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HOUSING DEVELOPMENT AND ITS FINANCING  
DEBT RECOVERY MECHANISMS  
AND  
MORTGAGE FORECLOSURE LAWS

IN

**SRI LANKA**

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SEPTEMBER, 1992

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**Introduction:**

Pursuant to modification No. 02 to Delivery Order No. 05, Contract No. 391-0507-I-00-1780, Mr. Askari Taqvi, President and Legal Specialist, visited Sri Lanka in September, 1992 to carry out a study on specific debt recovery mechanisms and mortgage foreclosure laws. Mr. William Strong, Advisor to SRMP, USAID Pakistan was also a member of the team.

02. Meetings in Sri Lanka had been arranged by USAID Sri Lanka. Detailed discussions were held with

(01) Mr. Aila Peruma, Secretary, Ministry of Housing and Construction.

(02) Mr. Easparathan, Executive Director, Central Bank of Sri Lanka.

(03) Mr. Piyatissa, Director, Central Bank of Sri Lanka.

(04) Mr. M. J. Silva, Chairman, National Savings Bank.

(05) Mr. D. U. Wijeratne, General Manager, National Savings Bank.

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(06) Mr. R. N. B. Talwatta, Chairman, State Mortgage & Investment Bank.

(07) Mr. D. B. Rajapakse, General Manager and Chief Executive, State Mortgage & Investment Bank.

- (08) Mr. E. A. Meththananda, Managing Director, HDFC.
- (09) Mrs. Ranjani Jayasuria, Deputy General Manager, HDFC.
- (10) Mr. S. B. Divaratne, Commissioner & Registrar of Cooperative Societies.
- (11) Mr. Ranjith Hethiarachchi, General Manager, Federation of Thrift and Credit Coop Societies Ltd.
- (12) Mr. Aslam Hameed, Chief Accountant, Ceylinko Housing & Real Estate Co Ltd.
- (13) Mr. Talbot Penna, USAID, Sri Lanka.
- (14) Mr. Howard Kane, Housing Programme USAID, Sri Lanka.
- (15) Mrs. Kamialini Feruando, Housing Programme USAID, Sri Lanka.

Housing Policy in Sri Lanka:

03.01 The Ministry of Housing & Construction in Sri Lanka is primarily responsible for framing and implementing the national housing policy which promises shelter to every Sri Lankan by the year 2000. The National Housing Development Authority of Sri Lanka is the implementing arm of the government and it is through the NHDA that all low cost housing programmes, in the public sector, are being executed. Besides long term low interest bearing loans, grants are also given for low costs houses. The ruling party of Sri Lanka, during the election campaign promised that housing loans will be written off with the result that the public in general

got an impression that loans advanced by institutions like the HDFC and the State Mortgage & Investment Bank were also not to be repaid with the result that these institutions had serious problems in the recovery of their loans.

03.02 There is no housing finance company as such, in the private sector, in Sri Lanka. The Housing Development Finance Corporation, the State Mortgage and Investment Bank and the National Savings Bank provide housing loans but these are all public sector organisation as would be discussed in detail in subsequent paragraphs. There are Commercial banks both in public and private sector but they are least interested in providing housing loans from their own resources except on a very nominal scale to their employees.

03.03 The Multipurpose Cooperative Societies and the Thrift and Credit Cooperative Societies are very popular and active in Sri Lanka and, besides other activities, also provide small housing loans to their members.

033.04 We were informed by the USAID Housing Programme Advisor that there are different land registration systems in Sri Lanka like the Dutch System, the Tamil System, the Kandi System and the English System; this is reported to have created many a problem for the housing industry in terms of firm title and ownership documentation. However, when this problem was discussed with the HDFC/State Mortgage Bank etc., it was clarified that

the land registration system is different in different provinces but there is no inherent problem in determining title to land and the lending agencies have not faced any serious problems in this regard as their attorneys are able to determine the title through the usual search system of land records.

Role of the Central Bank of Sri Lanka:

- 04.01 The Central Bank regulates all public and private commercial banks as well as non-banking financing institutions.
- 04.02 Commercial banks are required to maintain 13% cash reserve with the Central Bank on which no interest is paid. There is also a 20% liquid assets requirement which the commercial banks meet by investing in government treasury bills. One year treasury bills have an invest rate of 18% to 19% which explains the commercial lending rate of 22% to 24%. The current rate of inflation is 15%.
- 04.03 Corporate tax in Sri Lanka is 45% plus a surcharge of 15% on the tax which takes the total to 51.75% as against 52% in Pakistan.
- 04.04 The Central Bank is well aware of the black money in the economy and has floated several schemes to attract the black money into the formal financial sector. In the housing sector the Government of Sri Lanka has announced a policy not to investigate any money used in construction of a house on payment of a nominal tax.

04.05 The Central Bank of Sri Lanka will also provide the banking window for the \$25.00 million US Housing Guarantee Low Income Shelter Programme. These funds will be disbursed through the five commercial banks. The Central Bank will provide the refinance facility @ 12.5% for 20 years and the commercial banks will lend the money @ 20.5%. The banks will also be authorised to lend through intermediaries i.e. cooperatives or NHDA.

Special Debt Recovery Laws:

05.01 In view of the fact that the lending institutions were facing problems in the recovery of housing mortgage loans, the Government of Sri Lanka set up a Committee three years ago and the recommendations of the Committee led to amendments in 14 laws. Now the banking institutions are empowered to sell the mortgaged house without the intervention of court. The house so auctioned can be got vacated only with court assistance but there is hardly ever a need to seek police assistance for this purpose as the court bailiff is usually able to execute the court decree for vacation of the house. The three main enactments in this respect passed in 1990 are reproduced at Annex I.

State Mortgage & Investment Bank (SMIB):

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06.01 This is the oldest bank in Sri Lanka and was founded in 1931 as the State Mortgage Bank. Originally the main purpose of the SMIB was to provide housing loans and to redeem debt in housing loans. In 1979 it was

amalgamated with another institution namely the Agricultural and Industrial Credit Corporation. This was done under an act of parliament and the bank was re-named as the State Mortgage and Investment Bank. The Charter allows the bank to go for investment banking also as it is authorised to purchase property and be involved in land development for housing. SMIB has, however, not used this authority and has been engaged exclusively in housing mortgage finance for purchase of land/houses and construction of houses.

06.02 SMIB provides housing loans primarily to the middle income group. Minimum loan amount is Rs. 40,000.00 and the maximum ceiling is Rs. 01.00 million. For house construction a loan is provided upto 75% of the cost whereas for purchase of house the loan is allowed only upto 60% of the appraised value of the property. The Bank has a panel of 200 lawyers and a large number of licensed evaluators. The lawyers assist in determining the title to land and preparing other legal documentation. They must establish a thirty year period of clear title before a loan is given on any land/property. The evaluators determine the value of land and house. The lawyers and evaluators are paid by the borrowers on the basis of fee prescribed by the Bank. There is a Society of Evaluators as in U.K.

06.03 The Bank has about 40,000.00 loans presently under servicing and is now granting about 5,000.00 loans in a year. The Bank has only two branches but it has 24

district representatives who get a monthly salary and commission. Applications for loans are received and initially appraised by the district representatives who have a better knowledge of the applicants and their credit-worthiness. The borrower can repay the instalment and interest etc., at any of the 500 branches of the Bank of Ceylon. In this way the overhead costs of the SMIB are kept at the minimum. The Bank has a centralised system of accounting and the accounts and the recovery system is computerised.

06.04 The SMIB gets its funding from government. It is a wholly government owned institution. It can issue debentures which are guaranteed by the government. The last debenture was sold at 18% interest. Loans are provided at @ 20.5% interest providing a spread of 2.5% for the Bank. The SMIB is in a position to meet the rising demand for housing loans as it has no problem in resource mobilisation. Ten years ago the debentures were issued for 5-7 years. Now the market will absorb debentures for not more than 3 years which means that the SMIB has more interest rate risk and more asset liability maturing matching risk. Loans are given generally on 30% debt to income basis.

06.05 SMIB is also entering the USAID Housing Guarantee Loan Programme.

06.06 SMIB is receiving fixed deposits from public for one year @ 17% and for two years @ 18.5%. It has also introduced Loan Linked Savings Accounts Scheme for 3-5

years whereby the account holders qualify for housing loans upto 5 times of savings.

06.07 The SMIB has not been facing any problem in the recovery of its loans in view of the powers that it can sell the mortgaged property without having to go to court.

Housing Development Finance Corporation:

07.01 The HDFC was set up by the Government of Sri Lanka in 1984. It is a building society and is regulated under the National Housing Act. It is supervised by the Ministry of Housing and Construction. 72% equity in the Corporation is held by the government and the balance by private sector agencies. It has a paid up capital of Rs. 100.00 million and the authorised capital is open ended. It has a Board of Directors of 11 persons out of whom 8 Directors are nominated by government.

07.02 While the National Housing Development Authority (NHDA) grants loans upto Rs. 25,000.00 the HDFC provides loans in the range of Rs. 25,000.00 to Rs. 400,000.00. The loans are normally for 15 years. While the NHDA grants loans against personnel surety bonds, the HDFC provides loans against mortgage of land/property. Presently it is servicing a portfolio of Rs. 25,000.00 loans. The HDFC is now granting 150 loans per month and the target is 200 loans per month. Loans upto Rs. 250,000.00 can be granted by the Managing Director and in excess of this amount by the Board of Directors.

07.03 HDFC has 4000 members. A member has to buy a share of Rs. 500.00. The Corporation has 12 District Offices. Each District Office has two loan officers. The District office receives the loan applications which are investigated and appraised and passed on to the head office. Interest is 20.5% on loans upto Rs. 250,000.00. For loans in excess of this amount interest is charged @ 22.5%. Loans above Rs. 250,000.00 are allowed to only those persons who have a minimum monthly income of Rs. 9,000.00. HDFC has recently introduced the new concept of a variable rate of interest. It has instituted an elaborate programme of educating its borrowers to make them fully aware of the need of increase in interest rates. Rates are going to be adjusted every six months and the first adjustment has taken place without any major adverse effect on recoveries. HDFC has a mandatory life insurance policy for the borrowers. Cost of insurance is 3% of the loan amount and must be paid up front by the borrower. Fire insurance is also required and costs about 0.03%.

07.04 The Corporation does not receive any grant from government. It receives long term loans from the NHDA. It also has its own Savings Deposit Scheme, Savings for Housing Loan Scheme and Investment Bonds. Interest @ 17% to 18-1/2% is payable on these scheme and bonds.

07.05 HDFC is receiving Rs. 286.00 million from the Asian Development Bank out of its \$ 40.00 million Housing Loan Programme. The Corporation gets funds @ 9% from

the ADB and banks them @ 20.5%. In return HDFC has agreed to privatize itself during the next four years. HDFC is starting to float a new convertible share issue aimed at changing the ownership composition by 1994 when it will be 60% private and 40% public. The representation on the Board of Directors will also be changed accordingly.

07.06 HDFC has launched special programmes for large business customers. These include the Police Department with 35,000 employees, the Port Authority with 30,000 employees and the Drainage Board with 7,000 employees. These organisations provide 50% of the money to the HDFC out of the G. P. Fund of the employees and the Corporation provides the balance 50%. The Corporation charges 3% for grant and servicing of these loans.

07.07 HDFC has a foreclosure procedure under the National Housing Act. No court action is required under this procedure. The lender has to give the prescribed notices to the defaulters and if they do not respond and pay up, the lender can proceed and sell the property. Action to sell can be taken only after Board approval. After the sale, it takes about a month to get a court order to vacate the premises. It is seldom necessary to seek police help for having the house vacated. The entire procedure is very speedy and it takes only about six months to have the property sold and vacated.

The National Saving Bank:

- 08.01 The NSB was set up in 1972 under the National Saving Bank Act by amalgamating three organisations namely the Post Office Savings Bank, the Ceylon Savings Bank and the Savings Certificates Branch of the Post Office.
- 08.02 Since one of the amalgamated organisations namely the Ceylon Savings Bank used to provide housing loans, the NSB also continued to perform this function. Under the Act the NSB is allowed to provide housing loans against primary mortgage of property. Housing loans are being advanced by the NSB for purchase of land and/or house, construction, renovation/expansion of house and also for redemption of debts. The Bank has not provided any loan so far to house developers/builders.
- 08.03 The NSB is a very important arm of the Government and helps through mobilisation of savings/deposits. During the past twenty years it has mobilised Rs. 30,000.00 million as deposits. In 1990 the deposits were of the order of Rs. 2,300.00 million and increased to Rs. 3,000.00 million in 1991. The target for 1992 is Rs. 4,000.00 million. The NSB has about Rs. 08.00 million depositors and the deposits range from small amounts to millions of rupees. The average deposit is of the order of Rs. 2,000.00. The Bank has 82 branches. Besides, there are 500 post offices and 3,300 sub-post offices.

The rate of interest allowed to the depositors is as follows:

- |  |                              |      |     |        |
|--|------------------------------|------|-----|--------|
| - Savings  | Pass                         | Book | A/c | 14.00% |
| (deposits where the entire amount can be withdrawn at any time).                         |                              |      |     |        |
| - 06 months maturity deposits  | (Interest paid on maturity). |      |     | 16.20% |
| - 12 months maturity deposits  | (Interest paid on maturity). |      |     | 17.00% |
| - 24 months maturity deposits  | (Interest paid on maturity). |      |     | 18.50% |
| - There is also a scheme of paying monthly interest (16.2% on a one year fixed deposit). |                              |      |     |        |

08.04 Over 95% of the funds of the NSB are invested in government securities and treasury bills. About 1.5 of the funds are utilised for providing housing loans. The Bank has an outstanding portfolio of Rs. 500.00 million as housing loans. The Bank is very keen to provide more loans as they are more profitable for the Bank and the demand for housing loans is also increasing. The Bank has adequate resources to meet the increasing demand for housing loans.

08.05 The rates of interest charged by the NSB on housing loans vary with the amount and purpose of the loan as shown below:

<u>Purpose</u>	<u>Amount</u>	<u>Interest rate per annum</u>
(a) For purchase of land	Upto Rs. 150,000	19%
	Rs. 150,001 to Rs. 300,000	20%
	Rs. 300,001 to Rs. 500,000	21%
(b) Construction of house/flat or purchase of brand new house/flat.	Upto Rs. 200,000	18%
	Rs. 200,000 to Rs. 350,000	19%
	Rs. 350,000 to Rs. 500,000	21%
	Rs. 500,000 to Rs. 1.5 million.	23%
<b>Note:</b> Loan ceiling for one unit is Rs. 750,000 but for a double unit a loan of Rs. 1.5 million is allowed.		
(c) Purchase of house/ property (Not new).	Upto Rs. 200,000	19%
	Rs. 200,001 to Rs. 350,000	20%
	Rs. 350,001 to Rs. 500,000	22%
	Rs. 500,001 to Rs. 1.5 million	23%
(d) Completion /repairs/ renovation/expansion	Upto Rs. 100,000	20%
	Rs. 100,001 to Rs. 400,000	22%
(e) Redemption of debts	Upto Rs. 200,000	20.5%
	Rs. 200,001 to Rs. 500,000	21.0%
	Rs. 500,001 to Rs. 1.5 million	23.0%

The documents required to be submitted to the NSB with the loan application are listed below:

(1) Survey Plan of not more than 10 years old pertaining to the property, with street and building lines certificate. If the lot is affected by street line, the portion affected should be computed and endorsed on the plan by a Licensed Surveyor. If no such street and building lines have been determined for any area, a letter to that effect from the Local Authority. If the lot is a new sub-division, approval for the same from the Local Authority.

(2) (a) Certificate of Ownership (b) Certificate of Non-vesting.

(c) Current notice of Assessment and (d) Receipt for the payment of last quarter tax, issued by the relevant local authority.

(3) Rough sketch of roadway with prominent land marks leading to the property.

(4) Where the applicant is employed, a letter from the employer -

(a) as to the applicant's employment in a permanent and confirmed post,

(b) as to the applicant's monthly remuneration showing also the deductions, and

(c) as to the employer's undertaking to remit the loan instalments from the applicant's salary.

(5) Where the applicant's income is from self employment, profession or business, certified statement for the last 3 years of assessable and taxable income and tax paid from the Commissioner for Inland Revenue together with, where applicable, audited Profit and Loss Account and Balance Sheet of the business for the same years.

(6) Where the loan is for the construction or completion of, or improvements to, a house -

(a) approved Building Plan and if for more than one unit, a letter from the local authority that the units will be separately assessed, and

(b) Bill of Quantities.

(7) Where the loan is for the purchase of a land or house -

(a) the original or a Certified Copy of the notarially attested Sale Agreement and

(b) a letter from the tenants, if any, permitting the Bank's officials to inspect the house and undertaking to give vacant possession at or before purchase.

(8) Where the loan is for redemption of debt -

(a) a certified copy of the document covering the security given to the Institution from which the debt was incurred;

(b) a statement from the Institution as to the balance outstanding on the debt; and

(c) a Certificate of Conformity if the debt was incurred for the construction or completion of, or extension to, a house and if it be of more than 1 unit, a letter as to separate assessment of units.

(9) A statement as to how the applicant will meet any shortfall between the cost involved and the loan amount.

(10) Such other documents as the Bank may call for, depending on the nature of a case or otherwise.

08.06 The NSB has a detailed procedure for appraisal of the loan application. Title to land is checked by the attorney by search through land record. The bank provides several house type plans and bills of quantities (BOQs) to the applicants seeking loans for construction of houses. However any plan approved by the local authority is also acceptable to the NSB.

08.07 At present the Bank has about 7500 loan accounts. About 100 loans are being approved each month. The minimum amount of loan is Rs. 10,000.00 while the maximum

ceiling is Rs. 1.5 million for a two unit house. Loans are granted for a period of 5 to 20 years.

08.08 The Bank has had little problem in recovery of loans and has a very satisfactory rate of recovery. Under the NSB Act, the Bank has powers of selling the mortgaged property without seeking the intervention of the courts. After giving proper notice to the defaulter, a resolution passed by the Board of Directors of the Bank is required to be published to enable the bank sell the mortgaged property. There have been only 5 cases so far where the NSB had to sell the property to recover its dues. The powers vested in the Bank for recovery of the outstanding amount are provided in sections 48 to 60 of the NSB Act 30 of 1971 and are reproduced at Annex II of this Report. These powers are very extensive and have served as adequate threat to the borrowers who usually pay up the arrears on being informed of the consequences if the default continues.

The Cooperatives:

09.01 The Cooperative Movement seems to be quite popular and successful in Sri Lanka. The Cooperatives are governed by the Cooperatives Act of 1972. All the cooperatives are owned, controlled and managed by members. About 4 million persons in Sri Lanka are members of Cooperative Societies.

There are three main types of cooperatives:

- (i) Multi-purpose Cooperative Societies;
- (ii) Thrift and Credit Cooperative Societies; and
- (iii) Housing Development Cooperative Societies.

09.02     There are 287 Multi-purpose Cooperative Societies. Each has a minimum of two Rural Cooperative Banks (RCB). There are 1090 RCBs in Sri Lanka and they had a total deposit of Rs. 3,272.00 million in 1991 and their turn over was Rs. 17.00 billion. These funds are funnelled into the Peoples Bank which is a government bank. The main focus of this huge financial activity is in consumer type transactions. Less than half of this amount is utilised in providing housing loans. The loan application is examined by a Credit Committee. Interest rate is about 18%. Loans do not exceed Rs. 200,000.00. Recovery rate is 90%. Out of the balance, disputes over the recoverable balance are settled by Arbitration Committees. There are District wise Associations of the RCBs. The Cooperative Department is planning to try and get them the status of a commercial bank. The Cooperative Societies are receiving lot of external assistance and grants are provided by government through the Registrar if there is need for monetary injection in cooperatives.

09.03     Thrift and Credit Cooperatives: These societies are very similar to Credit Unions. There are 7000 TCCs and the total membership is 750,000. Each TCC has about 120

to 150 members. There are 27 district officers and a Federation at the national level. There are 200 sub-divisional unions. The total savings in 1991 were of the order of Rs. 480.00 million. Turnover is three times in a year. Members get 16% interest on their deposits.

The TCCs provide three types of loans:

- (i) Instant use loan Rs. 200.00 to Rs. 300.00
- (ii) Productive lending for agriculture/small business Rs. 2,000.00 - Rs. 5,000.00.
- (iii) Housing Loan Rs. 20,000.00

Out of the loans given by the TCCs 65% are for agricultural production for 1-2 years, 8% for self employment, 15% for weddings and other activities and about 10% for housing.

The Federation of TCCs had a housing programme from 1986 to 1988 when it received Rs. 157.00 million from NHDA for housing loans. The TCCs generated 57,000 loans with these funds. Recovery has been around 96%. The good recovery is due to pressure exerted on the defaulters by their neighbours. Loans are for 10 to 15 years.

The TCCs have about 900 staff members for Grade I and Grade II societies. Smaller societies are managed by the members themselves.

09.04 Housing Development Cooperative Societies: There are only 5 or 6 such societies which have been set up in association with the NHDA.

10.01 A meeting was also held with an executive of a housing and real estate company namely the Ceylinko Housing and Real Estate Company, Colombo. This is a public limited company with a paid up share capital of Rs. 15.00 million and an authorised capital of Rs. 100.00 million and its shares are quoted on the stock exchange. Presently their share of Rs. 10.00 is being quoted at Rs. 17.00. Fifty percent shares in this company are held by the Ceylinco group and the balance 50% are held by public. The company is engaged in real estate business and also advances loans for purchase of land and construction of houses. The company also constructs houses and sells them to public along with a loan equal to not more than 50% of the price which is required to be repaid in monthly instalments over a period of 15 years. The company has been in business, and operating under the company law for the last seven years. It did not have to seek approval from any government agency for operating as a housing finance company. It has provided 30 loans in respect of houses constructed by the company itself and 270 loans to individuals to constructs their own houses. The minimum size of loan is Rs. 100,000 while there is no upper limit. A loan of Rs. 2.00 million has also been advanced.

10.02 The company usually 'manages' to get its building plans approved by the local authority within about four weeks. Land title is checked by the attorney. The borrower's repayment capacity is thoroughly checked but the company does not insist on documentary proof of the capacity to repay. 40% of the borrowers monthly salary/income should not be less than the monthly instalment required to be paid against the loan. Title deed of the house is held by the company in its own name with the result that the borrowers hardly ever default in payment as the company can sell the property. The title deed is released only after the entire loan has been repaid. For pre-mature payment the company charges interest for 6 months on the balance amount.

10.03 The company borrowed an amount of Rs. 10.00 million from the National Development Bank for 08 years @ 19% and is negotiating another loan of like amount. As against this, the company charges 26% interest from its own borrowers. The Ceylinco Group also has a Finance Company which accepts deposits against payment of interest @ 20% whereas it advances short term loans (other than housing) @ 30%.

10.04 75% of the income of the company is exempt from income tax provided it is derived from construction of loans being built up on less than 2000 sq. feet.

Tax Incentives for Housing:

11.01 The government of Sri Lanka has allowed liberal tax incentives for housing to promote the housing programme in the country and the present government has promised to provide shelter to every citizen by the year 2000. All the incentives have been reproduced in this Report at Annex III. The main tax incentives for housing are however listed below:

- (i) Net annual value of one house owned and occupied by an individual is exempt from income tax.
  - (ii) Rent accruing from a house is exempt from income tax for six years.
  - (iii) Capital gain arising from change of ownership of any house is either exempt or taxable at reduced rates.
  - (iv) Profits from construction and sale of certain houses are exempt from tax: Where a firm engaged in construction and sale of houses is approved by the Commissioner of National Housing, 75% of the profits arising from the first sale of any house or flat are exempt from income tax provided the floor area of which does not exceed 2000 square feet.
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- (v) Dividends paid by a company carrying on an undertaking for the construction and sale of houses out of exempt profits are exempt from income tax.

(vi) Relief for investment: The following expenses are deductible from the assessable income of a person:

(a) Any sum invested by a person in the purchase of original ordinary shares in a company which is engaged in construction and sale of houses;

(b) The re-payment of capital of a loan obtained for construction of a house or purchase of the first house at a cost not exceeding Rs. 1.00 million.

(c) Monthly payments in respect of a house obtained on hire purchase basis, the total cost of which does not exceed Rs. 1.00 million.

(d) Amount spent by an individual on construction of the first house at a cost not exceeding Rs. 01.00 million.

(e) Amount spent by an individual for the purchase of the first house or the first site for the construction of a house at a cost not exceeding Rs. 01.00 million.

(vii) Exemption from wealth tax: The following are excluded from the wealth of a person:

(a) One house used as a residence by the owner.

(b) Any house having a floor area not exceeding 500 sq. feet (exemption is for 6 years).

# ANNEXURES

BEST AVAILABLE DOCUMENT

**List of Annexures**

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**BEST AVAILABLE DOCUMENT**

25

**MORTGAGE (AMENDMENT) ACT, NO. 3 OF 1990**

[Certified on 6th March, 1990]

**AN ACT TO AMEND THE MORTGAGE ACT**

1. This Act may be cited as the Mortgage (Amendment) Act, No. 3 of 1990.
2. Section 46 of the Mortgage Act (hereinafter referred to as the "principal enactment") is hereby repealed and the following section substituted therefor :-

46. No decree in any hypothecary action upon any mortgage of land which is created after the coming into force of this section, and no decree in any action for the recovery of any moneys due upon any such mortgage, shall order any property, whatsoever, other than the mortgaged property to be sold for the recovery of any money found to be due under the mortgage, and no property whatsoever, other than the mortgaged property, shall be sold or be liable to be sold in execution of any such decree.

In this section "action for the recovery of moneys due upon a mortgage" includes any action for the recovery of any debt secured by a mortgage whether the cause of action sued upon arises by reason of the mortgage or otherwise.'

3. The following new section is inserted immediately after section 47 and shall have effect as section 47A of the principal enactment :-

47A. (1) Where at the time of the execution of a mortgage bond in favour of a lending institution for the payment of a loan, the principal of which exceeds one hundred and fifty thousand rupees the mortgagor executes a separate instrument, attested by the notary attesting the bond and by the witnesses to the bond containing -

- (a) a special declaration on the part of the mortgagor that he renounces the benefit of section 46 and that the effect of such renunciation has been explained to him by the notary; and
- (b) an endorsement signed by the notary to the effect that he has explained to the mortgagor the effect of such renunciation,

then, in addition to the mortgaged property, any other property belonging to the mortgagor shall, subject to the provisions of subsection (2), be liable to be ordered to be sold and to be sold under the decree in an action upon the mortgage, and the provisions of section 218 of the Civil procedure Code (Chapter 101) shall, *mutatis mutandis*, apply to the seizure and sale of such other property.

- (2) In any case referred to in subsection (1), no process shall issue for the seizure and sale of any property of the mortgagor, other than the mortgaged property, until the mortgaged property is sold and the proceeds thereof applied in satisfaction of the decree.

- (3) Where the separate instrument referred to in subsection (1) is to be ex-

**BEST AVAILABLE DOCUMENT**

ecuted by any mortgagor, it shall be the duty of the notary to explain to the mortgagor, that the instrument provides for the renunciation of the benefit of section 46 and that the effect of such renunciation is that, in addition to the mortgaged property, other property of the mortgagor is liable to be sold in execution of a decree in an action upon the mortgage.

- (4) No stamp duty shall be payable upon the further instrument referred to in this section.
- (5) Where the mortgage is created by an instrument referred to in section 69 which is attested by an officer of a lending institution, then for the purpose of the application of the provisions of subsection (1) and sub-section (3) of this section, any reference in those provisions to the notary attesting the mortgage bond shall be deemed to be a reference to such officer.
- (6) Nothing in this section shall apply to any action upon a mortgage created before the coming into force of this section.
- (7) For the purpose of this section "lending institution" means -
  - (a) a licensed Commercial Bank within the meaning of the Banking Act, No. 30 of 1988;
  - (b) the State Mortgage and Investment Bank established by the State Mortgage and Investment Bank Act, No. 13 of 1975 ;
  - (c) the National Development Bank established by the National Development Bank of Sri Lanka Act, No. 2 of 1979 ;
  - (d) the National Savings Bank established by the National Savings Bank Act, No. 30 of 1971 ; and
  - (e) the Development Finance Corporation of Ceylon established by the Development Finance Corporation of Ceylon Act (Chapter 165).

4. The following new Part is inserted immediately after section 62 and shall have effect as Part IIA of the principal enactment :-

#### "PART IIA

##### SPECIAL PROVISIONS FOR RECOVERY WHERE PARATE EXECUTION OF IMMOVABLE PROPERTY IS EMPOWERED

- 62A. The provisions of this Part shall be in addition to and not in derogation of the provision of any laws which empower certain banks and other institutions to exercise the powers of parate execution for the purpose of recovery of loans granted by them on the security of immovable property, in the event of default.
- 62B. (1) Where bank or an institution is empowered to authorise any person to enter into possession of or to maintain and to manage the property mortgaged and such person is unable or apprehends that he will be unable to take possession of that land because of any obstruction or resistance which has been or is likely to be offered, such officer shall, on his making an applica-

tion in that behalf to the Magistrate's Court having jurisdiction over the place where that land is situated, be entitled to an order of that court directing the Fiscal to deliver possession of the land to him.

- (2) Where an order under subsection (1) is issued to the Fiscal by a Magistrate's Court he shall forthwith execute such order and shall in writing report to that Court the manner in which the order was executed.
  - (3) For the purpose of executing an order issued by a Magistrate's Court under sub-section (1), the Fiscal or any person acting under his direction may use such force as may be necessary to enter the land to which that order relates and to eject any person in occupation of that land and to deliver possession of that land to the officer who is authorized to take possession of that land, for or on behalf of the bank or institution.
- 62c. Where after sale by public auction and the delivery of a certificate of sale to the purchaser of the property mortgaged, the purchaser is unable to take effective possession of it, he shall on application to the District Court of Colombo or the District Court having jurisdiction over the place where the property is situate, and on production of the certificate of sale be entitled to an order for the delivery of possession of the property.
- 62d. Every application under section 62C shall be made, and shall be disposed of, by way of summary procedure in accordance with the provisions of Chapter XXIV of the Civil Procedure Code; and on all documents filed for the purpose of each such application and on all proceedings held thereon, stamp duties and other charges shall be payable at the respective rates payable under any written law for the time being in force, on application for, and proceedings connected with or incidental to, the execution of a decree of a District Court for the delivery of possession of any immovable property of the same value as the property to which such application relates.
- 62e. Where any immovable property sold in pursuance of the law empowering the mortgagee to sell, is in the possession or occupation of a person under a possession or dent of the debtor or under a title created by the debtor prior to the mortgage by an instrument duly executed and duly registered prior to the mortgage, the right of such person shall have priority over the rights of the purchaser, and the purchaser shall not be entitled to an order for delivery of possession of such immovable property.
- 62f. Where any immovable property sold in pursuance of the preceding provisions is in the occupancy of the debtor or of some person on his behalf or of some person claiming under a title created by the debtor subsequent to the mortgage of the property to the bank or institution the District Court shall order delivery to be made by putting the purchaser, or any person whom he may appoint to receive possession on his behalf in possession of the property.
- 
- 62g. (1) Where any immovable property sold in pursuance of the law empowering

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the mortgagee to sell, is in the occupancy of a tenant or other person entitled to occupy the same by virtue of an agreement entered into before the date of execution of the mortgage, but which transaction has not been duly registered, the following provisions shall apply :-

- (a) (i) if the mortgagee has given the tenant or person in occupation notice of the execution of the mortgage in his favour with full particulars such as the name of the land and the volume and folio in which the bond is registered within a month of its execution, and the tenant or other person in occupation fails within one month of the receipt of such notice to register a document substantially in the Form No. 6 set out in the First Schedule to this Act in the same volume and folio as in the notice, then the court shall order delivery of possession to be made by putting in possession the purchaser or any person whom he may appoint to receive possession on his behalf;
- (ii) where as a consequence of a purchaser or other person being put into possession under sub-paragraph (i), a tenant or person in occupation is dispossessed, he shall be entitled to such compensation as the court may think reasonable, regard being had to the period of tenancy or occupancy and the compensation so ordered shall be paid by the purchaser to the tenant or person in occupation only after the purchaser has received possession;
- (b) (i) if the mortgagee has given the tenant or person in occupation notice of the execution of the mortgage in his favour with full particulars such as the name of the land and the volume and folio in which the bond is registered within a month of its execution and the tenant or other person in occupation duly registered within one month of the receipt of notice by him a document substantially in the Form No. 6 set out in the First Schedule to this Act in the same volume and folio as in the notice referred to, and forthwith notifies the mortgagee of this fact in writing, the District Court shall order delivery of possession to be made by fixing a notice that the sale has taken place in the Sinhala, Tamil and English languages in some conspicuous place on the land and proclaiming to the tenant or person in occupation in such manner as the court may direct, at some convenient place, that the interests of the debtor have been transferred to the purchaser. The cost of such proclamation shall be fixed by the court and shall be prepaid by the purchaser;
- (ii) if the tenant or person entitled to occupy consents to accept a sum of money as compensation in lieu of his tenancy rights or right to occupy, then the Court shall order delivery of possession to be made by putting the purchaser or any person whom he may appoint to receive possession on his behalf only after such compensation has been deposited in court by the purchaser;
- (iii) the quantum of compensation, where the property is business or

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residential premises shall be the equivalent of five years rent, and in the case of other property, the compensation shall be such amount as the court deems reasonable, in all the circumstances of the case.

62ii. Every order under section 62F shall be deemed to be an order for delivery of possession under section 287 of the Civil Procedure Code, and every order made under section 62G shall be deemed to be an order for delivery of possession under section 288 of the same Code and may be enforced in a like manner as an order so made."

5. The First Schedule to the principal enactment is hereby amended by the addition at the end thereof, of the following :-

**"FORM 6**

**APPLICATION FOR REGISTRATION OF AN INSTRUMENT RELATING TO A RIGHT TO OCCUPY LAND**

To the Registrar of Lands.....

I ..... (name in full and address) apply under section ..... of the Mortgage Act ..... for the registration in or discontinuation of the folios specified at 'A' below of my right to occupy the land, by virtue of an agreement, particulars of which are given at B' below :

A. Volume :

Folio : .....

Volume :

Folio :

B. My right to occupy is by virtue of deed/instrument dated ..... executed by ..... the owner thereof or by virtue of an oral tenancy agreement with the owner.

The registration fee of Rs. .... is enclosed in stamps.

Signature of Applicant or \*Agent

\*Agent means an Agent authorised in writing by the Applicant."

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

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**DEBT RECOVERY (SPECIAL PROVISIONS) ACT, NO.2 OF 1990\***

(Certified on 6th March, 1990)

**AN ACT TO PROVIDE FOR THE REGULATION OF THE PROCEDURE RELATING TO DEBT RECOVERY BY LENDING INSTITUTIONS AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.**

1. This Act may be cited as the Debt Recovery (Special Provisions) Act, No.2 of 1990.

**PART I**

**INSTITUTION OF ACTION**

2. (1) A lending institution (hereinafter referred to as the "institution") may, subject to the provisions of sub-section (2) recover debt due to it by an action instituted in terms of the procedure laid down by this Act, in the District Court within the local limits of whose jurisdiction —
  - (a) a party defendant resides; or
  - (b) the cause of action arises; or
  - (c) the contract sought to be enforced was made.
- (2) No action shall be instituted by an institution in terms of the procedure laid down by this Act, for the recovery of any loan, where the principal amount lent or advanced was less than one hundred and fifty thousand rupees.
3. An action under this Act shall be instituted by presenting a plaint in the form specified in the Civil Procedure Code (Chapter 101).
4. (1) The institution suing shall on presenting the plaint file an affidavit to the effect that the sum claimed is justly due to the institution from the defendant and shall in addition produce to the court the instrument, agreement or document sued upon or relied on by the institution.
  - (2) If any instrument, agreement or document is produced to court and the same appears to the court to be properly stamped (where such instrument, agreement or document is required by law to be stamped) and not to be open to suspicion by reason of any alteration or erasure or other matter on the face of it, and not to be barred by prescription; the court being satisfied of the contents contained in the affidavit referred to in subsection (4), shall enter a decree *nisi* in the form set out in the First Schedule to this Act in a sum not exceeding the sum mentioned in the plaint together with interest upto the date of payment and such costs as the court may allow at the time of making the decree *nisi* together with such other relief prayed for by the institution as to the court may seem meet and the decree *nisi* shall be served on the defendant in the manner hereinafter specified.
  - (3) The day to be inserted in the decree *nisi* as the day for the defendant's appearance and showing cause, if any, against it shall be as early a day as can conveniently be named, regard being had to the distance from the defendant's residence to the court.

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- (4) The affidavit to be filed by the institution under sub-section (1) shall be made by any director or a principal officer of such institution or by an attorney-at-law duly authorised to bring and conduct the action on behalf of the institution and which affidavit shall be made by such person having personal knowledge of the facts of the cause of action and such person shall in his affidavit swear or affirm that he disposes from his own personal knowledge to the matters therein contained and shall be liable to be examined as to the subject matter thereof at the discretion of the judge.
- (5) The institution shall tender with the plaint -
- (a) the affidavit and instrument, agreement or document referred to in subsection (1) of this section;
  - (b) draft decree *nisi*; and
  - (c) the requisite stamps for the decree *nisi* and service thereof
5. Where a decree *nisi* is entered under section 4 the provisions of section 705A and 705B of the Civil Procedure Code (Chapter 101) shall, *mutatis mutandis*, apply to the service of such decree *nisi* on the defendant.
6. (1) In an action instituted under this Act the defendant shall not appear or show cause against the decree *nisi* unless he obtains leave from the court to appear and show cause.
- (2) The court shall upon the application of the defendant give leave to appear and show cause against the decree *nisi* either, -
- (a) upon the defendant paying into court the sum mentioned in the decree *nisi*; or
  - (b) upon the defendant furnishing such security as to the court may appear reasonable and sufficient for satisfying the sum mentioned in the decree *nisi* in the event of it being made absolute; or
  - (c) upon affidavits satisfactory to the court that there is an issue or a question in dispute which ought to be tried. The affidavit of the defendant shall deal specifically with the plaintiff's claim and state clearly and concisely what the defence is and what facts are relied on as supporting it.
- (3) In default of the defendant obtaining such leave for appearance and showing cause the court shall make the decree *nisi* absolute, and the provisions of section 389 of the Civil Procedure Code (Chapter 101) shall, *mutatis mutandis*, apply to such order. For this purpose, the Judge shall endorse the words "Decree *nisi* made absolute" (or words to the like effect) upon the decree *nisi* and shall date and sign such endorsement.
7. If the defendant appears and leave to appear and show cause is given the provisions of sections 384, 385, 386, 387, 388, 390 and 391 of the Civil Procedure Code (Chapter 101) shall, *mutatis mutandis*, apply to the trial of the action.

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8. In any proceeding under this Act the court may order the instrument, agreement or other documents which are produced to the court with the plaint or on which the action is founded to be forthwith deposited with an officer of the court, and may further order that all proceedings shall be stayed until the institution gives security for the costs thereof.
9. Where the institution is the holder of a dishonoured bill of exchange or promissory note it shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise by reason of such dishonour as such institution has under this Act for the recovery of the amount of such bill or note.
10. In the court where cases may be instituted under this Act a Special Inquiry Roll shall be kept of such cases in which leave to appear and show cause against the decree *nisi* has been granted, and it shall be competent for the Judge of such court to order such cases to be set down for hearing on such days as may facilitate their early disposal, any rule or practise of such court to the contrary notwithstanding, and after giving the parties, reasonable notice of the date of inquiry.
11. If it appears to the court that the decree *nisi* was obtained on insufficient grounds, or if after the entering of a decree *nisi* the action is dismissed and the decree *nisi* is discharged by default or otherwise, and it appears to the court that there was no reasonable ground for entering the decree *nisi*, the court may, in the same action on the application of the party against whom the decree *nisi* was entered, award against the institution obtaining the same, such sum as it deems reasonable compensation for the expense or injury caused to such party by the entering of the decree *nisi* and an award under this section shall bar any action for compensation in respect of the entering of the decree *nisi*.
12. Where the defendant appears in court in response to the decree *nisi* and does not contest the decree *nisi* but admits liability and prays to liquidate the debt in instalments, the court shall minute this fact on the record and obtain the defendant's signature thereto. The court shall thereafter make the decree absolute and shall enter terms of settlement as to instalments for the liquidation of the debt sued for in term of section 408 of the Civil Procedure Code (Chapter 101). Such settlement shall operate as a stay of execution proceeding unless the defendant acts in breach of any of the terms of settlement in which event the institution shall be entitled to execute the decree.

## PART II

### OF SPECIAL PROVISIONS RELATING TO EXECUTION

13. Subject to orders of court, where a decree *nisi* entered in an action instituted under this Act is made absolute it shall be deemed to be a Writ or Execution duly issued to the Fiscal in terms of section 225 (3) of the Civil procedure Code (Chapter 101) and it shall be the duty of the Fiscal to execute the same in the manner prescribed in the Civil Procedure Code for the execution of Writs.

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14. (1) If the Fiscal be resisted by any person while executing a writ referred to in section 13 the Fiscal shall report such resistance to the court and the court shall thereupon issue a notice against the person resisting requiring him to show cause as to why he should not be dealt with for contempt of court occasioned by such resistance.
- (2) Any person resisting the Fiscal while executing a writ under this Act shall be deemed to be guilty of contempt of Court and shall be liable to the penalties prescribed for contempt of court by the Judicature Act, No.2 of 1978 and the Civil Procedure Code (Chapter 101) unless he proves that the property sought to be seized belonged to a person other than the judgment debtor.
- (3) If the person resisting the Fiscal appears in court and claims that the property sought to be seized by the Fiscal is being held by him on account of any person other than the judgment debtor or person holding under such judgment debtor such person shall be called upon to furnish security for the satisfaction of the decreed sum or such part thereof as the court deem fit in all the circumstances of the case, in the event of his claim failing or in the discretion of court such person may be allowed to give an undertaking that the property sought to be seized would remain in constructive Fiscal custody until the claim inquiry is concluded.
15. (1) Whenever an action is instituted under this Act the same shall be entered in a special register maintained by court substantially in the form set out in the Second Schedule to this Act.
- (2) Where the defendant or his representative in interest alienates any movable or immovable property or otherwise disposes of same in any manner whatsoever after the decree *nisi* such alienation shall be null and void and of no force or effect in law and shall be open to seizure in whosoever's hands such property, may be:
- Provided that such alienation shall be valid if the action is dismissed or the decree *nisi* is discharged : and
- Provided further that such alienation shall also be valid, if the decree absolute is satisfied, but only in respect of such of the property alienated as has not been seized and applied in satisfaction of the decree absolute : and
- Provided further that such alienation shall also be valid property in the hands of an alienee who has come by such property in good faith for consideration without having notice of the decree *nisi* either at the time the purchase money was paid, or when the conveyance was executed not to an alienee from such an alienee, the burden of proof of which facts shall be on such alienee.
- (3) The Registrar of the court shall in addition to the register to be maintained under this section maintain also an index of the names of the defendants against whom actions have been filed under this Act and such index shall be in alphabetical order.

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- (4) Such register and index shall be open to public inspection and entries therein shall constitute prima facie notice to the public.
- (5) All claims to property seized by whomsoever made shall be disposed of in the same action and a decision on such claim shall be a bar to the institution of any other action for the recovery of any property seized or to establish any right to such property or to have the same declared liable to be sold in execution of the decree in favour of the institution.
- (6) Nothing in subsection (2) applies to money or currency notes in the hands of a *bona fide* holder to whom they have passed in circulation, or to negotiable instruments in the hands of *bona fide* holder for value of shall be deemed to effect section 22 and 23 of the Sale of Goods Ordinance, or the rights of any holder in good faith for consideration of any document of title which by law passes the ownership of goods to which it relates by endorsement or delivery, or the liability of a person to whom a debt or charge is transferred, or the right of a person who holds property under a title declared indefeasible by statute or of his successor in title.

### PART III

#### OF APPEALS

16. Subsection (7) of section 756 of the Civil Procedure Code is hereby amended by the addition of the following proviso at the end thereof :-

"Provided however that in an application for leave to Appeal in respect of any order made in the course of any action instituted under the Debt Recovery (Special Provisions) Act No. 2 of 1990 proceedings in the original court shall not be stayed when Leave to Appeal is granted unless the Court of Appeal otherwise directs and the Court of Appeal shall where it decides to grant Leave to Appeal call upon the appellant to give security in cash or by a guarantee from a banker for the satisfaction of the entire claim of that plaintiff or such part thereof as the court deem fit in all the circumstances of the case, in the event of the appeal being dismissed."

17. Section 763 of the Civil Procedure Code is hereby amended by the addition immediately after paragraph (b) of subsection (2) of that section, of the following :-

"Provided that in the case of decrees entered under the provisions of the Debt Recovery (Special Provisions) Act No. 2 of 1990 the security to be given by the judgment debtor shall be the full amount of the decreed sum or such part thereof as the court deems fit in all the circumstances of the case."

18. Section 23 of the Judicature Act No. 2 of 1978, as amended by section 2 of Act No. 37 of 1979 is further amended by the addition at the end of that section of the following proviso :-

"Provided that in the case of decrees entered under the Debt Recovery (Special Provi-

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sions) Act No. 2 of 1990 the amount of the Bond to be entered into shall be the decreed sum or such part thereof as the court deems fit in all the circumstances of the case".

#### PART IV

##### OF SPECIAL PROVISIONS

19. In any matter or question of procedure not provided for in this Act the procedure laid down in the Civil Procedure Code (Chapter 101) in a like matter or question shall be followed by the court if such procedure is not inconsistent with the provisions of this Act.
20. Where no form to be used for the purpose of this Act has been prescribed in any particular case or for any particular purpose such form as the court may approve may be used in that case or for that purpose.
21. No action by a lending institution for the recovery of a loan -
  - (a) not exceeding two hundred fifty thousand rupees or such other sum as the Minister may, by Order published in the Gazette, fix; or
  - (b) recoverable over a period of not less than five years,

due to such lending institution, in terms of the procedure laid down by this Act, shall be entertained by any court if the amount claimed as interest on such loan exceeds the sum due as principal.

22. No sum of money which constitutes a penalty for default in payment, or delay in payment, of a debt shall be recoverable in an action instituted for the recovery of such debt, in terms of the procedure laid down by this Act.
23. In an action instituted under this Act the court shall, in the decree *nisi*, order interest agreed upon between the parties up to the date of decree *nisi*, and interest at the same rate on the aggregate sum of the decree *nisi* from the date of decree *nisi* until the date of payment in full. In the event of the parties not having agreed upon the rate of interest, the court shall in the decree *nisi* order interest at the market rate from the date of institution of action up to the date of decree *nisi* and thereafter on the aggregate sum of the decree *nisi* from the date of decree *nisi* until the date of payment in full.

#### PART V

##### MISCELLANEOUS

24. Nothing in the Debt Conciliation Ordinance (Chapter 81) and the Money Lending Ordinance (Chapter 80) shall apply to, or in relation to, an institution.
25. (1) Any person who -
  - (a) draws a cheque knowing that there are no funds or not sufficient funds in the bank to honour such a cheque; or
  - (b) makes an order to a banker to pay a sum of money which payment is

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Provided, however, that in the event of a dispute between persons claiming to be entitled to be so appointed, the court shall make such an appointment (whether of one of those persons or of any other person) as appropriate in the opinion of the court, in the interests of the estate of the deceased.

28. Where any appointment is made under section 27 and the person so appointed is a party to the action, every order, decree *nisi*, decree absolute and sale or thing done in the action instituted under this Act (including the seizure and sale in execution of the property of the deceased debtor or of the deceased party) shall have the like effect as though the executor or administrator of the deceased were a party to the action.

29. Where any debtor of an institution dies or is adjudged an insolvent or a person of unsound mind at any time after the entry of decree absolute in an action instituted under this Act and before the execution of the decree, no proceedings for the execution or endorsement of the decree absolute shall be taken or if taken shall be of any effect, unless the duly appointed executor of the will or administrator of the estate of the deceased or a representative appointed under section 27 or as the case may be, the assignee or manager of the estate of the insolvent or person of unsound mind, is made a party to the action.

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

"debt" means a sum of money which is ascertained or capable of being ascertained at the time of the institution of the action, and which is in default, whether the same be secured or not, or owed jointly or severally, and alleged by a lending institution to have arisen from a transaction in the course of banking, lending, financial or other allied business activity of that institution, but does not include a promise or agreement which is not in writing;

"lending institution" means -

- (a) a licensed Commercial Bank within the meaning of the Banking Act, No. 30 of 1988;
- (b) the State Mortgage and Investment Bank established by the State Mortgage and Investment Bank Act, No. 13 of 1975;
- (c) the National Development Bank established by the National Development Bank of Sri Lanka Act, No. 2 of 1979;
- (d) the National Savings Bank established by the National Savings Bank Act, No. 30 of 1971;
- (e) the Development Finance Corporation of Ceylon established by the Development Finance Corporation of Ceylon Act (Chapter 165); and
- (f) a company registered under the Finance Companies Act, No. 78 of 1988, to carry on finance business;

"market rate" means the rate per centum per annum determined by the Monetary Board of the Central Bank by Notification published in the Gazette, having regard to current rates of bank interest;

"principal officer" in relation to an institution, means, a director, secretary or other officer not below the rank of a manager of such institution and shall include any other officer of such institution specially authorized by such director, secretary or other officer not below the rank of a manager.

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

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FIRST SCHEDULE

[Section 4(2)]

Form of Decree *Nisi* .....

(Title)

This action coming on for disposal before (name and office of Judge) on the ..... day of ..... 19.... and after reading the plaint and documents and being satisfied of the averments contained in the affidavit filed ..... it is ordered and decreed that the defendant do pay to the plaintiff a sum of Rs .... together with interest at ..... per centum from .... (date ..... to ..... and thereafter interest at the same rate from date here of till payment in full together with costs of action and (where the Decree is for delivery of immovable property, describe the property) (if relief of something other than money or immovable property, set out the relief.)

These are therefore to command the Fiscal ..... Province to levy and make of the houses, lands, goods, debts and credits of the abovenamed .... by seizure and if necessary by sale thereof, the sum of Rs. .... which the plaintiff has recovered against the said .... by this Decree of Court and have that money before this Court within thirty days of this Decree *nisi* being made absolute or within such extended time as this court shall allow and inform this court what sum or sums and to what person or persons the Fiscal of the ..... Province have sold the property respectively and this Decree *Nisi* when made absolute shall serve as a Mandate for such purpose.

It is further ordered and these are to command you, the aforesaid ..... defendant to appear before this court on the ..... day of ..... 19... at (time) ..... and show cause, if any, why this Decree *Nisi* should not be made absolute.

(Signed) ..... (name and office of Judge) the ..... day of ..... 19.....

SECOND SCHEDULE

[Section 17(1)]

(Form of Register)

No. of action	Name of Plaintiff	Name of Defendant	Claim	Decree <i>nisi</i> (whether made absolute or discharged)	Result	Date of satisfaction	Any other matters
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not made by reason of there being no obligation on such banker to make payment or by reason of the payment having been countermanded; or

(c) gives an authority to an institution to pay a sum of money to itself, in payment of a debt or loan or any part thereof owed to such institution from and out of an account maintained or funds deposited, by such person with such institution and such institution is unable to make such payment to itself by reason of such person not placing adequate funds in such account or by reason of the funds deposited having been withdrawn by reason of such person countermanding the authority given or by reason of any one or more of such reasons; or

(d) having accepted an inland bill dishonours it by non-payment, shall be guilty of an offence under this Act and shall on conviction by a Magistrate after summary trial be liable to punishment with imprisonment of either description for a term which may extend to one year or with fine of ten thousand rupees or ten per centum of the full value of the cheque, order, authority or inland bill in respect of which the offence is committed, whichever is higher, or with both such fine and imprisonment.

(2) The expressions "cheque", "dishonoured", "banker", "Inland Bill" and "Bill" shall have the respective meanings assigned to them in the Bills of Exchange Ordinance (Chapter 82), and the term "dishonest" shall have the same meaning as in section 22 of the Penal Code (Chapter 19).

26. Notwithstanding anything to the contrary in the Prescription Ordinance where an institution has instituted action for the recovery of any debt due to it and such action is pending on the date of commencement of this Act, such institution shall be entitled to institute action under this Act for the recovery of that debt :

Provided that this section shall not apply to any pending action where the cause of action on the debt was prescribed as at the date of the institution of such first mentioned action.

27. (1) Where any debtor of an institution dies before the institution of an action under this Act in respect of any debt owed to the institution or any debtor of an institution or any person who is or becomes a party to an action instituted under this Act dies after the institution of the action, and grant of probate of the will or issue of letters of administration to the estate of the deceased has not been made, the court in which the action is to be or has been instituted may in its discretion, after the service of notice on such persons, if any, and after such inquiry as the court may consider necessary, make order appointing a person to represent the estate of the deceased for the purposes of the action and such person may be made or added as a party to the action.

27. In making any appointment under subsection (1) the court shall appoint as representative a person who, after summary inquiry, appears to the court to be the person to whom probate of the will or letters of administration to the estate of the deceased would ordinarily be issued :

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## RECOVERY OF LOANS BY BANKS (SPECIAL PROVISIONS)

ACT, NO. 4 OF 1990

[Certified on 6th March, 1990]

AN ACT TO PROVIDE FOR THE RECOVERY OF LOANS GRANTED BY BANKS FOR THE ECONOMIC DEVELOPMENT OF SRI LANKA; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

1. This Act may be cited as the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990.
2. (1) Every person -
  - (a) to whom any loan is granted by a bank on the mortgage of property, or
  - (b) who has obtained probate of the will or letters of administration to the estate of a person to whom any loan has been granted by a bank on the mortgage of property, or who, upon application made in that behalf by the Board, has been appointed by court to represent such estate, or
  - (c) to whom any right, title or interest whatsoever in any property mortgaged to a bank as security for any loan, has passed, whether by voluntary conveyance or by operation of law,

shall register with a bank an address to which all notices to him may be addressed.

- (2) Any notice which is required to be served on any person to whom subsection (1) applies, shall be deemed to have been duly served on that person if it is sent by post in a registered letter directed to that person at the address registered by him under that subsection, and service shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post :

Provided that, where any such person fails to register his address under subsection (1), the bank shall publish in the *Gazette* and in at least three daily newspapers in the Sinhala, Tamil and English languages, a notice addressed to him and such notice shall be deemed to be duly given to him on the day on which such notice is last published.

3. Whenever default is made in the payment of any sum due on any loan, whether on account of principal or of interest or of both, default shall be deemed to have been made in respect of the whole of the unpaid portion of the loan and the interest due thereon up to date; and the Board may in its direction, take action as specified either in section 5 or in section 4;

Provided, however, that where the Board has in any case taken action, or commenced to take action, in accordance with section 5, nothing shall be deemed to prevent the Board at any time from subsequently taking action in that case by resolution under section 4 if the Board deems it advisable or necessary to do so.

4. Subject to the provisions of section 7 the Board may by resolution to be recorded

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in writing authorize any person specified in the resolution to sell by public auction any property mortgaged to the bank as security for any loan in respect of which default has been made in order to recover the whole of the unpaid portion of such loan, and the interest due thereon upto the date of the sale, together with the moneys and costs recoverable under section 13.

5. (1) Subject to the provisions of section 7 the Board may by resolution to be recorded in writing authorize any person specified in the resolution to enter upon any immovable property mortgaged to the bank as security for any loan in respect of which default has been made or where the terms of any loans agreement are contravened in respect of such property to take possession of, and to manage and maintain such property, and to exercise the same powers in the control and management of such property as might have been exercised by the mortgagor if he had not made default, or contravened the terms of such agreement.
  - (2) Whenever any sum of money due on any loan granted for any agricultural or industrial undertaking on the security of any plant, machinery or other movable property to the bank is in default or where the terms of any loan agreement are contravened in respect of such property, the Board may authorize any person specified in writing to enter and take possession of such agricultural or industrial undertaking in which such plant, machinery or other movable property is situate, and exercise the same power in the control and management of such undertaking as might have been exercised if such property had been pledged or mortgaged.
6. (1) Any person authorized by resolution of the Board under section 5 in respect of any property shall be entitled generally to take action in terms of the resolution and in particular -
    - (a) to sell the produce of such property ;
    - (b) to sell the goods manufactured wholly or partly from any plant or machinery, on the security of which any loan was granted, if default has been made in respect of such loan;
    - (c) to receive the rents, profits or other income from such property ;
    - (d) to pay the expenses incurred in the control and management of such property out of the income from such property;
    - (e) to appropriate to himself out of such income such sum (if any) as the Board may deem fit to fix as remuneration for his services;
    - (f) to remain in possession of such property until all moneys due to the bank under the mortgage on such property have been fully paid or until he is directed by the Board to yield possession of such property under subsection (2).
  - (2) Every person authorized by resolution of the Board under section 5 in respect of any property shall -
    - (a) pay monthly, out of the income of such property such sum (if any) as

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the Board may in its discretion fix, to the mortgagor for his maintenance ;

- (b) pay quarterly or as otherwise directed by the Board, to such person or persons, and in such manner, as the Board may direct, the balance of the income from such property remaining after the payments herein before authorized have been made ;
  - (c) keep and render to the Board, at such intervals as the Board may determine, clear and accurate records of all sums received or paid out by him in respect of such property ;
  - (d) yield possession of such property to the mortgagor or some other person as directed by the board and pay to the Board, any balance of the income from such property remaining in his hands after the payments hereinbefore authorized have been made.
- (3) The Board shall when all sums due to the bank under the mortgage have been fully paid surrender possession of the mortgaged property to the mortgagor and return to him any balance remaining of the income from such property.
7. (1) Save as otherwise provided in subsection (2) the, provisions of section 4 shall apply in the case of any default notwithstanding that the borrower may have died or that any right, title or interest whatsoever in the property mortgaged to the bank as security for the loan may have passed by the voluntary conveyance or operation of law to any other person.
- (2) Where a borrower is dead and probate of his will or letters of administration to his estate have not been issued to any person, the District Court of Colombo or the District Court of the district in which the property, mortgaged to the Bank by the borrower, is situate, may upon application made in that behalf by a bank and after service of notice of the application on such persons, if any, as the court may order, and if satisfied that the grant of probate or the issue of letters of administration is likely to be unduly delayed, appoint a person to represent the estate of the borrower for the purposes of this section; and the provisions of section 4 shall not apply in the case of any default made by such borrower unless and until a person is appointed under this subsection to represent the estate of such borrower.
8. Notice of every resolution under section 4 authorizing the sale of any property shall be published in the *Gazette* and in at least three daily newspapers, in the Sinhala, Tamil and English languages and copies of such notice shall be despatched to the borrower, if he is alive, and to every person who has, in respect of that property, registered his address as required by section 2 and if that property consists of the interest of a lessee under a lease from the State, to the Land Commissioner.
9. Notice of the date, time and place of every sale authorized by a resolution under section 4 shall, not less than fourteen days before the date fixed for the sale be published in the *Gazette* and copies of such notice shall be -

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- (a) dispatched to the borrower, if he is alive, and to every, person to whom notice of any resolution is required to be dispatched under section 2,
  - (b) posted on or near the property which is to be sold.
10. (1) If the amount of the whole of the unpaid portion of the loan, together with interest payable and of the moneys and costs, if any, recoverable by the Board under section 13 is tendered to the Board at any time before the date fixed for the sale, the property shall not be sold, and no further steps shall be taken in pursuance of the resolution under section 4 for the sale of that property.
- (2) If the amount of the instalment in respect of which default has been made, and of the moneys and costs, if any, recoverable by the Board under section 13 is tendered to the Board at any time before the date fixed for the sale, the Board may in its discretion direct that the property shall not be sold and that no further steps shall be taken in pursuance of the resolution under section 4 for the sale of that property.
11. The Board may fix an upset price below which the property shall not be sold to any person other than the bank to which the property is mortgaged.
12. (1) In any case where two or more loans have been granted by a bank on the security of the same property and, default made in the payment of any sum due upon any one or more of such loans, the foregoing provisions of this Act shall apply notwithstanding that default may not have been made in respect of the other loan or any of the other loans and the Board may, in any such case, by resolution under section 4 authorize the sale of the property for the recovery of the total amount due to the Bank in respect of both or all of the loans, as the case may be, and these provisions shall apply accordingly.
- (2) Nothings in section 3 to 15 (both sections inclusive) shall be read or construed as prohibiting a bank from recovering the amount due on a mortgage bond in accordance with the provisions of any other written law.
13. In addition to the amount due on any loan, the Board may recover from the borrower, or any person acting on his behalf-
- (a) all moneys expended by a bank, in accordance with the covenants contained in the mortgage bond executed by the person to whom the loan was granted, in the payment of premia and other charges in respect of any policy of insurance effected on the property mortgaged to such bank, and in the payment of all other costs and charges authorized to be incurred by the bank, under the covenants contained in such mortgage bond and executed by the borrower ;
  - (b) the costs of advertising the sale and of selling of the mortgaged property :

Provided that the costs incurred under paragraph (b) shall not exceed such percentage of the loan as may be prescribed.

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14. If the mortgaged property is sold, the bank shall, after deducting from the proceeds of the sale the amount due on the mortgage and the moneys and costs recoverable under section 13, pay the balance remaining, if any, either to the borrower or any person legally entitled to accept the payment due to the borrowers or where the Board is in doubt as to whom the money should be paid into the District Court of the district in which the mortgaged property is situate.
15. (1) If the mortgaged property is sold, the Board shall issue a certificate of sale and thereupon all the right, title, and interest of the borrower to, and in, the property shall vest in the purchaser; and thereafter it shall not be competent for any person claiming through or under any disposition whatsoever of the right, title or interest of the borrower to, and in, the property made or registered subsequent to the date of the mortgage of the property to the bank, in any court to move or invalidate the sale for any cause whatsoever, or to maintain right title or interest to, or in, the property as against the purchaser.
- (2) A certificate signed by the Board under subsection (1) shall be conclusive proof with respect to the sale of any property, that all the provisions of this Act relating to the sale of that property have been complied with.
- (3) If the purchaser is some person other than the bank, the certificate shall be substantially in the prescribed form and, if the purchaser is the bank, the certificate shall be substantially in such other form as may be prescribed.
- (4) Every certificate of sale shall be liable to stamp duty and charges as if it were a conveyance of property and to any registration and other charges authorized by law, all of which shall be payable by the purchaser.
- (5) Where the property sold consists of the interest of a lessee under a lease from the State, then, if the purchaser of the property is some person other than the bank, the certificate of sale shall not be signed by the Board unless the Land Commissioner, in the exercise of his discretion, has approved the purchaser.
- (6) Whenever the Land Commissioner refuses, under sub-section (5), to approve any purchaser of the interest of a lessee under a lease from the State -
- (a) all sums paid to the bank by the purchaser in respect of the sale shall be repaid to him by the Board;
- (b) the costs of advertising and holding such sale shall be deemed to be costs recoverable by the Board under section 13; and
- (c) the property shall be resold in accordance with the provisions of this Act.
16. (1) The purchaser of any immovable property sold in pursuance of the preceding provisions of this Act shall, upon application made to the District Court of Colombo or the District Court having jurisdiction over the place where

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that property is situate, and upon production of the certificate of sale issued in respect of that property under section 5, be entitled to obtain an order for delivery of possession of that property.

- (2) Every application under subsection (1) shall be made and shall be disposed of, by way of summary procedure in accordance with the provisions of Chapter XXIV of the Civil Procedure Code ; and on all documents filed for the purpose of each such application and on all proceedings held thereupon, stamp duties and other charges shall be payable at the respective rates payable under any written law for the time being in force on applications for, and proceedings connected with, or incidental to, the execution of a decree of a District Court for the delivery of possession of any immovable property of the same value as the property to which such application relates.
  - (3) Where any immovable property sold in pursuance of the preceding provisions of this Act is in the occupancy of the borrower or some person on his behalf or of some person claiming under a title created by the borrower subsequently to the mortgage of the property to the bank the District Court shall order delivery to be made by putting the purchaser or any person whom he may appoint to receive possession on his behalf, in possession of the property.
  - (4) Where any immovable property sold in pursuance of the preceding provisions of this Act is in the occupancy of a tenant or other person entitled to occupy the same, the District Court, shall order delivery to be made by affixing a notice that the sale has been taken place, in the Sinhala, Tamil and English languages, in some conspicuous place on the property, and proclaiming to the occupant by beat of tom-tom or any other customary mode or in such manner as the court may direct, at some convenient place, that the interest of the borrower has been transferred to the purchaser. The cost of such proclamation shall be fixed by the court and shall in every case be prepaid by the purchaser.
  - (5) Every order under subsection (3) or subsection (4) shall be deemed, as the case may be, to be an order for delivery of possession made under section 287 or section 288 of the Civil Procedure Code, and may be enforced in like manner as an order so made, the borrower and the purchaser being deemed, for the purpose of the application of any provisions of that Code, to be the judgement-debtor and judgement-creditor, respectively.
17. Where the property sold has been purchased on behalf of the bank, the Board may at any time before it resells that property, cancel the sale by an endorsement to that effect on a certified copy of the certificate of sale, upon the borrower or any person on his behalf paying the amount due in respect of the loan for which the property was sold (including the cost of seizure and sale) and interest on the aggregate sum at a rate not exceeding the prescribed rate per annum. Such an endorsement shall, upon registration in the office of the Registrar of Lands, revert the said property in the borrower as though the sale under this Act has never been made.

18. If the property so sold has been purchased on behalf of the bank and the sale is

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not cancelled under section 17, the Board may at any time, re-sell the property and transfer to the purchaser by endorsement on a certified copy of the certificate referred to in subsection (3) of section 16, all the right, title and interest which would have been acquired by the purchaser at the original sale. the endorsement shall be liable to the same stamp duty and charges as a certificate to a purchaser at the original sale and shall, when it is registered in the office of the Registrar of Lands, vest such right, title and interest as aforesaid in the purchaser.

19. If any any sale in pursuance of the preceding provisions of this Act, a bank has purchased any property sold for default in the payment of a loan, the bank shall not hold such property for a long period than it is necessary to enable the bank to re-sell the property for such a sum as will cover the total amount due to the bank on account of the loan, interest, expenses and costs.
20. Any person who without reasonable cause, resists, obstructs or prevents a person authorized by the Board by a resolution under section 4 to sell any property mortgaged to the bank from carrying out such sale shall be guilty of an offence and shall on conviction after trial by a Magistrate, be liable to imprisonment not exceeding six years, or to a fine not exceeding five thousand rupees, or to both such imprisonment and fine.
21. (1) The Minister may make regulations for or in respect of all matters required by this Act to be prescribed.  
(2) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or upon such later date as may be specified in the regulation.  
(3) Every regulation made by the Minister shall, as soon as is convenient after its publication in the *Gazette*, be brought before Parliament for approval.  
(4) Every regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder. Notification of the date on which any regulation is deemed to be rescinded shall be published in the *Gazette*.
22. In this Act, unless the context otherwise requires -

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

- (a) the Bank of Ceylon established by the bank of Ceylon Ordinance (Chapter 397);
- (b) the People's Bank established by the People's Bank Act, No. 29 of 1961;
- (c) any bank established under the provision of the Regional Rural Development Bank Act, No. 15 of 1985.

and shall be deemed to include the Development Finance Corporation of Ceylon established by the Development Finance Corporation of Ceylon Act, (Chapter 165);

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**"Board" in relation to a bank means the Board of Directors of the bank or any body of persons by whatever name or designation called for the time being charged with the management or administration of such bank ;**

**"loan" means a loan of money and includes any overdraft or advance or any other monetary accommodation by whatever name or designation called ;**

**"property" means any movable or immovable property and includes the right, title and interest of the lease, in any case where a loan is secured by a mortgage of the interest of a lessee under a lease from the State.**

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

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**National Savings Bank Act, No. 30 of 1971**

48. (1) Every person—

Registered  
address and  
notices.

- (a) to whom a loan is granted by the Bank on the mortgage of immovable property; or
- (b) who has obtained probate of the will or letters of administration to the estate of a person to whom any loan has been so granted, or who, upon application made in that behalf by the Bank, has been appointed by court to represent such estate; or
- (c) to whom any right, title or interest whatsoever in any immovable property mortgaged to such Bank as security for any loan has passed, whether by voluntary conveyance or by operation of law,

shall register with the Bank an address to which all notices to him may be addressed.

(2) Any notice which is required to be served on any person to whom sub-section (1) applies shall be deemed to have been duly served on that person if it is sent by post in a registered letter directed to that person at the address registered by him under that sub-section, and the service shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post:

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Provided that, where any such person fails to register his address under sub-section (1), the Bank shall publish in the *Gazette* and in a daily newspaper, a notice addressed to him, and such notice shall be deemed to be duly given to him on the day on which such notice was published.

No director or employee of the Bank to guarantee loans.

49. No director or employee of the Bank shall guarantee the repayment of any loan granted by the Bank to any person.

Restrictions on loans to directors, &c.

50. (1) No loan shall be granted by the Bank to any director or to the spouse or a dependent child of a director or to any company or firm in which a director has a substantial interest.

(2) For the purposes of sub-section (1), "substantial interest"—

(a) when used in relation to a company, means the holding of a beneficial interest by a director of the Bank or his spouse or dependent child, whether singly or taken together, in the shares of the company, if the amount paid up in respect of the holding exceeds five per centum of the paid-up capital of the company, and

(b) when used in relation to a firm, means the beneficial interest held in the firm by a director of the Bank or his spouse or his dependent child, whether singly or taken together, if the beneficial interest exceeds in value five per centum of the total capital subscribed by all the partners of the firm.

Priority of charge created by loan granted by Bank.

51. Where a loan is granted by the Bank on the mortgage of any immovable property, that property shall from and after the date of the registration of such mortgage be charged with the payment of the loan with interest in priority to every other debt, mortgage or charge affecting it, except a debt which is secured by a mortgage duly registered prior to such date and which is due to a creditor who in good faith advanced the money before the loan was granted by the Bank.

Procedure on default of payment.

52. (1) Whenever default is made in the payment of any sum due on a loan, whether on account of principal or interest or of both, default shall be deemed to have been made in respect of the whole of the unpaid portion of the loan and the interest due thereon up to date; and the Bank may, by resolution of the Board published in the *Gazette*, authorize any person in writing to sell the property mortgag-

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ed as security for such payment by public auction at any time not less than twenty-one days after the date on which such resolution was published, in order to recover the whole of the unpaid portion of the loan and the interest due thereon up to the date of sale and the moneys and costs recoverable under section 53.

(2) (a) Save as otherwise provided in paragraph (b), the provisions of sub-section (1) shall apply in the case of any default notwithstanding that the borrower may have died or that any right, title or interest whatsoever in the property mortgaged to the Bank as security for the loan may have passed by voluntary conveyance or by operation of law to any other person.

(b) Where a borrower is dead and probate of his will or letters of administration to his estate have not been issued to any person, the District Court of Colombo or the District Court of the district in which the property mortgaged to the Bank by that borrower is situate, may, upon application made in that behalf by the Bank and after service of notice of the application on such persons, if any, as the court may order, and if satisfied that the grant of probate or the issue of letters of administration is likely to be unduly delayed, appoint a person to represent the estate of the borrower for the purposes of this section; and the provisions of sub-section (1) shall not apply in the case of any default made by such borrower unless and until a person is appointed under this paragraph to represent the estate of such borrower.

(3) (a) Notice of every resolution under sub-section (1) authorizing the sale of any property shall be published, in addition to the Gazette, in three daily newspapers in Sinhala, Tamil and English respectively, and copies of such notice shall be despatched to the borrower, if he is alive, and to every person who has, in respect of that property, registered his address under the provisions of paragraphs (b) and (c) of sub-section (1) of section 48, and, if that property consists of the interest of a lessee under a lease from the Crown, to the Land Commissioner.

(b) Notice of the date, time and place of every sale shall, not less than fourteen days before the date fixed for the sale, be published in the Gazette and copies of such notice shall be—

(i) despatched to the borrower if he is alive, and to every other person to whom notice of any resolution is required to be despatched under paragraph (a);

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(ii) posted on or near the property which is to be sold ;  
and

(iii) affixed to the walls of the Kachcheri and the several District Courts and Magistrates' Courts within the jurisdiction of which the property is situate.

(4) (a) If the amount of the whole of the unpaid portion of the loan together with interest, including any penal interest due thereon and of the moneys and costs, if any, recoverable by the Bank under section 53, is tendered to the Bank at any time before the date fixed for the sale, the property shall not be sold, and no further steps shall be taken in pursuance of the resolution under sub-section (1) for the sale of that property.

(b) If the amount of the instalment or equated payment in respect of which default has been made, together with any penal interest due thereon, and of the moneys and costs, if any, recoverable by the Bank under section 53, is tendered to the Bank at any time before the date fixed for the sale, the Board may, in its discretion, direct that the property shall not be sold, and that no further steps shall be taken in pursuance of the resolution under sub-section (1) for the sale of that property.

(5) The Board may fix an upset price below which the property shall not be sold to any person other than the Bank. In fixing such price the Bank shall have particular regard both to the outstanding amount of the loan granted on the security of such property and the current value of such property.

(6) In any case where two or more loans have been granted by the Bank on the security of the same property and default is made in the payment of any sum due upon one or more of such loans, the provisions of this section shall apply notwithstanding that default may not have been made in respect of the other loan or of any of the other loans, and the Bank may, in any such case, by resolution of the Board under sub-section (1) authorize the sale of the property for the recovery of the total amount due to the Bank in respect of both or all the loans, as the case may be, and the provisions of this Act shall apply accordingly.

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53. Besides the amount due on the loan, the Bank may recover from the debtor or any person acting on his behalf—

Recovery of expenses and costs incurred by the Bank.

- (a) all moneys expended by the Bank, in accordance with the covenants contained in the mortgage bond executed by the debtor, in the payment of premiums and other charges in respect of the policy of insurance effected on the property mortgaged to the Bank and in the payment of all other costs and charges authorized to be incurred by the Bank, under the covenants contained in the mortgage bond executed by the debtor; and
- (b) the costs of advertising the sale and of selling the property:

Provided that the costs incurred under this paragraph shall not exceed such percentage of the loan as may be prescribed; and

- (c) in any case where the property mortgaged as security for the loan consists of the interest of the debtor under a lease from the Crown, and such property has been surrendered to the Crown in accordance with the provisions of section 59, all moneys paid to the Crown by the Bank on such surrender as moneys due to the Crown by the debtor under the said lease.

54. If the mortgaged property is sold, the Bank shall, after deducting from the sale proceeds the amount due on the mortgage and the moneys and costs recoverable under section 53, pay the overplus, if any, either to the debtor or any person legally entitled to accept the payments due to the debtor, or into the District Court having jurisdiction over the property sold in case the Bank is in doubt as to whom the money is to be paid.

Payment of excess.

55. (1) If the mortgaged property is sold the Bank shall sign a certificate of sale and thereupon all the right, title, and interest of the debtor to and in the property shall vest in the purchaser, nor shall any person claiming through or under any disposition whatsoever of the debtor's right, title, or interest to and in the property made or registered subsequently to the mortgage of the property to the Bank be able in any court of law to move to invalidate the sale for any cause whatsoever or to maintain any right, title or interest to or in the property as against the purchaser.

Certificate of sale.

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(2) A certificate signed by the Bank under sub-section (1) shall be conclusive proof with respect to the sale of any property that all the provisions of this Act have been complied with.

(3) The certificate referred to in sub-section (1) shall be substantially in such form as may be prescribed. Different forms may be so prescribed accordingly as the purchaser is, or is not, the Bank.

(4) Every certificate of sale shall be liable to the stamp duty and charges fixed for conveyance of immovable property, and to any registration or other charges authorized by law, all of which shall be payable by the purchaser.

(5) Where the property sold consists of the interest of a lessee under a lease from the Crown, then, if the purchaser of the property is some person other than the Bank, the certificate of sale shall not be signed by the Bank unless the Land Commissioner, in the exercise of his discretion, has approved the purchaser.

(6) Whenever the Land Commissioner refuses, under sub-section (5), to approve any purchaser of the interest of a lessee under a lease from the Crown—

- (a) all sums paid to the Bank by the purchaser in respect of the sale shall be repaid to him by the Bank;
- (b) the costs of advertising and holding such sale shall be deemed to be costs recoverable by the Bank under section 53 (b); and
- (c) the property shall be resold in accordance with the provisions of this Act.

Order for  
delivery of  
possession.

56. (1) The purchaser of any property sold in pursuance of the provisions of section 52 shall, upon application being made to the District Court of Colombo or the District Court having jurisdiction over the place where the property is situate, and upon production of the certificate of sale issued in respect of the property under section 55, be entitled to obtain an order for delivery of possession of the property.

(2) Every application under sub-section (1) shall be made, and shall be disposed of, by way of summary procedure in accordance with the provisions of Chapter XXIV of the Civil Procedure Code; and on all documents filed for the purposes of each such application and on all proceedings held thereupon, stamp duties and other charges shall be payable at the respective rates payable under any written

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law for the time being in force, on applications for, and proceedings connected with or incidental to, the execution of a decree of a District Court for the delivery of possession of a property of the same value as the property to which such application relates.

(3) Where the property sold in pursuance of the provisions of section 52 is in the occupancy of the debtor or of some person on his behalf or of some person claiming under a title created by the debtor subsequently to the mortgage of the property to the Bank, the District Court shall order delivery to be made by putting the purchaser, or any person whom he may appoint to receive possession on his behalf, in possession of the property.

(4) Where the property sold in pursuance of the provisions of section 52 is in the occupancy of a tenant or other person entitled to occupy the same, the District Court shall order delivery to be made by affixing a notice that the sale has taken place, in the Sinhala, Tamil and English languages, in some conspicuous place on the property, and proclaiming to the occupant by beat of tom-tom, or in such other mode as may be customary, at some convenient place, that the interest of the debtor has been transferred to the purchaser. The cost of such proclamation shall be fixed by the court and shall in every case be prepaid by the purchaser.

(5) Every order under sub-section (3) or sub-section (4) shall be deemed, as the case may be, to be an order for delivery of possession made under section 287 or section 288 of the Civil Procedure Code, and may be enforced in like manner as an order so made, the debtor and the purchaser being deemed, for the purpose of the application of any provision of that Code, to be the judgment-debtor and judgment-creditor, respectively.

57. If the property sold has been purchased on behalf of the Bank the Board may, at any time before it resells the property, cancel the sale by an endorsement to that effect on a certified copy of the certificate of sale, if the debtor or anyone else on his behalf pays the amount due in respect of the loan for which the property was sold (including the costs of seizure and sale) and interest on the aggregate sum at a rate not exceeding a prescribed rate. Such an endorsement shall, upon registration in the office of the Registrar of Lands, revert the said property in the proprietor as though the sale under this Act had never been made.

Cancellation  
of sale.

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Resale by  
Bank.

58. If the property so sold has been purchased on behalf of the Bank, and the sale is not cancelled under section 57, the Board may, at any time, resell the property and transfer to the purchaser by endorsement on a certified copy of the certificate referred to in sub-section (3) of section 55, all the right, title, and interest which would have been acquired by a purchaser at the original sale. The endorsement which shall be liable to the same stamp duty and charges as a certificate to a purchaser at the original sale, shall when it is registered in the office of the Registrar of Lands vest such right, title, and interest as aforesaid in the purchaser.

Limit of  
retention of  
property by  
Bank.

59. If at any sale under section 52 the Bank has purchased any property sold for default in the repayment of a loan the Bank shall not hold such property for a longer period than is necessary to enable the Board to resell the property for such a sum as will cover the total amount due to the Bank on account of loan, interest, expenses and costs :

Provided that where such property consists of the interest of a lessee under a lease from the Crown, the Board may, instead of reselling such property, pay all sums of money due to the Crown by the lessee under the lease and surrender the lease to the Crown on such terms and conditions as may be agreed upon between the Board, the Minister and the Minister charged with the subject of Crown lands.

Power of  
Bank to  
inspect  
valuation  
rolls  
of local  
rating or  
taxing  
authority.

60. For the purpose of deciding whether any immovable property tendered as security for a loan should or should not be accepted, the Bank shall have access without fee or charge to the valuation roll of any local rating or taxing authority, and the officers of every such authority shall upon application supply to the Bank full particulars as to any valuation of property in respect of which such authority is empowered under the provisions of any law to levy any rate or tax.

Meaning of  
property.

61. In this Part, unless the context otherwise requires, "property", in any case where a loan is secured by a mortgage of the interest of a lessee under a lease from the Crown, means the right, title and interest of the lessee under the lease.

Bank not  
precluded  
from other  
methods of  
recovery.

62. Nothing in sections 52 to 61 shall be deemed to preclude the Bank from recovering the amount due on any mortgage bond in accordance with the provisions of any other written law.

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## CHAPTER 32 TAX INCENTIVES FOR HOUSING

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### 1. Exemptions

#### (1) Net annual value

- (i) The net annual value of one house owned by, and occupied by or on behalf of, an individual is exempt from income tax.

(Section 12(1) (a) )

- (ii) The net annual value of any house owned and occupied by an individual is exempt from income tax for the year of assessment in which the construction of that house was completed and for the next 6 years. Where the floor area of the house does not exceed 1,500 sq. ft., the exemption is available for a further period of 3 years.

(Section 12 (b) )

#### (2) Rent

Rent accruing from any house owned solely for residential purposes is exempt from income tax for the year of assessment in which the construction of that house was completed and for the next 6 years, if—

- (i) it is a house to which the Rent Act applies, or
- (ii) its floor area (inclusive of the thickness of the walls) does not exceed—

- (a) 3000 sq. ft. if the construction of such house is completed on or before 31.03.1989,

- (b) 2000 sq. ft. if the construction of such house is completed on or after 01.04.1989.

Where the floor area of the house does not exceed 1,500 sq. ft., the exemption is available for a further period of 3 years.

(Section 12(1) (b) a (bb) )

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**(3) Conversion into residential units**

Where a house, the income from which is not exempt from income tax, is converted into two or more residential units and each such unit is assessed separately for rating purposes, the income accruing from each such residential unit is exempt from income tax—

- (i) for the year of assessment in which the conversion was effected and for the next 5 years, if the floor area of that unit does not exceed 1,000 sq. ft., or
- (ii) for the year of assessment in which the conversion was effected and for the next 3 years, if the floor area of that unit does not exceed 2,000 sq. ft.

(Section 12(1) (c))

**(4) Capital Gains**

The capital gains arising from the change of ownership of any house are either exempt or taxable at reduced rates.

(i) The following are exempt:

- (a) Capital gains arising to an individual on the first sale or the acquisition by the State of any house constructed by him and which is used solely for residential purposes.
- (b) Capital gains arising to an individual on the first sale or the acquisition by the State, after 01.04.1978, of any other house used solely for residential purposes.
- (c) Capital gains arising to any person from the change of ownership of any house occurring not less than 25 years after its acquisition by such person.

(Section 14(a))

(ii) The following capital gains are taxed at reduced rates:

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The capital gains arising to any person from the change of ownership of any house, occurring,

- (a) between 2 years and 5 years after its acquisition by such person-taxable at a maximum rate of 25 per cent.
  - (b) between 5 years and 15 years after its acquisition by such person-taxable at a maximum rate of 17½ per cent.
  - (c) between 15 years and 20 years after its acquisition by such person-taxable at a maximum rate of 12½ per cent.
  - (d) between 20 years and 25 years after its acquisition by such person-taxable at a maximum rate of 5 per cent.
- (5) Profits from the construction and sale of certain houses

Where an undertaking engaged in the construction and sale of houses is approved by the Commissioner of National Housing, 75% of the profits arising from the first sale of any house or flat, the floor area of which does not exceed 2000 sq. ft. and the construction of which was commenced on or after 01.01.1977, is exempt from income tax.

(Section 21(2))

(6) Dividends

Dividends paid by a company carrying on an undertaking for the construction and sale of houses out of exempt profits are exempt from income tax.

(See Chapter 6, paragraph 3)

**2. Relief for Investment**

The following expenses are deductible from the assessable income of a person as 'qualifying payments':-

- (1) Any sum invested by a person in the purchase of ordinary shares, other than existing shares, in a company which carries on an undertaking for the construction and sale of houses, and which is approved under section 31.

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- (2) (i) The repayment by an individual of capital of a loan obtained on or after 01.04.1973 but on or before 31.03.1989 from the Government, a bank, a local authority or other approved institution for—
- (a) the construction of house, or
  - (b) the purchase of either the first house or the first site for the construction of a house purchased on or after 01.04.1973.
- (ii) The repayment by an individual of capital of a loan obtained on or after 01.04.1989, from the Government, a bank, a local authority or other approved institution for
- (a) the construction of a house, at a cost not exceeding Rs. 1,000,000 being the first house constructed after 1.4.78 or
  - (b) the purchase of either the first house or the first site for the construction of a house, at a cost not exceeding Rs. 1,000,000. purchased on or after 1.4.78.
- (Section 31(2) (ee))
- (3) The monthly payments made by an individual in respect of any house let on or after 01.04.1973 on rent-purchase terms. With effect from 01.04.1989, the consideration of the rent purchase agreements should not exceed Rs. 1,000,000.
- (Section 31 (2) (ee))
- (4) (i) The amount spent by an individual in the construction of a house on or before 31.03.1989 where such expenditure is not met out of borrowings from sources referred to in sub-paragraph (2).
- (ii) The amount spent by an individual on or after 01.04.1989 on the construction of the first house constructed on or after 01.04.1978 at a cost not exceeding Rs. 1,000,000 where such expenditure is not met out of borrowings from sources referred to in sub-paragraph (2).

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- (5) (i) The amount spent by an individual for the purchase on or after 01.04.1978 but on or before 31.03.1989 of either the first house or the first site for the construction of a house purchased by him on or after that date where such expenditure is not met out of borrowings from sources referred to in paragraph (2).
- (ii) The amount spent by an individual for the purchase on or after 01.04.1989 of either the first house or the first site for the construction of a house at a cost not exceeding Rs. 1,000,000 being the first house or the first site purchased by him on or after 01.04.1978. Where such expenditure is not met out of borrowings from sources referred to in sub paragraph (2).
- (6) The amount spent by an individual on the lease of any unit of residential accommodation constructed with the approval of the Urban Development Authority and forming part of a registered condominium property, if
- (a) the lease is for more than 50 years, and
- (b) the full consideration for such lease was paid at the time the lease agreement was entered into,

With effect from 01.04.1989 the consideration of the lease agreement should not exceed Rs. 1,000,000.

### 3. Exemption from Wealth Tax

The following are excluded from the wealth of a person:

- (i) One house used as a residence by the owner.
- (ii) Any house completed on or after 01.10.1966 having a floor area not exceeding 500 sq. ft., for the year of assessment in which that house was completed and for the next 6 years.

(Section 45)

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