

EMPLOYEES' TRUST FUND

Acts.
No. 46 of 1980,
3 of 1982,
47 of 1988,
18 of 1993.

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A FUND CALLED THE EMPLOYEES' TRUST FUND AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[29th October, 1980]

Short title

1. This Act may be cited as the Employees' Trust Fund Act, No. 46 of 1980.

Application of this Act.

2. The provisions of this Act shall apply to every State and private sector undertaking belonging to any class or category of State or private sector undertaking as is specified in an Order made by the Minister and published in the *Gazette*.

PART I

ESTABLISHMENT OF EMPLOYEES' TRUST FUND BOARD

Establishment of Employees' Trust Fund.

3. There shall be established a fund called the Employees' Trust Fund (hereinafter referred to as the "Fund").

Establishment of Employees' Trust Fund Board.

4. (1) With effect from such date as the Minister may appoint by Notification published in the *Gazette*, there shall be established a Board called the Employees' Trust Fund Board (hereinafter referred to as the "Board").

[§ 2,47 of 1988.]

(2) The Board shall be a body corporate having perpetual succession and a common seal and may in its name sue and be sued.

(3) The administration, management and control of the Fund shall be vested in the Board.

Members of the Board.

5. (1) The Board shall consist of the following nine members appointed by the Minister:-

(a) four members nominated by the Minister;

(b) one member nominated by the Minister in charge of the subject of Finance;

(c) one member nominated by the Minister in charge of the subject of Trade;

(d) one member nominated by the Employers Federation of Ceylon; and

[§ 3,47 of 1988.]

(e) two members nominated by the Minister in consultation with the executive of every trade union having more than 100,000 members.

For the purpose of this paragraph "executive" in relation to a trade union has the same meaning as in the Trade Unions Ordinance:

Provided, however, that in the case of the first Board, the members specified in paragraph (e) of this subsection shall be appointed by the Minister from among members of Trade Unions having more than 100,000 members each and shall hold office unless removed earlier, until effluxion of the period for which they are appointed.

[§ 3,47 of 1988.]

(2) The Chairman of the Board, who shall be the chief executive of the Board, shall be appointed by the Minister.

(3) The Minister may, if he thinks it expedient to do so, remove any member of the Board from office without assigning any reason therefore.

(4) A member of the Board who has been removed from office, shall not be eligible for reappointment as a member of the Board or to serve the Board in any other capacity.

(5) A member of the Board may at any time resign his office by written communication addressed to the Minister.

(6) If the Chairman or any member of the Board is temporarily unable to discharge the duties of his office on account of ill-health or absence from Sri Lanka or any other cause, the Minister may appoint another person to act in his place.

(7) Every member of the Board shall, unless he earlier vacates office by death, resignation or removal, hold office for a period of two years. Any member of the Board who vacates office by effluxion of time, shall be eligible for reappointment.

(8) If any member of the Board vacates his office prior to the expiration of his term of office, his successor shall, unless such successor vacates his office earlier, hold office for the unexpired portion of the term of office of the person whom he succeeds.

(9) No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy amongst its members or any irregularity in the appointment of a member thereof.

(10) The Board may by rules provide for the conduct of its business.

Remuneration of the members of the Board.

6. The members of the Board shall be remunerated in such manner and at such rates as may be determined by the Minister with the concurrence of the Minister in charge of the subject of Finance.

The objects of the Board.

7. The objects of the Board shall be-

- (a) to promote employee ownership, employee welfare, economic democracy through participation in financing and investment;
- (b) to promote the employee participation in management through the acquisition of equity interest in enterprises;
- (c) to provide for non-contributory benefit to employees on retirement; and
- (d) to do all such other acts or things as may be necessary for, or conducive to, the attainment of the objects specified in paragraphs (a), (b) and (c) of this section.

Powers and duties of the Board
[§ 4, 47 of 1988.]

8. The Board-

[§4,47 of 1988.]

- (a) shall receive all sums paid under this Act as contributions, surcharges, loans, grants, interest, dividends, deposits by members or by employers on their behalf, borrowings from Banks and other sources and all moneys realised from investments and sale of movable or immovable property or any other form of payment whatsoever and shall credit all such moneys to the Fund;
- (aa) may acquire, in any manner whatsoever and hold, take or give on lease or hire, mortgage, pledge, sell or otherwise dispose of, any movable or immovable property;
- (b) shall have custody of the moneys of the Fund;
- (c) shall pay to the persons certified by the Board, the benefits to which such persons are entitled under this Act;

- (d) may invest such of the moneys of the Fund as are not immediately required for the purposes of this Act in such shares or securities as the Board may consider fit and may sell such shares and securities;
- (e) shall maintain a general account in respect of the Fund and a separate account (in this Act referred to as the "individual account") in respect of each member of the Fund;
- (f) shall cause the books of accounts relating to the Fund to be balanced as on the thirty first day of December in each year;
- (g) shall cause to be prepared in respect of the Fund for each year, a statement of receipts and payments, a statement of income and expenditure, a statement of assets and liabilities and a statement of investments showing the face value, purchase price and market value of each of the investments;
- (h) shall transmit to the Minister a copy of each of the statements prepared under paragraph (g) in respect of each year before the thirtieth day of September of the succeeding year;
- (i) shall notify each member of the Fund, before the thirtieth day of September in each year the amount lying to the credit of his individual account at the end of the preceding year;
- (j) shall deduct from the income from the investment of moneys of the Fund in respect of each year, the expenses incurred in that year by the Board in carrying out the provisions of this Act;
- (k) shall have such other powers and duties in connection with the Fund, not inconsistent with this Act, as may be conferred and imposed on such Board, by regulations made under this Act.

The Seal of the Board.
[§ 5 47 of 1988.]

8A. The Seal of the Board -

- (a) shall be in the custody of such persons as the Board may from time to time determine;
- (b) may be altered in such manner as may be determined by the Board; and
- (c) shall not be affixed to any document except with the sanction of the Board, and in the presence of two members of the Board who shall sign the document in token of their presence.

Investments.

9. The Board may utilize any money in the Fund for the purpose of securing shares for employees in any undertaking with a view to promoting employee participation in the management of such undertaking or with the approval of the Cabinet of Ministers, for the purpose of establishing and operating commercial or industrial enterprises or the development of immovable property, with a view to generating income for the benefit of employees.

Audit of accounts of the Board.

10. (1) The Auditor-General shall audit the accounts of the Board each year.

(2) Notwithstanding the provisions of subsection (1), the Minister may, with the concurrence of the Minister in charge of the subject of Finance, and in consultation with the Auditor-General, appoint a qualified auditor or auditors to audit the accounts of the Board. Where such appointment has been made by the Minister, the Auditor-General may, in writing, inform such auditor or auditors that he proposes to utilize his or their services, for the performance and discharge of the Auditor-General's duties and functions in relation to the Board and thereupon such auditor or auditors shall act under the direction and control of the Auditor-General.

(3) (a) The Auditor-General may, for the purpose of assisting him in the audit of the accounts of the Board, employ the services of any qualified auditor or auditors who shall act under his direction and control.

(b) If the Auditor-General is of opinion that it is necessary to obtain assistance in the examination of any technical, professional or scientific problem relevant to the audit of the accounts of the Board, he may engage the services of -

- (i) a person not being an employee of the Board; or
- (ii) any technical or professional or scientific institution not being an institution which has any interest in the management of the affairs of the Board,

and such person or institution shall act under his direction and control.

(4) (a) The Auditor-General or any person authorized by him shall in the audit of the accounts of the Board be entitled -

- (i) to have access to all books, records, returns and other documents of the Board;
- (ii) to have access to stores and other property of the Board; and
- (iii) to be furnished by the Board or its officers with such information and explanations as may be necessary for the performance of the audit of the accounts of the Board.

(b) Every qualified auditor appointed to audit the accounts of the Board or any person authorized by such auditor shall be entitled to have like access, information and explanations in relation to the Board.

(5) Every qualified auditor appointed under the provisions of subsection (2) shall submit his report to the Minister and also submit a copy thereof to the Auditor-General.

(6) For the purposes of this section, the expression "qualified auditor" means -

- (a) an individual who, being a member of the Institute of Chartered Accountants of Sri Lanka, or of any other Institute established by law, possesses a certificate to practice as an accountant issued by the Council of such Institute; or
- (b) a firm of accountants each of the resident partners of which, being a member of the Institute of Chartered Accountants of Sri Lanka or of any other Institute established by law, possesses a certificate to practice as an accountant issued by Council of such Institute.

(7) The Auditor-General shall forward his report to the Board.

Reports to be tabled in Parliament

11. The Board shall annually prepare a report of the work of the Board and forward, such report together with the report of the Auditor - General, before the lapse of the year succeeding the year to which such reports relate, to the Minister who shall table such reports in Parliament.

Directions of the Minister. [S 2,3 of 1982.]

11A. The Minister may from time to time give the Board general or special directions in writing as to the performance of its duties and the exercise of its powers under this Act and the Board shall give effect to such directions.

Payment from the Consolidated Fund to the Board.

12. (1) There shall be paid out of the Consolidated Fund to the Board such sums as may be determined by resolution of Parliament for defraying -

- (a) all expenditure, including capital expenditure, incurred by the Board in carrying out the provisions of this Act during the period of twelve months commencing on the date of coming into operation of this Act; and
- (b) all capital expenditure incurred by the Board in carrying out the provisions of this Act during the period of twenty-four months commencing on the day imme-

diately succeeding the date of the termination of the period referred to in paragraph (a) of this subsection.

(2) Every sum paid out of the Consolidated Fund under subsection (1) shall constitute a loan from the Government to the Board and shall be repaid in accordance with such terms and conditions as may be determined by the Minister with the concurrence of the Minister in charge of the subject of Finance.

Dividends.

*14. The Board shall declare dividends from the profits realized by investments of moneys of the Fund and such dividends shall be credited to the individual account of each member of the Fund.

PART II

CONTRIBUTIONS

Membership of the Fund.

15. (1) Where an employer first becomes liable under the provisions of this Act to contribute to the Fund in respect of any employee employed by such employer, such employee shall then become a member of the Fund and continue to be a member of the Fund so long as there is any sum to the credit of his individual account in the Fund.

(2) No member of the Fund or other person claiming on behalf of such member shall have any interest in, or claim to, the moneys of the Fund otherwise than by, and except in accordance with, the provisions of this Act or of any regulations made thereunder.

(3) It shall be a condition of any employee's right to any moneys under the provisions of this Part of this Act that he or any person on his behalf makes a claim thereto in the prescribed manner.

Contributions by employer in respect of employee.

16. (1) The employer of every employee to whom this Act applies shall, in respect of each month during which such employee is employed by such employer, be liable to pay in respect of such employee, to the Fund, on or before the last day of the succeeding month, a contribution of an amount equal to three *per centum* of the total earnings of such employee from his employment under such employer during that month.

(2) The liability of an employer to pay contributions under this section shall commence on the day immediately after the day fixed in relation to such employment by the Minister by order published in the *Gazette*.

(3) Any contribution made under the provisions of subsection (1) in respect of any employee shall be credited by the Board to the individual account of such employee in the Fund.

Contributions by certain employers to whom Act No. 15 of 1958 applies. [§ 4.3 of 1982.]

17. (1) Notwithstanding the provisions of section 29 of this Act, where an employer to whom the Employees' Provident Fund Act, No. 15 of 1958, applies, has made an election under the provisions of section 11 of that Act to pay to the Employees' Provident Fund established under that Act or to a provident fund declared to be an approved provident fund under that Act in respect of each employee employed by such employer a contribution of an amount calculated at a percentage higher than the amount specified under that Act and -

(a) if such higher percentage amounts to three *per centum* or more of such employee's total earnings per month, from his employment under such employer, such employer may deduct three *per centum* from such higher percentage every month and remit such three *per centum* to the Fund established under this Act and continue to contribute the balance after such deduction, to the Employees' Provident Fund or to the approved provident fund; or

* Section 13 repealed by Act, No. 3 of 1982.

(b) if such higher percentage amounts to less than three *per centum* of such employee's total earnings per month from his employment under such employer, such employer may remit such amount as is in excess of the percentage specified in section 10 of that Act, together with an additional contribution by such employer to make a total of three *per centum* of such earnings to the Fund established under this Act and continue to contribute the amount specified under the Employees' Provident Fund Act, No. 15 of 1958, to the Employees' Provident Fund or to the approved provident fund.

(2) Any payment made by an employer to the Fund established under this Act in terms of subsection (1) shall be deemed to have been made in compliance with the provisions of section 16.

Self employed person to notify Board of his willingness to become a member of the Fund.
[§6, 47 of 1988.]

18. A self-employed person or a migrant worker desiring to become a member of the Fund shall by notice in writing sent to the Board indicate his desire to become such a member.

Power of Board to call for return from person sending notice under section 18.

19. (1) Where the Board receives a notice under the provisions of section 18, it may, for the purposes of this Act, direct in writing any person sending such notice, to furnish to the Board before a date specified in such direction, a return in the prescribed form containing particulars regarding his employment, and such person shall comply with such direction.

(2) Any person furnishing a return under subsection (1), may transmit with such return, a request in writing that the contents of such return should be treated as confidential and, where such a request is made, the contents of such return shall not be disclosed without the consent previously obtained of such person.

(3) Nothing in the preceding provisions of this section shall be deemed to require or permit any person to disclose the contents of, or to produce, any return in any case where such disclosure or production is prohibited by or under the provisions of any written law other than this Act.

Contributions by self employed persons.

[§ 7, 47 of 1988.]

20. (1) Where a person sends a notice under the provisions of section 18 and the Board, after considering the return furnished by such person under the provisions of section 19 accepts such person as a member of the Fund, the Board shall inform such person in writing, of such acceptance.

[§ 7, 47 of 1988.]

(2) Where a person becomes a member of the Fund under the provisions of subsection (1), he shall in respect of each month pay on or before the last day of the succeeding month a contribution of an amount equal to twenty-five rupees or a multiple thereof, so however that the amount of the monthly contribution shall be constant during the calendar year;

[§ 7,47 of 1988.]

(3) Any person making a contribution to the Fund under the provisions of subsection (2) shall, after informing the Board in writing, cease to make such contribution from such date as he ceases to be self-employed or ceases to be employed outside Sri Lanka.

Time at which the benefits will be paid
[§ 5 , 3 of 1982.]
[§ 5,3 of 1982.]

(4) In the event of the non-payment of contributions for three consecutive months in a calendar year or for an aggregate of five months in a calendar year by a person becoming a member of the Fund under subsection (1), such member shall not be entitled to any interest or dividend for that calendar year on his contributions to the Fund.

21. (1) No moneys lying to the credit of the individual account of any member of the Fund shall be paid until the expiry of a period of two years from the date of establishment of the Fund.

(2) On the expiry of the period of two years referred to in subsection (1), a member shall be paid the total amount lying to the credit of his individual account subject to the provisions of sections 23, 24 and 25.

[§ 5,3 of 1982.]

(3) Notwithstanding the provisions of subsections (1) and (2), the total amount of monies lying to the credit of the individual account of any member who is to be repatriated under the Indo-Ceylon Agreement (Implementation) Act, No.14 of 1967, shall be paid to such member prior to the date of his departure from Sri Lanka.

Interest on contributions & c.

22. (1) Interest at such rate, not less than three *per centum*, as may from time to time be fixed by the Board with the concurrence of the Minister and the Minister in charge of the subject of Finance shall be paid for each year, out of the income from the investment of the moneys of the Fund, on the amount standing to the credit of the individual account of each member of the Fund as at the thirty-first day of December in that year:

[§ 8,47 of 1988.]

Provided that for the period commencing on the first day of January of the calendar year in which any sum is paid as a benefit under this Act to, or in respect of, a member of the Fund and ending on the last day of the month preceding the date of payment of that sum, interest at the rate of three *per centum* per annum shall be paid on the amount to the credit of the individual account of that member on the date of termination of that period.

Payment of benefits to the employees on termination of employment.

[§ 9, 47 of 1988.]

23. (1) Subject to the provisions of section 24, the amount standing to the credit of any employee in his individual account shall be payable by the Board to such employee on the termination of his employment:

Provided that a member of the Fund shall not be entitled to withdraw any sum standing to his credit in his individual account more than once in a period of five years except -

(a) where a member is over sixty years of age; or

(b) where a member satisfies the Board by documentary evidence, that he is due to leave Sri Lanka with the intention of not returning to Sri Lanka or for permanent residence abroad.

[§ 9, 47, of 1988.]

(2) Notwithstanding anything contained in subsection (1) of this section, where an employee to whom this Act applies takes up pensionable employment -

(i) in the Public Service;

(ii) in the Local Government Service constituted by the Local Government Service Act, No.16 of 1974;

(iii) in the District Service established under section 47 of the Development Councils Act, No.35 of 1980; and

(iv) in the service of any local authority other than as a member of the Local Government Service,

the amount standing to the credit of such employee in his individual account on the day he takes up such pensionable appointment, shall be payable by the Board to such employee.

[§ 2,18 of 1993.]

Provided that where a non pensionable post held by an employee in any service referred to in paragraphs (ii) and (iv) is subsequently made pensionable with effect from the date on which he was first employed in the non-pensionable post, the amount of the contributions standing to the credit of the individual account of that employee on the date on which the post was made pensionable shall be refunded to his employer.

Payment of benefits on termination of employment due to disablement.

[§ 10, 47 of 1988.]

24. (1) Where the employment of any employee is terminated on disablement due to accident or disease, the sum standing to the credit of such employee in his individual account shall be payable by the Board to such employee, notwithstanding the proviso to subsection (1) of section 23.

(2) For the purposes of subsection (1), "terminated on disablement" means cessation of employment by reason of a permanent and total incapacity for work and certified by a registered medical practitioner to be unfit for work any longer for that reason.

[§ 10, 47 of 1988.]

(3) The Chairman of the Board may, where he has reason to doubt the genuineness of a medical certificate submitted by an employee under subsection (2) of this section, refer such employee for re-examination by a duly constituted Medical Board or a Government Medical Officer and where on such re-examination the original medical certificate is found to be false in any material particular, the Board shall reject such certificate, and the Board shall be entitled to refuse to accept future medical certificates issued by such registered medical practitioner.

Payment of
benefits
on death of
employee.

25. (1) On the death of any employee, the sum standing to his credit in his individual account shall be paid by the Board to his nominee. If there shall be no nominee, such sum shall be paid to the executor of the last will or the administrator of the estate of such employee or to the heirs of such employee.

(2) Where a member of the Fund dies before becoming entitled to the amount standing to his credit in his individual account or where he dies after becoming entitled thereto but before receiving such amount and where no nominee has been appointed under regulations made under this Act to whom such amount should be paid in the event of the death of such member, or where the nominee or nominees appointed under regulations made under this Act is or are dead, then such amount shall -

- (a) if it is an administrable estate, be paid to the executor of the last will or the administrator of the estate of such deceased member to be included in that estate;
- (b) if it is not an administrable estate, be paid to the person who is, or be appointed by the Board amongst the persons who are certified to be in the opinion of the Board, entitled by law to such amount; and
- (c) Where a member of the Fund has appointed two or more nominees to whom the amount lying to the credit of the individual account of such member shall be paid in the event of his death and where one or more than one nominee dies before such member then, upon the death of such member without such member having appointed a fresh nominee or nominees, as the case may be, such amount shall-
 - (i) be paid to the sole surviving nominee if there is one, or
 - (ii) if there is more than one nominee, by dividing among such nominees in equal shares.

(3) A member of the Fund may at any time nominate any person or persons to whom the amount standing to the credit of the individual account of such member in the Fund may be paid in the event of his death.

[§ 3,18 of 1993.]

(3A) Where no nomination has been made under the provisions of this Act and such member is also a member of the Employee's Provident Fund established under the Employees' Provident Fund Act or an approved provident fund under that Act, any nominee nominated under the regulations made under that Act shall be deemed to be a nominee under this Act and the provisions of this Act shall, *mutatis mutandis*, apply in respect of that nominee.

(4) A member of the Fund may at any time revoke any nomination made by him.

(5) Every nomination and every document or revocation of nomination shall be in the prescribed form.

(6) Every document of nomination and every document of revocation of nomination made by any member shall be forwarded to the Board through his employer within thirty days of the execution of such document.

(7) Any nomination made by a member prior to his marriage shall be deemed to be revoked upon the marriage of such member.

(8) Every nomination made by a member who is married shall be in favour of one or more members of his family.

PART III

ADMINISTRATION AND DETERMINATION OF CLAIMS

Board to issue directions to employers in respect of reduced contribution.

26. (1) Where the Board is satisfied that the employer of any employee has, during the period of one year immediately prior to the date of coming into operation of this Act or at any time on or after such date, reduced the earnings of such employee for the purpose of reducing the amount of any contribution payable under this Act, the Board shall, by written notice, direct such employer to pay to the Fund in such installments and before such dates as may be specified in that notice, in respect of the entire period during which such employee receives such reduced earnings, the difference between the sum he should have paid during the period as contributions, had such contributions been calculated on the basis of the earnings of such employee before the reduction and the sum actually paid by him as contribution during that period.

(2) Where the Board gives any employer a direction under subsection (1), such employer shall comply with that direction.

Employer to pay surcharge where any contributions have not been paid. [§ 6, 3 of 1982.]

27. Where any contribution payable under this Act has not been paid to the Fund on the due date and the employer is unable to explain to the satisfaction of the Board that the failure to pay such contribution was due to circumstances beyond his control, he shall be liable to pay to the Fund, in addition to the amount of such contribution, a surcharge of such amount calculated in the following manner:-

- (a) where such contribution is in arrear for a period not exceeding ten days, a surcharge of five *per centum* of the amount of such contribution;
- (b) where such contribution is in arrear for a period exceeding ten days but not exceeding one month, a surcharge of fifteen *per centum* of the amount of such contribution;
- (c) where such contribution is in arrear for a period exceeding one month but not exceeding three months, a surcharge of twenty *per centum* of the amount of such contribution;
- (d) where such contribution is in arrear for a period exceeding three months but not exceeding six months, a surcharge of thirty *per centum* of the amount of such contribution;
- (e) where such contribution is in arrear for a period exceeding six months but not exceeding twelve months, a surcharge of forty *per centum* of the amount of such contribution; and
- (f) where such contribution is in arrear for a period exceeding twelve months, a surcharge of fifty *per centum* of the amount of such contribution.

Mode of Recovery of moneys due to the Fund

28. (1) Any money due to the Fund shall be recoverable by an action in which proceedings may be taken by way of summary procedure. The provisions of the Civil Procedure Code relating to actions of which the procedure is summary shall apply to an action under

this section, and, for the purposes only of the application of such provisions to such action, section 8 of the Civil Procedure Code shall have effect as if, for the words "by this Ordinance" occurring in that section, there were substituted the words "by this Ordinance or by any other written law.

[§ 11, 47 of 1988.]

(2) Where an employer makes default in the payment of any sum which he is liable to pay under this Act and the Board is of the opinion that recovery under subsection (1) is impracticable or inexpedient, the Board may issue a certificate to the District Court having jurisdiction in any district in which the employee in respect of whom the default made is, or was, employed, is by such defaulting employer, containing particulars of the sum due and the name and place of residence of such employer and the Court shall thereupon direct a writ of execution to issue to the Fiscal authorizing and requiring him to seize and sell all the property movable and immovable of the defaulting employer or such part thereof as he may deem necessary for the recovery of the amount so due, and the provisions of sections 226 to 297 of the Civil Procedure Code shall, *mutatis mutandis*, apply to and relation to such seizure and sale.

[§ 11,47 of 1988.]

(3) Where an employer makes default in the payment of any sum which he is liable to pay under this Act and the Board is of opinion that it is impracticable or inexpedient to recover that sum under subsection (1) or under subsection (2) or where the total amount due has not been recovered by seizure and sale, then, the Board may issue a certificate containing particulars of the sum so due and the name and place of residence of the defaulting employer to the Magistrate having jurisdiction in the division in which the place of work of the employee in respect of whom the default is made, is situate. The Magistrate shall thereupon summon such employer before him to show cause why further proceedings for the recovery of the sum due under this Act should not be taken against him and in default of sufficient cause being shown, such sum shall be deemed to be a fine imposed by a sentence of the Magistrate on such employer for an offence punishable with imprisonment and the provisions of section 291 (except paragraphs (a), (f) and (i) of subsection (1) thereof) of the Code of Criminal Procedure Act, No.15 of 1979, relating to the default of payment of a fine imposed for such an offence shall thereupon apply and the Magistrate may make any directions which by the provisions of that section he could have made at the time of imposing such a sentence.

(4) The correctness of any statement in a certificate issued by the Board for the purpose of this section shall not be called in question or examined by the court in any proceedings under this section and accordingly nothing in this section shall authorize court to consider or decide the correctness of any statement in such certificate and the certificate of the Board, shall be sufficient evidence that the amount due under this Act from the defaulting employer has been duly calculated and that such amount is in default.

(5) Proceedings for the recovery of any moneys due to the Fund may be instituted by the Board or any officer, authorized in that behalf, of the Board and the Board or such officer may, notwithstanding anything to the contrary in any other written law, conduct such proceedings.

(6) The provisions of the Prescription Ordinance shall not apply to the recovery of any sum payable as contribution or surcharge under this Act.

Employer not to reduce earnings of employee to pay contributions.

29. No employer shall, by reason of his liability to pay in respect of any employee any contribution or surcharge under this Act, reduce the earnings of that employee or alter to the detriment of such employee any benefit which the employee is entitled to under the provisions of any written law or under the terms and conditions of his employment.

Employer not to deduct any sum which he is liable to pay.

30. The employer of any employee shall not deduct from the earnings of that employee any sum which that employer is liable to pay as a contribution or surcharge under the provisions of this Part of this Act.

Sum due from any employer to be first charge on assets.

31. Any sum due under this Act, from any employer on the day immediately following the end of the period within which that sum is required by this Part to be paid by him shall be the first charge on his assets notwithstanding anything to the contrary in any other written law.

Assignment of sum lying to the credit of employee void.

32. Every assignment of, or charge on, any sum to the credit of the individual account of a member of the Fund and every agreement to assign or charge any sum shall not pass to any assignee acting on behalf of the creditors of such member, notwithstanding the provisions of the Insolvency Ordinance.

Board or an officer authorized by the Board to determine claims.

33. (1) All claims to any payment from the Fund shall be determined by the Board or an officer authorized in that behalf by the Board and the determination of the Board or such officer shall, subject to any decision on appeal made against such determination, be final.

[§ 12,47 of 1988.]

(2) Any person dissatisfied with a determination made by an officer of the Board under subsection (1) may appeal therefrom to the Board, within thirty days of the communication of such determination to such person. The Board may, on any appeal, confirm, vary or overrule the determination of the officer and the decision of the Board in any such appeal shall be deemed to be a determination of the Board, for the purposes of subsection (1) of section 34.

Appeal against order of the Board

34. (1) Any person dissatisfied with the determination of the Board may, by written petition in which every other party to the appeal is mentioned as a respondent, appeal to the Court of Appeal from that determination on a question of law.

(2) The petition of appeal shall state the question of law to be argued and shall bear a certificate by an attorney-at-law that such question is fit for adjudication by the Court of Appeal.

[§ 13,47 of 1988.]

(3) The petition of appeal shall be filed within thirty days of the communication of the determination to the appellant. The date on which a determination is communicated to a person, for the purposes of subsection (2) of section 33 and this section, shall be deemed to be the date on which such determination is posted under registered cover to such person.

Registers, forms and returns

35. All registers, forms and returns in connection with the administration of the Fund shall be prescribed.

PART IV

STAFF OF THE BOARD

Appointment of officers and servants.

36. (1) The Board may appoint such other officers and servants as it considers necessary for the efficient discharge of its functions.

(2) The officers and servants appointed under subsection (1) shall be remunerated in such manner and at such rates and shall be subject to such conditions of service as may be determined by the Board.

(3) At the request of the Board, any officer in the public service may, with the consent of that officer and the Secretary to the Ministry of the Minister in charge of the subject of Public Administration, be temporarily appointed to the staff of the Board for such period as may be determined by the Board with like consent, or be permanently appointed to such staff.

(4) Where any officer in the public service is temporarily appointed to the staff of the Board, the provisions of subsection (2) of section 13 of the Transport Board Law, No.19 of 1978 shall, *mutatis mutandis*, apply to and in relation to him.

(5) Where any officer in the public service is permanently appointed to the staff of the Board, the provisions of subsection (3) of section 13 of the Transport Board Law, No.19 of 1978, *mutatis mutandis*, apply to and in relation to him.

(6) Where the Board employs any person who has agreed to serve the Government for specified period, any period of service to the Board by that person shall be regraded as service to the Government for the purpose of discharging the obligations of such agreement.

(7) At the request of the Board any member of the Local Government Service or any other officer or servant of a local authority, may, with the consent of such member, officer or servant and the Local Government Service Advisory Board, or the local authority, as the case may be, be temporarily appointed to the staff of the Board for such period as may be determined by the Board with like consent or be permanently appointed to such staff on such terms and conditions including those relating to pension or provident fund rights as may be agreed upon by the Board and the Local Government Service Advisory Board or that local authority as the case may be.

(8) At the request of the Board any officer or servant of a public corporation may, with the consent of such officer or servant, be temporarily appointed to the staff of the Board for such period as may be determined by the Board with like consent, or be permanently appointed to such staff on such terms and conditions including those relating to pension and provident fund rights, as may be agreed upon by the Board and the said public corporation.

(9) Where any person is temporarily appointed to the staff of the Board in pursuance of subsection (7) or subsection (8), such person shall be subject to the same disciplinary control as any other member of such staff.

PART V
MISCELLANEOUS

Board or officer authorized by it to issue directions to employer.

37. The Board or any officer authorized by the Board may direct an employer to furnish to the Board or such officer before a date specified in that direction-

- (a) a return containing such particulars in respect of all or any of the employees of that employer as may be specified in the direction;
- (b) such information or explanation in respect of any particulars stated in any return furnished by that employer as may be specified in the direction; and
- (c) a true copy of or extract from any register or record, required by this Act or under any other law, to be kept by that employer or any part of such register or record.

[§ 14,47 of 1988.]

Imposition of surcharge on defaulting employers.
[§ 4,18 of 1993.]

37A. Where an employer, who is required by the Act or any regulation made there under or any direction issued by the Board, to furnish a return relating to contributions, has failed to furnish that return within the period specified therein, or has furnished an incorrect or deficient return and is unable to explain to the satisfaction of the Board or an officer authorised in that behalf by the Board the reason for the failure to furnish the return within that period, or to furnish an accurate or complete return, as the case may be, he shall be liable to pay to the fund a surcharge at the rate of one per cent of the amount of the contribution to which the return relates for every completed month or part thereof from the last date on or before which the return was due to the date of receipt by the Board of a duly completed and correct return.

Powers of member of the Board or authorized officer to inspect premises &c.

38. Any member of the Board or any officer authorized in that behalf by the Board in writing for the purposes of this Act may -

- (a) enter and inspect at all reasonable hours by day or by night, any premises or place, for examining any register or record relating to the earnings of any employee;

- (b) take copies of any such register or record or part thereof;
- (c) examine any person whom he has reasonable cause to believe is an employer or any employee; and
- (d) examine any records or other documents relating to contributions to any provident fund.

Offences and penalties.

39. Every person who-

- (a) contravenes or fails to comply with any of the provisions of this Act or any regulations made thereunder; or
- (b) makes default in complying with any direction or order made or given under this Act; or
- (c) knowingly furnishes or causes to be furnished any false return, or information required to be furnished under section 37 of this Act,

shall be guilty of an offence and shall on conviction before a Magistrate be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding six months, or to both such fine and imprisonment.

Liability of certain persons in respect of offences committed by bodies corporate or unincorporate.

40. Where any offence under this Act is committed by a body of persons, then -

- (a) if that body of persons is a body corporate, every director and officer of that body corporate; or
- (b) if that body of persons is a firm, every partner of that firm; or
- (c) if that body of persons is a trade union, every officer of that trade union; or
- (d) if that body of persons is unincorporated body, the President, Manager, Secretary and every other officer of that unincorporated body,

shall be deemed to be guilty of such offence:

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

Protection of members, officers and servants of the Board. [§ 15, 47 of 1988.]

40A. No member, officer or servant of the Board shall be liable either civilly or criminally, in respect of anything he may have done or may have omitted to do, when acting in good faith, in pursuance or in supposed pursuance of his powers or in the performance of his duties under this Act.

Reimbursement for expenses incurred on behalf of the Board. [§ 15, 47 of 1988.]

40B. Every member, officer or servant of the Board shall be indemnified from the Fund for all losses and expenses incurred by him in, or about, the performance of his duties, other than such losses and expenses as the Board may deem to have been occasioned by his misconduct or wilful default.

No prosecution for an offence to be instituted without sanction of the Board.

41. No prosecution for an offence under this Act shall be instituted except by or with the written sanction of the Board.

Prosecution under this Act no bar to a civil action.

42. No prosecution instituted under this Act against any person for any offence under this Act shall be a bar to any civil action brought against such person in respect of any matter arising out of this Act.

Regulations.

43. (1) The Minister may make regulations -

- (a) in respect of all matters which are stated or required by this Act to be prescribed;
- (b) in respect of all matters for which regulations are required or authorized to be made by this Act;
- (c) in respect of all matters connected with or incidental to the collection of contributions and other payments under this Act;
- (d) in respect of the refund of any sum paid in error to the Fund;
- (e) for enabling a person to be appointed to exercise, on behalf of a claimant to any benefit under this Act who is a child or who may be unable for the time being to act, any right which the claimant may be entitled to exercise under this Act, and for authorizing a person so appointed to receive and deal with such benefit to which a claimant is entitled;
- (f) in respect of the nomination by a member of the Fund of a person or persons to whom the amount standing to the credit of that member's individual account in the Fund may be paid in the event of that member's death and the manner of revocation of such nomination;
- (g) for the suspension of the grant of any benefit under this Act pending the review by the Court of Appeal of the determination upon the claim to such benefit;
- (h) as to the date from which any decision on a review or an appeal under this Act is to have effect or to be deemed to have effect;
- (i) for treating any sum paid to any person under a determination made under this Act or by virtue of the provisions of any regulation, which it is subsequently decided was not payable, as properly paid, or for the repayment by him and for the recovery from him of that sum; and
- (j) in respect of the payment of allowances to officers and servants employed in carrying out the provisions of this Act and the method of computing such allowances.

(2) Every regulation made by the Minister under subsection (1) shall be published in *Gazette* and shall come into operation upon such publication or on such later date as may be specified in the regulation.

(3) Every regulation made made by the Minister under subsection (1) shall as soon as convenient after its publication in the *Gazette*, be brought before the Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded from the date of such disapproval but without prejudice to anything previously done thereunder.

Interpretation.

44. In this Act, unless the context otherwise requires -

[§ 16,47 of 1988.]

“duly constituted Medical Board” means a Medical Board nominated by the Director General of Health Services on an application made by the Chairman of the Board for the purpose of examining persons the medical certificates submitted by whom give rise to reasonable doubt;

“eavnings” means -

[§ 5,18 of 1993.]

- (a) wages, salary or fees;
- (b) cost of living allowance, special living allowance and other similar allowances;
- (c) payment in respect of holidays;
- (d) the cost value of any cooked or uncooked food provided by the employer to employees in employments provided by regulations made under the Employees' Provident fund Act, and any such commodity used in preparation or composition, of any food as so provided, such value being assessed by the employer,

subject to an appeal to the Commissioner of Labour whose decision on such appeal shall be final;

(e) meal allowances; and

(f) such other forms of remuneration as may be prescribed by regulations made under the Employees' Provident Fund Act;

[§ 16,47 of 1988.]

“employee” means any person who has entered into or works under a contract with an employer in any capacity, whether the contract is expressed or implied, or oral or in writing and, whether it is a contract of service or of apprenticeship or a contract personally to execute any work of labour, and includes any person ordinarily employed under any such contract, whether such person is, or is not in employment at any particular time;

[§ 16,47 of 1988.]

“employer” means any person who employs or on whose behalf any other person employs any workman and includes a body of employers (whether such body is a firm, company, corporation, local authority or trade union), and any person who on behalf of any other person employs any workman, and includes a competent authority of a business undertaking vested in the Government under any written law, the legal heir, successor in law, executor or administrator and liquidator of a company; and in the case of unincorporated body, the president or the secretary of such body, and in the case of a partnership, the managing partner or manager;

[§ 5,18 of 1993.]

[§ 16,47 of 1988.]

“local authority” means any Municipal Council, Urban Council or Pradeshiya Sabha and includes any authority created and established by or under any law to exercise, perform and discharge powers, duties and functions corresponding to or similar to the powers, duties and functions exercised, performed and discharged by any such Council or Sabha;

[§ 16, 47 of 1988.]

“migrant worker” means a person who is a citizen of Sri Lanka but is employed outside Sri Lanka, for so long as such person is so employed;

“prescribed” means prescribed by regulation;

“private sector undertaking” means any undertaking carried on by an employer in the private sector and includes any undertaking carried on by a self-employed person;

“public corporation” means any corporation, board or other body, which was or is established under any written law, other than the * Companies Ordinance, with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise;

“registered medical practitioner” means a medical practitioner registered under the Medical Ordinance or an ayurvedic practitioner registered under the Ayurveda Act, No.31 of 1961; and

“State undertaking” means any public corporation or any business undertaking vested in the Government under any written law, or any branch or section of such corporation or business undertaking.

Transitional provisions.
[§ 17,47 of 1988.]

45. Notwithstanding anything in the principal enactment the amount standing to the credit of the individual account of an employee of -

(a) the University Grants Commission established by the Universities Act, No. 16 of 1978 or of a Higher Educational Institute within the meaning of that Act;

(b) the National Apprenticeship Board established by the National Apprenticeship Act, No. 49 of 1971,

on the date of commencement of this Act, shall be paid to such employee by the Board within six months of the date of commencement of this Act.

* Repealed by the Companies Act, No. 17 of 1982. Act No. 17 of 1982 repealed by Act, No. 17 of 2007.