

CHAPTER 177

COMPANIES (SPECIAL PROVISIONS)

Law

No. 19 of 1974. A LAW TO PROHIBIT COMPANIES FROM OWNING PROPERTY OR CARRYING ON ANY UNDERTAKINGS IN SRI LANKA AFTER A SPECIFIED DATE UNLESS THEY ARE INCORPORATED UNDER THE COMPANIES ORDINANCE * OR ARE EXEMPTED COMPANIES AND TO ENABLE THE ACQUISITION ON BEHALF OF THE GOVERNMENT OF THE WHOLE OR ANY PART OF THE UNDERTAKINGS OF COMPANIES WHICH ARE NOT SO INCORPORATED OR EXEMPTED, FOR WHICH COMPENSATION IS PAYABLE. TO APPOINT A TRIBUNAL FOR THE ASSESSMENT OF SUCH COMPENSATION, AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[19th June, 1974.]

Short title. 1. This Law may be cited as the Companies (Special Provisions) Law.

PART I

CERTAIN PROHIBITIONS ON COMPANIES AFTER A SPECIFIED DATE UNLESS THEY ARE INCORPORATED UNDER THE PRINCIPAL ENACTMENT OR ARE EXEMPTED COMPANIES

Certain prohibitions on companies, subject to certain exemptions, unless they are incorporated under the principal enactment.

2. (1) On and after the first day of September, 1974, in this Law referred to as the "appointed date", no company—

- (a) shall have an interest in any property in Sri Lanka, whether as owner, co-owner, lessee, mortgagee, or otherwise, or
(b) shall carry on any undertaking in Sri Lanka, unless such company is recognized as an "existing company", or is incorporated, under the principal enactment, or is an exempted company.

(2) Before the appointed date, the Minister may, from time to time, by Order published in the Gazette, alter such date, and thereafter the new date specified in the Order shall be deemed to be the appointed date for the purposes of this Law.

Power of Minister to issue a direction of exemption.

3. (1) Before the appointed date, the Minister may from time to time, with the prior concurrence of the Minister in charge of the subject of Finance, issue a written

direction, in this Part referred to as a "direction of exemption", exempting from the application of the provisions of section 2 any such company or class or category of companies not incorporated under the principal enactment as shall be specified in such direction. The Minister shall cause notice of such direction to be published in the Gazette.

(2) After the appointed date, the Minister may from time to time with the prior concurrence of the Minister in charge of the subject of Finance issue a direction of exemption, exempting from the application of the provisions of section 2 any such company or class or category of companies formed or established after the appointed date as shall be specified in such direction. The Minister shall cause notice of such direction to be published in the Gazette.

(3) A direction of exemption shall, for so long and so long only as it is in force, be final and conclusive, and shall not be called in question in any court or tribunal.

(4) A company in respect of which, or in respect of the class or category to which it belongs, a direction of exemption is for the time being in force is in this Law referred to as an "exempted company".

4. (1) The Minister may from time to time, with the prior concurrence of the Minister in charge of the subject of Finance, issue a written direction revoking, with

Power of Minister to revoke a direction of exemption.

* Later repealed and replaced by the Companies Act, No. 17 of 1982— See 1985 Supplement to the Revised Edition.

effect from such date as shall be specified in the direction, a direction of exemption in respect of any company or class or category of companies and, upon the direction of revocation taking effect, the direction of exemption shall cease to be in force. The Minister shall cause notice of the direction of revocation to be published in the Gazette.

(2) A direction of revocation issued by the Minister under subsection (1) shall be final and conclusive and shall not be called in question in any court or tribunal.

5. Where any cultivated agricultural land in Sri Lanka owned or possessed on May 29, 1971, by a company registered or incorporated outside Sri Lanka is transferred by such company after the 19th day of June, 1974, to a company which is recognized as an "existing company", or which is incorporated, under the principal enactment, such land shall not be taken into account in the computation of the acreage of agricultural land for the purpose of applying the ceiling under the provisions of the Land Reform Law in respect of the latter company.

Certain lands transferred by foreign companies not to be taken into account in applying the ceiling under Land Reform Law.

PART II

POWER OF MINISTER TO VEST IN THE GOVERNMENT THE WHOLE OR ANY PART OF THE UNDERTAKINGS OF COMPANIES, OTHER THAN EXEMPTED COMPANIES, WHICH ARE NOT INCORPORATED UNDER THE PRINCIPAL ENACTMENT

6. (1) The Minister may from time to time, by Order published in the Gazette (in this Part referred to as a "vesting Order under this Part"), vest in the Government, with effect from such date as shall be specified in the Order, the whole or any part of the undertaking of any such company as shall be specified in the Order, being a company, other than an exempted company, which, on the appointed date, is not incorporated under the principal enactment.

Vesting Order under this Part.

(2) Before a vesting Order under this Part takes effect, the Minister may, by Order published in the Gazette—

(a) alter or amend such Order; or

(b) alter the date on which such Order takes effect.

(3) A vesting Order under this Part shall have the effect of giving the Government absolute title to the whole or part, as the case may be, of the undertaking of any such company to which such Order applies as shall be specified in such Order with effect from such date as shall be specified thereon, and free from all encumbrances.

(4) Subject to any Order by the Minister published in the Gazette under subsection (2), a vesting Order under this Part shall be final and conclusive, and shall not be called in question in any court or tribunal.

7. (1) Where the whole or any part of the undertaking of any company is vested in the Government by virtue of the operation of a vesting Order under this Part, the Minister may appoint any person, by name or by office, to be a competent authority for the purpose of managing such undertaking, or part thereof, as the case may be.

Appointment of a competent authority.

(2) In the exercise and discharge of the powers and functions conferred on him by subsection (1), a competent authority shall be subject to such general or special directions as the Minister may issue from time to time.

8. (1) A competent authority, or any authorized officer, may take possession, on behalf of the Government, of the whole or any part, as the case may be, of the undertaking of any company vested in the Government by virtue of a vesting Order under this Part.

Taking possession of the whole or any part of any undertaking vested in the Government by virtue of the operation of a vesting Order under this.

(2) A competent authority, or any authorized officer, shall, by notice given to the person in possession of any property comprising the whole or any part, as the case may be, of any undertaking of any company vested in the Government by virtue of the operation of a vesting Order under this Part—

(a) inform such person that such authority or officer intends to take

possession of such property on behalf of the Government on such date and at such time and place as shall be specified in the notice; and

(b) require such person or his authorized agent to be present on the date and at the time and place so specified, and to allow and assist such authority or officer to take possession of such property on behalf of the Government.

(3) Any notice required to be given to any person under the preceding provisions of this section shall be deemed to be given to him if such notice is sent to him by registered letter through the post.

(4) Any person—

(a) who contravenes or fails to comply with the requirements of any notice given to him under this section; or

(b) who wilfully or negligently destroys, damages or impairs, or causes to be destroyed or damaged or impaired, or wilfully conceals or puts away, any property comprising the whole or any part of the undertaking of any company vested in the Government by virtue of the operation of a vesting Order under this Part; or

(c) who prevents or obstructs, or directly or indirectly causes any person to prevent or obstruct, a competent authority or any authorized officer in taking possession of such property,

shall be guilty of an offence and shall, on conviction after trial before a Magistrate, be liable to imprisonment of either description for a period not exceeding one year, or to a fine not exceeding five thousand rupees, or to both such imprisonment and fine.

(5) The expression "authorized officer", in this Part means any officer appointed by a competent authority to be an authorized officer for the purposes of this Part.

9. Where the whole or any part of the undertaking of any company is vested in the Government by virtue of the operation of a vesting Order under this Part, a competent authority shall, by notice published in the Gazette, direct every person who had an interest in such undertaking or part thereof immediately before the date on which such undertaking or part thereof was so vested, to make, within a period of two months reckoned from the date specified in the notice, a written claim to the whole or any part of the compensation payable under this Law in respect of such undertaking or part thereof together with all documents relied upon by him in support of his claim, and to specify in the claim—

(a) his name and address;

(b) the nature of his interest in such undertaking or part thereof;

(c) the particulars of his claim; and

(d) how much of such compensation is claimed by him.

10. (1) A competent authority shall refer to the Tribunal for determination the amount of the compensation payable in respect of the whole or any part, as the case may be, of the undertaking of any company vested in the Government by virtue of the operation of a vesting Order under this Part, and shall transmit to the Tribunal all claims made to such compensation, together with all documents furnished by the claimants in support of their claims.

(2) A reference made under subsection (1) to the Tribunal is hereafter in this Law referred to as a "reference for an award as to compensation".

11. (1) Where a competent authority, or any authorized officer, is unable or apprehends that he will be unable to take possession on behalf of the Government of any property comprising the whole or any part of the undertaking of any company which is vested in the Government by virtue of the operation of a vesting Order under this Part because of any obstruction or resistance that has been or is likely to be offered, he shall, on his making an application in that behalf to the Magistrate's Court having

Notice to persons to make claims to the compensation payable under this Law in respect of the whole or any part of the undertaking of any company vested in the Government by virtue of the operation of a vesting Order under this Part

Reference to the Tribunal for an award as to compensation in respect of the whole or any part of the undertaking of any company vested in the Government by virtue of the operation of a vesting Order under this Part.

Special powers for taking possession of property on behalf of the Government.

jurisdiction over the place where the property is kept or situated, be entitled to an Order of the Court directing the Fiscal to deliver possession of that property to him on behalf of the Government.

(2) Where an Order under subsection (1) is issued to the Fiscal by a Magistrate's Court, he shall forthwith execute that Order and shall in writing report to the Court the manner in which that Order was executed.

(3) For the purpose of executing an Order issued by a Magistrate's Court under subsection (2), the Fiscal or any person acting under his direction may use such force as may be necessary to enter any place where any movable property to which that Order relates is kept and seize such movable property, or to enter any land, building or other structure to which that Order relates and to eject any person in occupation thereof, and to deliver possession of such movable property, land, building or other structure to the person who is authorized to take possession thereof on behalf of the Government.

(3) The members, officers and servants of the Tribunal may be remunerated at such rates as shall be determined by the Minister with the concurrence of the Minister in charge of the subject of Finance.

13. (1) The Secretary to the Tribunal shall, under the direction of the Chairman of the Tribunal, convene meetings of the Tribunal for the consideration and determination of references for awards as to compensation,

Meetings of the Tribunal.

(2) The Chairman shall preside at meetings of the Tribunal.

(3) A meeting of the Tribunal may from time to time be postponed or adjourned.

14. The Tribunal shall not consider and determine any reference for an award as to compensation, until it has forwarded a copy of such reference together with copies of all relevant documents to the Chief Valuer for his recommendations as to the compensation that should be paid in respect of the subject-matter of such reference, and has received such recommendations.

Recommendations of the Chief Valuer to be obtained.

PART III

COMPENSATION TRIBUNAL

12. (1) There shall be established, for the purposes of this Law, a Compensation Tribunal (in this Law referred to as "the Tribunal") consisting of the following members:—

- (a) the Chairman of the Tribunal, who shall be a person with judicial experience;
- (b) the Secretary to the Ministry, or any other officer of the Ministry; and
- (c) the Secretary to the Ministry charged with the subject of Finance, or any other officer of the Treasury.

(2) There shall be appointed a Secretary to the Tribunal and such other officers and servants as may be necessary for the performance of the work of the Tribunal.

15. (1) Every reference for an award as to compensation, shall be considered and determined at a meeting of the Tribunal.

Proceedings before the Tribunal.

(2) The Secretary to the Tribunal shall fix a date, time and place for the consideration and determination by the Tribunal of each reference for an award as to compensation.

(3) The Secretary to the Tribunal shall, in respect of every reference for an award as to compensation, keep a record of all such proceedings before the Tribunal as relate to that reference.

16. (1) The determination made at a meeting of the Tribunal on any matter considered at such meeting shall be deemed to be the determination of the Tribunal.

Determination of the tribunal.

(2) Every determination of the Tribunal shall contain the reasons therefor.

Constitution of Compensation Tribunal and appointment of Secretary, &c-

Procedure and practice before a Tribunal

17. The proceedings of the Tribunal shall as far as possible be free from the formalities and technicalities of the rules of procedure and evidence ordinarily or normally applicable to a court of law and may be conducted by the Tribunal in any manner not inconsistent with the principles of natural justice, which to the Tribunal may seem best adapted to elicit proof concerning the matters that are being investigated.

Provisions to be complied with by the Tribunal before making an award on a reference made to it

18. Where a reference for an award as to compensation is made to the Tribunal, the Tribunal shall, before making such award—

- (a) give every person who has made a claim to compensation an opportunity of being heard either in person or by an agent authorized in that behalf and also of adducing evidence in support of such claim; and

- (b) make available to such person or agent a copy of the recommendations of the Chief Valuer as to the amount of the compensation that shall be paid in respect of the subject-matter of the reference.

An award as to compensation by the Tribunal on a reference.

19. (1) Where a reference for an award as to compensation is made to the Tribunal

In respect of the property of any company which is vested in the Government, the Tribunal shall, after considering all such matters and hearing all such witnesses as may be necessary for the purpose and complying with the provisions of section 18, make an award determining—

- (a) whether or not each person who has made a claim to compensation is a person entitled to compensation, and if so, the capacity in which he is entitled;
- (b) the amount of the compensation payable in respect of such property ; and
- (c) the apportionment of the compensation among the persons entitled to compensation:

Provided, however, that where there is a dispute as to the persons entitled to such compensation or as to the apportionment of such compensation among the persons entitled to such compensation, the Tribunal shall defer making an award and shall refer the dispute for decision to the District Court of Colombo and shall, after such Court makes its decision on such dispute, make an award in accordance with such decision.

(2) The Tribunal shall cause written notice of its award to be given—

- (a) to the company in respect of whose property the award was made ; and
- (b) to the claimants to compensation.

(3) An award of the Tribunal shall be final and conclusive, and shall not be called in question in any court or tribunal.

20. Any compensation payable in respect of the whole or any part of the undertaking of any company which has vested in the Government under Part II, less any sum required by section 21 to be paid to any officer therefrom, shall be deposited by the Secretary to the Ministry charged with the subject of Finance with such company which shall pay such compensation to the persons entitled thereto.

Payment of compensation.

21. Where any compensation is payable in respect of the whole or any part of the undertaking of any company which has vested in the Government under Part II, the Secretary to the Ministry charged with the subject of Finance shall pay from the amount of such compensation—

Deductions from compensation.

- (a) to the Commissioner-General of Inland Revenue, any sum certified under the hand of the Commissioner-General of Inland Revenue to such Secretary to be due from such company as tax on income or profits, or as personal tax; and

- (b) to the Commissioner of Labour, any sum certified under the hand of the Commissioner of Labour to such Secretary to be due from such

company to any person employed in such undertaking—

- (i) as arrears of salary, provident fund contributions, gratuity or other monetary benefits,
- (ii) as moneys due on any order of a Labour Tribunal or any award of an arbitrator or an Industrial Court,
- (iii) as the sum due on any settlement reached by conciliation between such company and such person, or
- (iv) as the sum due on any settlement reached before such Commissioner between such company and such person.

PART IV

GENERAL

22. Where any undertaking carried on in Sri Lanka by any company registered or incorporated outside Sri Lanka (in this section referred to as "the foreign company") is transferred after the 19th day of June, 1974, to a company recognized as an "existing company", or incorporated, under the principal enactment (in this section referred to as "the Sri Lanka company")—

- (1) the provisions of the Termination of Employment of Workmen (Special Provisions) Act and any requirement pertaining to the giving of notice prior to the termination of employment of any workman, shall not apply to the termination of employment by the foreign company of any workman employed in such undertaking;
- (2) the Sri Lanka company shall continue to employ each workman employed in such undertaking in the same capacity in which he was employed immediately prior to such transfer and on terms and conditions not less favourable than those applicable to him immediately prior thereto, and shall pay him his wages

or remuneration and all other benefits which he would have otherwise received if he had continued to be employed by the foreign company;

- (3) for the purpose of the grant of pensions, gratuities, promotions or other benefits, the period of service of any such workman under the foreign company shall be regarded as service under the Sri Lanka company, and the continuity of service of any such workman shall not be deemed to have been interrupted by reason of the transfer of such undertaking ; and
- (4) the Sri Lanka company shall be liable to do all such other acts, matters and things including the payment of provident fund contributions in respect of each such workman as the foreign company would have been liable to do if such workman had continued to be employed by the foreign company.

23. The expenses incurred in the administration of this Law, including—

- (a) the remuneration of members, officers or servants of the Tribunal; and
- (b) the compensation payable under this Law to the persons entitled thereto,

shall be paid by the Secretary to the Ministry charged with the subject of Finance out of funds provided for the purpose by Parliament.

24. No suit or prosecution shall be—

- (a) against a competent authority for any act which in good faith is done or purported to be done by him under this Law; or
- (b) against any other person for any act which in good faith is done or purported to be done by such other person under this Law or on the direction of a competent authority—

Workmen employed in transferred undertakings.

Expenses of the administration of this Law.

Protection for action taken under this Law or on the direction of a competent authority.

Special provisions in respect of offences committed by bodies of persons.

25. Where an offence under this Law is committed by a body of persons, then,—

- (a) if the body of persons is a body corporate, every director and officer of that body corporate shall be deemed to be guilty of that offence;
- (b) if the body of persons is a firm, every partner of the firm shall be deemed to be guilty of that offence; and
- (c) if the body of persons is a body unincorporate, other than a firm, the president, manager, secretary and every officer of that body shall each be deemed to be guilty of that offence:

Provided, however, that no such person, shall be deemed to be guilty of an offence under this Law if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of that offence.

This Law to prevail over certain instruments and the principal enactment.

26. (1) The provisions of this Law shall have effect notwithstanding anything in any instrument governing, or applicable to, the formation or constitution of a company.

(2) In the event of any conflict or inconsistency between the provisions of this Law and the provisions of the principal enactment, the provisions of this Law shall prevail over the provisions of such enactment so however, that subject as hereinbefore provided, the provisions of such enactment shall continue to apply to a company.

Interpretation.

27. In this Law, unless the context

otherwise requires—

"company " includes any agency house and any business registered under the Business Names Ordinance ;

" competent authority ", in relation to the whole or any part of the undertaking of a company, means the person appointed by the Minister under section 7 to be a competent authority for the purpose of managing such undertaking or part thereof;

" Minister " means the Minister to whom the subject or function of the Companies Ordinance * has been assigned;

" Secretary to the Ministry " means the Secretary to the Ministry charged with the subject or function of the Companies Ordinance ;*

" principal enactment" means the Companies Ordinance, * as amended from time to time;

" property" means movable or immovable property but does not include shares in a company or choses in action;

" Treasury" means the department of Government known as the General Treasury;

" undertaking ", in relation to a company, means the business carried on by such company, and includes all the movable and immovable property and other assets of such company.

* Later repealed and replaced by the Companies Act, No. 17 of 1982 -See the 1985 Supplement to the Revised Edition.