited by the banker to a blocked account of that person.

* (4) Any sum standing to the credit of a blocked account shall not be dealt with except with permission of the bank.

(5) Where a person in whose name a blocked account is standing is declared an insolvent under the law of Sri Lanka or dies, the banker may, notwithstanding anything in subsection (4), transfer the account to the name of the assignee of the insolvent’s estate or the executor of the last will, or the administrator of the estate, of the deceased, but, save as aforesaid, no change shall, except with the permission of the bank, be made in the name in which the account stands; and where any such change is made (whether or not the permission of the bank is necessary therefor) the account shall remain a blocked account notwithstanding the change, and the provisions of this section shall apply accordingly.

(6) Where—

- (a) a sum is due from any person to any other person but the bank directs that it shall be paid or credited to a blocked account only, and
- (b) the person to whom the sum is due nominates such an account to the person from whom the sum is due,

the last-mentioned person shall be under a duty to the person to whom the sum is due to cause the sum to be paid or credited to that blocked account, and the crediting of any sum to a blocked account in pursuance of a direction of the bank shall, to the extent of the sum credited, be a good discharge to the person from whom the sum is due:

Provided that, in the case of a sum due under a contract, the preceding provisions of this subsection shall not apply in so far as the application of those provisions is inconsistent with the intention of the parties to that contract.

* Subsection (3) is repealed and proviso to subsection (4) is omitted by Law No. 39 of 1973.

(7) In this section—

“ blocked account ” means an account opened as a blocked account at an office or branch in Sri Lanka in favour of any person by a banker authorised by the bank to open blocked accounts, and

“ banker ”, in relation to any person, means a banker who opens a blocked account in favour of that person.

Branches.

32. (1) The Minister may by Order published in the *Gazette* provide that, for such of the purposes of this Act as may be specified in the Order—

- (a) any transaction with or by a branch of any business, whether carried on by a body corporate or otherwise, shall be treated in all respects as if the branch were a body corporate resident where the branch is situated, and
- (b) the making of any book entry or other statement recording a debit against a branch of any business in favour of any other branch of that business, shall be treated as a payment to that other branch, and
- (c) any property held by or on behalf of any person carrying on any business shall be deemed to be held by such of the branches of that business as may be determined in accordance with the Order;

and any such Order which makes, for any of the purpose of Part III of this Act, such provision as is mentioned in paragraph (c) of this subsection may contain provisions declaring the circumstances in which a branch is to be treated as nominee for any other branch.

(2) Any reference in subsection (1) to a branch of a business shall be deemed to include a reference to the head office of that business.

(3) Subsections (1) and (2) shall apply in relation to any body of persons (whether corporate or unincorporate) carrying on any activity, whether for the purpose of profit or not, as they apply in relation to a business.

Contracts.

33. (1) It shall be an implied condition in any contract that, where, by virtue of this Act, the permission or consent of the bank is at the time of the contract required for the performance of any term thereof, that term shall not be performed except in so far as the permission or consent is given or is not required:

Provided that the preceding provisions of this subsection shall not apply to that term in so far as the application of those provisions to that term is inconsistent with the intention of the parties to that contract, whether by reason of their having contemplated the performance of that term in despite of the provisions of this Act or for any other reason.

(2) Notwithstanding anything in the Bills of Exchange Ordinance, neither the provisions of this Act nor any condition, whether express or to be implied having regard to those provisions, that any payment shall not be made without the permission of the bank under this Act, shall be deemed to prevent any instrument being a bill of exchange or promissory note.

34. Where any provision of any other written law imposes an obligation in respect of the doing of any act and the permission or consent of the bank is, by virtue of this Act, required for the discharge of the obligation, it shall be an implied condition of the obligation that it shall not be discharged except in so far as the permission or consent is given or is not required.

Obligations
under other
written laws.

35. (1) The provisions of Part II of this Act shall apply to sums required to be paid by any judgment or order of any court or by any award as they apply in relation to other sums, and it shall be implied in any judgment or order of any court in Sri Lanka, and in any award given under the law of Sri Lanka, that any sum required to be paid by the judgment, order or award (whether as a debt, as damages or otherwise) to which those provisions apply shall not be paid except with the permission of the bank.

Legal
proceedings,
&c.

(2) Nothing in this Act shall be construed as preventing the payment by any person of any sum into any court in Sri Lanka, but the provisions of Part II of this Act shall apply to the payment of any sum out of court, whether under an order of the court or otherwise, to or for the credit of any person resident outside Sri Lanka.

(3) In any insolvency proceedings, winding up of a company, or administration of the estate of a deceased person, carried on under the law of Sri Lanka, a claim for a sum not payable without the permission of the bank shall, notwithstanding that the permission has not been given or has been revoked, be admitted to proof as if the permission had been given and had not been revoked:

Provided that nothing in the preceding provisions of this subsection shall be construed as affecting the application of the provisions of Part II of this Act to payments by the assignee of the insolvent's estate, or by the liquidator, or by the executor of the last

will, or administrator of the estate, of the deceased, or by any other person in such insolvency proceedings, or winding up, or administration.

(4) The provisions of this Act restricting the making of settlements shall not apply to any deed of arrangement made for the benefit of creditors generally, and the provisions of subsection (3) shall apply in relation to proceedings under any deed of arrangement as they apply in relation to insolvency proceedings.

(5) Where the permission of the bank is required under this Act for the payment of a debt the amount of which is sufficient under section 18 of the Insolvency Ordinance, to enable the creditor to petition for the sequestration of the estate of the debtor if the debtor commits an act of insolvency, the debt may, notwithstanding the aforesaid requirement, be allowed to be a good petitioning creditor's debt, if and to the extent that the debt can be satisfied either by a payment into court or by a payment to a blocked account.

Persons
leaving Sri
Lanka.

36. Where a person resident in Sri Lanka leaves Sri Lanka, the bank may, before, at or after the time he leaves Sri Lanka, direct that, for such period as may be specified in the direction, payments by him or on his behalf and to him or to his credit and transactions in or in relation to Treasury Bills, securities or secondary securities in which he is in any way concerned shall, whether or not he continues to be resident in Sri Lanka, be subject to such restrictions as may be specified in the direction.

Determination
of residence.

37. (1) Where any question arises as to the territory in which a person is or is not resident, the territory in which such person shall, for the purposes of this Act, be treated as resident or not resident, as the case may be, shall be determined in accordance with such general or special directions as may be given in that behalf by the Minister.

(2) For the purposes of this Act, the executor of the last will or the administrator of the estate of a deceased person shall, unless the Minister otherwise directs, be treated in respect of any matters in which such executor or administrator is concerned solely in his capacity as such, as resident—

- (a) if directions given under subsection (1) apply in the case of such deceased person, in the territory in which he is required by such directions to be treated as having been resident; or
- (b) in any other case, in the territory where at the time of his death the deceased person was resident.

38. The bank may give—

Directions to
bankers,
authorized
dealers &c.

- (a) to bankers and to persons who are concerned with the keeping of any register in Sri Lanka or are entrusted with the payment of capital moneys, dividends or interest in Sri Lanka, directions as respects the exercise of any functions exercisable by them by virtue of, or by virtue of anything done under, any provision of this Act, and
- (b) to authorised dealers—
 - (i) such directions as aforesaid, or
 - (ii) directions as to the terms on which they are to accept gold or foreign currency, or
 - (iii) directions requiring them to offer their gold or specified foreign exchange for sale to the Central Bank on such terms as may be set out in the directions.

[§ 7, 17 of
1971.]

39. (1) Without prejudice to any other provisions of this Act, the bank may give to any person in, or resident in, Sri Lanka directions requiring him—

Furnishing of
information
and production
of documents.

- (a) to furnish, within such time and in such manner as may be specified in such directions, to the bank or to any person designated in such directions as a person authorised to require it, any information in his possession which the bank or the person so authorised, as the case may be, may require for the purpose of securing compliance with, or detecting evasion of, the provisions of this Act, or where such person does not have the information in his possession, to obtain such information from any such person in Sri Lanka or abroad as may be specified in such directions and to furnish such information to the bank or to the person authorised; or
- (b) to attend in person before any officer specified in such directions at such place, at such date and at such time as may be specified therein so that he may be examined on any such matter or matters as may be specified in such directions.

(1A) Any person examined under the provisions of subsection (1) (b) shall answer truly all questions put to him by the officer examining him.

[§ 8, Law 39
of 1973.]

(2) A person required by any directions given under subsection (1) to furnish information shall also produce such books, accounts or other documents in his possession or control as may be required, for the purpose referred to in subsection (1), by the bank or by the person authorised to require the information, as the case may be.

(3) Nothing in the preceding provisions of this section shall be taken to require any person who has acted as counsel or attorney-at-law for any person to disclose any privileged communication made to him in that capacity.

(4) Where a person is convicted for failing to give information or produce any books, accounts or other documents when required so to do under this section, the court may make an order requiring the offender, within such period as may be specified in the order, to comply with the requirements to give the information or produce the books, accounts or other documents.

[§ 8, Law 39
of 1973.]

(5) In this section, “ bank ” includes any officer of the Department of Inland Revenue or Department of Customs generally or specially authorised by the Monetary Board to exercise the powers conferred by this section.

Search of
premises.
[§ 10, Law 39
of 1973.]

40. (1) If the Head of the Department of Exchange Control or any such officer who is designated as an Assistant to him or any such public officer not below the rank of Assistant to the Head of a Department of Government, as may be authorised by the Head of the Department of Exchange Control to act for the purposes of this section is satisfied—

- (a) that there is reasonable ground for suspecting that an offence under this Act has been or is being committed and that evidence of the commission of the offence is to be found at any premises or in any vessel, vehicle or aircraft or with any person; or
- (b) that any books, accounts or other documents which ought to have been produced under section 39 and have not been so produced are to be found at such premises or in any such vehicle, vessel or aircraft or with such person; or
- (c) that any foreign currency is to be found at any such premises or in any such vehicle, vessel or aircraft or with any such person,

the Head of the Department of Exchange Control or such officer may enter such premises or, as the case may be, any premises upon which the vehicle, vessel or aircraft or person may be, and search such premises, or, as the case may be, such vehicle, vessel, aircraft or person.

(2) The Head of the Department of Exchange Control or such officer, as the case may be, may seize any article which is found in the premises or in the vehicle, vessel or aircraft or with the person and which he has reasonable grounds for believing to be evidence of the commission of any offence under this Act, or any books, accounts or documents which he has reasonable grounds for believing ought to have been produced under section 39:

Provided that no female shall, in pursuance of a search under this section, be searched except by a female.

(3) Where by virtue of this section a person has any power to enter into any premises, he may use such force as is reasonably necessary for the purpose of exercising that power.

Where by virtue of this section, an officer has power to search a person, such officer may examine such person, and such person shall answer truly all questions put to him by the officer examining him.

(4) No person shall obstruct any other person in the exercise of any powers conferred on that other person by virtue of the preceding provisions of this section.

(5) Any person empowered to do any act under this section may, if he thinks fit so to do, obtain the assistance of a peace officer for doing such act.

41. (1) Any article seized by any authority under or by virtue of this Act which the authority has reasonable ground for believing to be evidence of the commission of an offence against this Act may be retained for a period of three months or, if within that period there are commenced legal proceedings in respect of such an offence in which the article is, or can properly be, adduced in evidence, until the final determination of those proceedings.

Retention of
seized
articles.

(2) The powers conferred by this section in relation to any article shall be in addition to, and not in derogation of, any powers otherwise exercisable in relation thereto.

42. No person in or resident in Sri Lanka shall—

- (a) with intent to evade the provisions of this Act, destroy, mutilate, deface, secrete or remove any books, accounts or other documents, or

Destruction,
&c., of
documents,
and false
statements.

- (b) in furnishing any information for any of the purposes of this Act make any statement which he knows to be false in a material particular, or recklessly make any statement which is false in a material particular.

Application to State.

43. This Act shall bind the State and shall apply to transactions by a Government department or any person acting on behalf of the State.

Exemptions.

44. Any provision of this Act imposing any obligation or prohibition shall have effect subject to such exemptions as may be granted by order of the Minister, and any such exemption may be either absolute or conditional.

Decisions of bank.

45. Every decision of the bank to grant or refuse any permission under this Act, or to revoke any permission which has been so granted, or to rescind, add to or vary any conditions or to extend or reduce any time-limit to which the permission granted is subject, shall be communicated in writing by the bank to the person by whom application for the permission was made or, as the case may be, to whom the permission was granted.

Appeals.

46. A person in regard to whom the bank makes a decision under this Act may, if he is dissatisfied with that decision, make a written appeal against the decision to the Minister within ten days after that decision is communicated to him.

Finality of decisions.

47. A decision of the bank against which an appeal is not made in accordance with the provisions of section 46, and a decision of the Minister on an appeal made in accordance with those provisions, shall be final and conclusive and shall not be subject to review or be called in question in any court.

Provisions relating to permission, consent or authority.

48. Any permission, consent or authority granted under this Act may be—

- (a) general or special,
- (b) absolute or conditional,
- (c) limited so as to expire on a specified date, unless renewed, and
- (d) varied or revoked.

Burden of proof of permission.

49. In any prosecution of a person for an offence against this Act, the burden of proving that he had obtained the permission or consent of the bank for doing the act or making the omission which constitutes the offence shall be on him.

49A. In any prosecution for the offence of contravening any of the provisions of this Act in relation to foreign currency, it shall be presumed, until the contrary is proved, that the currency in respect of which the offence is alleged to have been committed is genuine.

Presumption relating to foreign currency. [§ 2, 47 of 1957.]

49B. In any legal proceedings in respect of any offence under this Act, any of the following documents may be produced in court and given in evidence against any accused and shall be prima facie evidence of the matters, transactions or accounts therein contained:—

Admissibility of certain documents. [§ 11, Law 39 of 1973.]

- (a) a certified copy of a banker's book or of any extract thereof obtained from the manager or principal accountant of the bank;
- (b) a certified copy of any book or other record required by law to be maintained by a company or a certified copy of any extract thereof, obtained from a director or secretary of the company; and
- (c) a certified copy of any document or of an extract thereof in the proper custody of an officer of a foreign Government, and obtained from such officer.

50. No person shall be liable in any suit or other legal proceedings for any act done, or purporting to be done, in good faith in pursuance of the powers conferred by or under this Act, or for the purpose of carrying out the provisions of this Act.

Indemnity for acts done in good faith.

50A. (1) Except in the performance of his duties under this Act, every officer or servant of the Department of Exchange Control of the Central Bank shall preserve, and aid in preserving, secrecy with regard to all matters that may come to his knowledge in the performance of his duties under this Act; and any such officer or servant who communicates any such matter to any person other than—

Duty of officers and servants to maintain secrecy. [§ 2, 35 of 1956.]

- (a) the person to whom that matter relates or his authorised representative, or
- (b) the Monetary Board, or
- (c) the Governor of the Central Bank or an officer of the Central Bank authorised by such Governor to obtain information regarding that matter, or
- (d) the Secretary to the Ministry charged with the subject of Finance, or

- (e) a public officer authorised by the Minister to obtain information regarding that matter, or
- (f) a person to whom it is necessary to communicate that matter for the purpose of securing compliance with, or detecting evasion of, any provision of this Act, or of any other written law,

or suffers or permits any unauthorised person to have access to any books, papers or records of the aforesaid department or in the possession or custody, or under the control, of the head of that department, shall be guilty of an offence.

(2) No officer or servant of the Department of Exchange Control shall, in any legal proceedings to which the Monetary Board is not a party, be compellable, except by order of the court, to produce any book or document or to divulge or communicate any matter coming under his notice in the performance of his duties under this Act.

[§ 12, Law 39
of 1973.]

(3) For the purposes of this section any officer authorised by the Monetary Board under subsection (5) of section 39 shall be deemed to be an officer of the Department of Exchange Control of the Central Bank.

Offences.
[§ 13, Law 39
of 1973.]

51. (1) Any person in or resident in Sri Lanka who contravenes any provision of this Act or of any regulation made under this Act or fails to comply with any direction given or condition or requirement imposed under this Act shall be guilty of an offence, notwithstanding that the offence may, by virtue of Part IV of this Act, be also punishable under the provisions of the Customs Ordinance.

(2) Any person who attempts to commit an offence against this Act shall be guilty of an offence.

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

[§ 13, Law 39
of 1973.]

(4) Any person who commits an offence under this Act shall—

- (a) on conviction after summary trial before a Magistrate, be liable to imprisonment of either description for a term not exceeding eighteen months, or to both such imprisonment and a fine; or
- (b) on conviction before the High Court, be liable to imprisonment of either description for a term not exceeding five years, or to both such imprisonment and a fine;

and where the offence is concerned with any gold, currency, security, goods or other property, the court may, if it thinks fit so to do, order the gold, currency, security, goods, or property to be forfeited; and any gold, currency, security, goods or property forfeited under this subsection shall be dealt with or disposed of in such manner as the Minister may direct.

(5) Except in the case of a body corporate, the maximum fine which may be imposed for an offence against this Act shall be fifteen thousand rupees so, however, that where the offence is concerned with any gold, currency, security, payment, goods or other property, and does not consist only of a failure to give information or produce books, accounts or other documents with respect thereto when required so to do under section 39, a larger fine may be imposed not exceeding three times the amount or value of the gold, currency, security, payment, goods or property.

(6) A Magistrate before whom a prosecution is instituted against any person for an offence against this Act may, notwithstanding anything in the Code of Criminal Procedure Act, decide whether he will try that person summarily or take non-summary proceedings in respect of that offence:

Provided that the preceding provisions of this subsection shall not affect or prejudice any right or power of the Attorney-General under the aforesaid Code of Criminal Procedure Act.

(7) No prosecution in respect of any offence under this Act may be commenced except at the instance of, or with the sanction of, the bank:

[§ 13, Law 39 of 1973.]

Provided that this subsection shall not apply to a prosecution commenced by, or at the instance of, the Attorney-General.

(8) All offences under this Act shall be cognizable offences for the purposes of the application of the provisions of the Code of Criminal Procedure Act, notwithstanding anything contained in the First Schedule to that Act.

[§ 13, Law 39 of 1973.]

[§ 13, Law 39
of 1973.]

(9) Notwithstanding anything in any other law any offence under this Act committed outside Sri Lanka may be tried before a Magistrate having jurisdiction in the division of Colombo or before the High Court holden in the judicial zone of Colombo.

Imposition of
penalties by
the bank.
[§ 14, Law 39
of 1973.]

52. (1) Before the commencement of a prosecution under this Act, the bank may in writing require any person who in its opinion has committed an offence under this Act to pay as a penalty a sum not exceeding two thousand rupees, within such period as may be specified in the notification of such requirement.

(2) Where the offence referred to in subsection (1) is concerned with any gold, currency, security, payment, goods or other property, and is not only a failure to give information or produce books, accounts or other documents with respect thereto when required so to do under section 39,—

- (a) the bank may in writing require such person to pay as a penalty within such period as may be specified in the notification of such requirement an additional sum not exceeding three times the amount or value of the gold, currency, security, payment, goods or property; and
- (b) the bank may, if it thinks it fit so to do, in writing require gold, currency, security, goods or property to be delivered to the bank.

(3) Every requirement for delivery to the bank made under subsection (2)(b) shall be communicated to the person in whose possession the gold, currency, security, goods or property required to be delivered is, and such person shall, upon receipt of such communication, deliver to the bank such gold, currency, security, goods or property.

(4) Any gold, currency, goods or property delivered to the bank under this section shall be dealt with or disposed of in such manner as the Minister may direct.

(5) Any sum of money imposed as penalty under this section shall be disposed of in the following manner:—

- (a) one-half of that sum shall be forwarded to the Secretary to the Treasury to be credited to the Consolidated Fund; and
- (b) the other half of such sum may be divided among any informer or informers who, in the opinion of the bank, supplied such information as led to the detection of the offence referred to in subsection (1), or may be credited to the Consolidated Fund.

(6) No person against whom a requirement is made by the bank under this section shall except with the permission of the bank, sell, hypothecate, alienate, transfer or dispose of in any manner whatsoever any immovable property or securities belonging to him until such requirement is complied with or until the expiry of a period of two months from the end of the period specified in such order, whichever is earlier:

Provided, however, that where on the failure of such person to comply with such requirement, any action is instituted against such person in respect of the offence committed by him in any court before the expiry of the aforesaid period of two months, the court may direct that the prohibition on disposal of property referred to in the preceding provisions of this subsection shall continue for such further period as the court may determine.

(7) Any person against whom a requirement is made by the bank under this section may, within twenty-one days after the notification of the requirement to him, appeal therefrom in writing to the Minister. The appeal shall state the grounds of objection to the requirement.

(8) On an appeal made under subsection (7), the Minister may confirm, reduce, increase or annul the penalty imposed, or issue such directions in respect of the gold, currency, security, goods or property required to be delivered to the bank as he may think fit.

(9) Where any person pays to the bank the penalty imposed under this section, or pays the penalty and delivers to the bank the gold, currency, security, goods or property required to be delivered to the bank under this section, as the case may be, such person shall not be liable to a prosecution for the offence in respect of which the penalty was imposed or the requirement made.

53. (1) The Minister may make such regulations as may be necessary for carrying out the principles and provisions of this Act.

Regulations,
forms, &c.

(2) No regulation made under subsection (1) shall have effect unless it is approved by Parliament and is published in the *Gazette*.

(3) All applications, returns and other documents made or furnished under this Act shall be in such form as the bank may from time to time specify or provide for the purpose.

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

Interpretation.

“ authorised dealer ” means, in relation to gold or any foreign currency, a commercial bank for the time being authorised

under section 4 to act for the purposes of this Act as an authorised dealer in relation to gold or that foreign currency;

“bank” or “Central Bank” means the Central Bank of Sri Lanka established by the Monetary Law Act;

[§ 15, Law 39 of 1973.]

“banker’s book” includes any ledger, day book, cash book, account book and any other book used in the ordinary business of a bank;

[§ 15, Law 39 of 1973.]

“banking company” has the same meaning as in the Companies Ordinance ; *

“bearer certificate” means a certificate of title to securities by the delivery of which (with or without endorsement) the title to the securities is transferable;

“blocked account” has the meaning assigned to it by section 31 (7);

“certificate of title to securities” means any document of title whereby a person recognizes the title of any other person to securities issued or to be issued by the first-mentioned person, and in the case of any such document with coupons (whether attached or on separate coupon sheets) includes any coupons which have not been detached;

[§ 15, Law 39 of 1973.]

“certified copy” of any book, record, extract or document, means a copy of the book, record, extract or document, together with a certificate written at the foot of such copy that it is a true copy of such book, record, extract or document; and that such book, record, extract or document is still in proper custody, such certificate being dated and subscribed by the person in whose custody it is, with his name and official title;

[§ 15, Law 39 of 1973.]

“company” means a company registered under the enactments relating to companies from time to time in force in Sri Lanka or in any other country;

“coupon” means a coupon representing dividends or interest on a security;

[§ 8, 17 of 1971.]

“currency” includes coins, currency notes, bank notes, postal orders, money orders, cheques, drafts, travellers’ cheques, letters of credit, bills of exchange and promissory notes;

[§ 8, 17 of 1971.]

“foreign assets” means any movable or immovable property outside Sri Lanka of any class or description whatsoever and without prejudice to the generality of the preceding

provisions of this definition, includes foreign exchange, foreign currency, gold and securities;

“foreign currency” means any currency other than Sri Lanka currency and includes any currency payable by a foreign Government or institution to a person in, or resident in, Sri Lanka in respect of his pension or other gratuities due to him; [§ 8, 17 of 1971.]

“foreign exchange” means foreign currency and includes all deposits, credits and balances payable in any foreign currency, and any such drafts, travellers’ cheques, letters of credit and bills of exchange as are expressed or drawn in Sri Lanka currency but payable in any foreign currency; [§ 8, 17 of 1971.]

“gold” means gold coin or gold bullion;

“Minister” means the Minister in charge of the subject of Finance;

“Monetary Board” means the Monetary Board of the Central Bank;

“policy of assurance” means any policy securing the payment of a capital sum or annuity on the occurrence of a specified event which is certain to happen and includes—

(a) any policy by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and

(b) any policy securing the payment of an immediate annuity;

and the reference in this definition to the occurrence of a specified event which is certain to happen shall include the occurrence, which is certain to happen, of one of specified events none of which by itself is certain to happen;

“prescribed” means prescribed by the Minister by Order published in the *Gazette*;

“rupees” means Sri Lanka rupees;

“secondary securities” has the meaning assigned to it by section 19;

“securities” means shares, stock, bonds, capital in any partnership, notes (other than promissory notes), debentures, debenture stock, units under a unit trust scheme and shares in an oil royalty; [§ 15, Law 39 of 1973.]

“specified foreign exchange” has the meaning assigned to it by section 6; [§ 8, 17 of 1971.]

[§ 8, 17 of
1971.]

“ Sri Lanka currency ” means currency which is expressed or drawn in Sri Lanka rupees;

[§ 15, Law 39
of 1973.]

“ tourist, airline or shipping service ” means service of any class or description prescribed to be a tourist, airline or shipping service for the purposes of this Act;

“ unit trust scheme ” means any arrangements made for the purpose, or having the effect, of providing for persons having funds available for investment, facilities for the participation by them, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of any property whatsoever;

“ unit ” means, in relation to a unit trust scheme, a right or interest (whether described as a unit, as a sub-unit, or otherwise) which may be acquired under that scheme.

(2) Any provision of this Act (however worded) the effect of which is to prohibit the doing of any act where a person to or by whom the act is to be done or who stands in a specified relation to any property possesses any specified attribute as to residence or otherwise shall, where the act is done to or by two or more persons or, as the case may be, where two or more persons stand jointly in that relation to the property, operate to prohibit the doing of that act if any of those persons possess that attribute; and any provision of this Act imposing an obligation on any person to do an act if he possesses any specified attribute as to residence or otherwise shall, in relation to any act which can only be done by two or more persons jointly—

(a) where all those persons possess that attribute, operate to impose a joint obligation on all of them to do the act, and

(b) where some only of them possess that attribute, operate to impose a separate obligation on each one of them who possesses that attribute to do all he can to secure the doing of the act.

(3) Any power conferred by this Act to require declarations which are to be furnished on any occasion shall include a power to require that the declarations shall be made by specified persons and shall be verified in a special manner.