



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**RECOVERY OF LOANS BY BANKS
(SPECIAL PROVISIONS) (AMENDMENT)**

A

BILL

**to amend the Recovery of Loans by Banks (Special Provisions)
Act, No. 4 of 1990**

Presented by the Minister of Finance on 05th August, 2003

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STATEMENT OF LEGAL EFFECT

Clause 2 : This clause amends section 2 of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990 (hereinafter referred to as the "principal enactment") by the replacement of paragraph (c) of subsection (1) and the legal effect of the section will be to require any person who has obtained probate of the will or letters of administration to the estate of the deceased mortgagor or any person who has acquired a right, title or interest in the mortgaged property after the property has been mortgaged to the bank, to register his address.

Clause 3 : This clause amends section 4 of the principal enactment and the legal effect of the section as amended will be to prevent the borrower, mortgagor or any claimant from making an application to Court to invalidate a resolution of the Board authorizing the sale of the property. This clause will also enable banks to exercise parate execution rights in respect of syndicated loans.

Clause 4 : This clause amends section 5 of the principal enactment and the legal effect of the section as amended seeks to identify the borrower more clearly in order to avoid any doubt.

Clause 5 : This clause amends section 7 of the principal enactment and the legal effect of the section as amended will be to extend the scope given to banks to exercise the right of parate execution in respect of a mortgage property, to include a third party mortgage and is consequential to the amendments made by clause 3 of the Bill to section 4 of the principal enactment.

Clause 6 : This clause amends section 8 of the principal enactment and the legal effect of the section as amended will be to make provision for any person who has any right, title or interest in the mortgaged property to submit a claim to the bank subsequent to the publication of the notice in the newspaper, whereby relief to such person may be granted or refused.

Clause 7 : This clause inserts a new section 8A in the principal enactment. The new section prohibits any person from removing or replacing any movable property in respect of which a resolution for parate execution has been served.

Clause 8 : This clause amends section 13 of the principal enactment and the legal effect of the section as amended is consequential to the amendment made by clause 5 of the Bill.

Clause 9 : This clause amends section 14 of the principal enactment and the legal effect of the section as amended will be to make provision regarding the procedure to be adopted by Court in determining the order of priority for distribution of money due on claims.

Clause 10 : This clause amends section 15 of the principal enactment and the legal effect of the section as amended which is consequential to the amendment made by clause 7 and requires the Registrar of Motor Vehicles to register the name of the purchaser at a sale in execution of parate rights of a motor vehicle as owner, as against the Bank.

Clause 11 : This clause amends section 16 of the principal enactment and the legal effect of the section as amended is consequential to the amendment made by clause 4 and provides for proof of written notice to be given to the bank by the borrower or mortgagor.

Clause 12 : This clause amends section 17 of the principal enactment and the legal effect of

Clause 13 : This clause amends section 18 of the principal enactment and the legal effect of the section as amended is consequential to the amendment made by clause 7 and will enable the sale of immovable property in divided portions, if the property is purchased by the bank itself, at the auction.

Clause 14 : This clause amends section 17 of the principal enactment and the legal effect of the section as amended will be to enable the securing of the highest offer made on the re-sale of the property purchased by the bank, in default of payment of any loan.

Clause 15 : This clause inserts new section 20A and 29B in the principal enactment. The new sections provide for penal provisions in respect of damage to structures on mortgaged property caused willfully in order to reduce the value of such property and for directors, managers and others of corporate bodies, partners of firms and individuals on unincorporated bodies to be held liable for offences under the Act.

Clause 16 : This clause amends section 22 of the principal enactment by —

- (a) amending the definition of the expressions “bank” and “Board”; and
- (b) the insertion of new definitions of the expression “resolution” and “upset price”.

Clause 17 : This clause inserts a new section 22A in the principal enactment. The new section provides for the avoidance of doubt for where the powers conferred on a Bank are exercised by licensed commercial banks or licensed specialized banks.

Recovery of Loans by Banks (Special Provisions)
(Amendment)

L.D. – O. 49/2000.

AN ACT TO AMEND THE RECOVERY OF LOANS BY BANKS
(SPECIAL PROVISIONS) ACT, No. 4 OF 1990

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :–

1. This Act may be cited as the Recovery of Loans by Banks (Special Provisions) (Amendment) Act, No. of 2003. Short Title.

- 5 2. Section 2 of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990 (hereinafter referred to as the “principal enactment”) is hereby amended in subsection (1) of that section, by the repeal of paragraph (c) of that subsection and the substitution therefor of the following paragraphs :– Amendment of section 2 of Act, No. 4 of 1990.

- 10 “(c) who has mortgaged property to a bank as security for a loan granted by the bank, not being the person to whom such loan is granted, or, where such mortgagor is dead, every person who has obtained probate of the will of the mortgagor or letters of administration to the estate of the mortgagor, or
- 15 who upon application made in that behalf by the Board, has been appointed by court to represent such estates ;

- 20 (d) to whom any right, title or interest in any property mortgaged to a bank as security for any loan has passed, whether by voluntary conveyance on a document made or registered, or by operation of law, and where such right, title or interest has passed to such person after the mortgage of such property to the bank.”.

- 25 3. Section 4 of the principal enactment is hereby amended as follows :– Amendment of section 4 of the principal enactment.

- (1) by the renumbering of that section as subsection (1) of that section;

- (2) in the renumbered subsection (1), by the substitution for the words "under subsection 13" of the following words :-

5 "under section 13 and after the publication and dispatch of a notice of the resolution under section 8, it shall thereafter not be competent for the borrower or the mortgagor or any person claiming through or under any disposition whatsoever of the right, title or interest of the borrower or mortgagor to and in the property made or registered subsequent to the date of the mortgage to the Bank, in 10 any court, to move to invalidate or annul the said resolution for any cause whatsoever, and no court shall entertain any such application."

- (3) by the addition immediately after the renumbered subsection (1) of the following new subsections :-

15 "(2) Where two or more banks have granted to a borrower a syndicated loan on the security of a mortgage bond executed in favour of such banks (hereinafter referred to as a 'concurrent mortgage bond') and default is made in the payment of any sum due on the loan, the Board of any such 20 bank may, subject to the provisions of subsection (3) of this section and section 7, by a resolution to be recorded, authorize in writing any person specified in such resolution to sell by public auction the property mortgaged to the bank by the concurrent mortgage bond to recover the whole or the unpaid 25 portion of the loan and the interest due thereon up to the date of the sale together with the moneys and costs recoverable under section 13. The provisions of subsection (1) shall *mutatis mutandis* apply to such resolution.

30 (3) Prior to the Board of any bank referred to in subsection (2) recording a resolution under that subsection, such Board shall obtain the authority of the Boards of the other banks involved in granting the syndicated loan, by resolutions recorded in writing by such Boards authorizing the inclusion of the total sum due to those banks, in the resolution to be 35 recorded by the first mentioned bank."

4. Section 5 of the principal enactment is hereby amended in subsection (1) of that section by the substitution of the words "if he had not made default" of the words "if the borrower had not made default".

Amendment of section 5 of the principal enactment.

5. Section 7 of the principal enactment is hereby amended by the repeal of subsection (2) of that section and the substitution therefor of the following subsection :-

Amendment of section 7 of the principal enactment.

10 "2) Where a borrower or mortgagor is dead and probate of the will of the borrower or mortgagor or letters of administration to the estate of the borrower or mortgagor has 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 is situated, may upon application made in that behalf by the bank and after service of notice of such application on such person, if any, as the Court may order and if satisfied that the grant of probate or letters of administration is likely to be unduly delayed, appoint a person to represent the estate of the borrower or mortgagor for the purposes of this section. 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 or mortgagor."

6. Section 8 of the principal enactment is hereby amended as follows :-

Amendment of section 8 of the principal enactment.

25 (1) by the renumbering of that section as subsection (1) of that section ; and

(2) by the addition, immediately after the renumbered subsection (1), of the following subsection :-

30 "2) Upon the publication of a notice of the resolution under subsection (1) in respect of any property, any person who has acquired after the mortgage of the property to the bank any right, title or interest in the property, may, within thirty days after the publication of the notice, under the said

5 "Removal
or
replacement
of
movable
property.

10 8A. (1) Where the mortgaged property in respect of a loan is movable property and a notice of a resolution under subsection (1) of section 8 in respect of that property is served on the borrower or any person entitled to notice under that subsection, the borrower or such person shall not remove or replace such property from or in the place where such property is installed or usually kept, without the prior written consent of the bank granting the loan on the security of such property.

15 (2) The borrower or such person referred to in subsection (1) who acts in contravention of the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction by a Magistrate to imprisonment of other description for a term not exceeding six years or to a fine not exceeding five thousand rupees or to both such imprisonment and fine."

20 8. Section 13 of the principal enactment is hereby amended by the repeal of paragraph (a) and the substitution therefor of the following paragraph :-

Amendment of section 13 of the principal enactment.

25 "(a) all moneys expended by a bank, in accordance with the covenants contained in the mortgage bond, 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;"

30 9. Section 14 of the principal enactment is hereby repealed and the following new section substituted therefor :-

Replacement of Section 14 of the principal enactment.

"Payment of excess.

14. (1) If the mortgaged property is sold, the bank shall, after deducting from the proceeds of sale the amount due to the bank on the mortgage and in the case of a concurrent mortgage bond, to all the banks

5 and the moneys and costs recoverable under section
 13, pay, subject to provisions of subsection (2), the
 balance remaining, if any, either to the borrower or
 where the borrower is not the mortgagor of the
10 property, to the mortgagor or any person legally
 entitled to accept the payment due to such
 borrower or mortgagor 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 situated to be paid to such persons legally
 entitled thereto as may be determined by Court.

15 (2) Where any claim is submitted to the bank
 under subsection (2) of section 8, the bank shall in
 terms of the provision of section 630 of the Civil
 Procedure Code (Chapter 101), deposit the balance
 sum of money calculated under subsection (1) of this
 section in the District Court of the district in which the
 mortgaged property is situated and refer the claims
20 made to the bank under subsection (2) of section 8 to
 the Court for determination of the claims and the order
 of priority for distribution of the money due on such
 claims.

25 (3) A reference under subsection (2), shall be by
 way of plaint in writing addressed to the Court stating
 that the bank has no interest in the sum deposited and
 praying for the determination of the claims stated in
 the plaint and the order of priority for the distribution
 of money due on such claims. Such plaint shall in
30 addition to the statements necessary for plaints,
 contain statements relating to the matters set out
 in section 629 of the Civil Procedure Code
 (Chapter 101).

35 (4) The plaint referred to in subsection (3) shall, as
 required by section 629 of the Civil Procedure Code
 (Chapter 101), be supported by an affidavit, verifying
 the facts stated in the plaint and made by the manager
 of the bank or an officer of the bank authorized in that
 behalf by the manager.

(5) On receipt of the plaint under subsection (3), the Court shall discharge the bank from the proceedings and notice the claimants to establish their claim to the sum deposited in Court.

5 (6) After hearing the claimants or such of the claimants who may appear before the Court, the Court shall determine the claims and the order of priority for distribution of the money due on such claims out of the sum deposited in Court.

10 (7) In determining the order of priority, the Court shall have regard to the date on which the rights under the claims arose and, where the rights arose under the instrument requiring registration, the date of such registration of the instrument.

15 (8) The sum deposited in Court shall be distributed by Court in accordance with the determination made under subsection (6).

20 (9) The provisions of Chapter XLIII of the Civil Procedure Code (Chapter 101) shall, *mutatis mutandis*, apply to, and in relation to, any reference made to a District Court under subsection (2) of this section.”

10. Section 15 of the principal enactment is hereby amended as follows :-

Amendment
of section 15
of the
principal
enactment.

25 (1) in subsection (1) of that section by the substitution for the words “interest of the borrower”, whenever they occur, of the words “interest of the borrower or, where the borrower is not the mortgagor of such property, of such mortgagor”;

30 (2) in subsection (2) of that section, by the substitution for the words “complied with.” of the words “complied with and, where the property sold is a motor vehicle within the

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(Amendment)

5 meaning of the Motor Traffic Act, the Commissioner of Motor Traffic appointed under section 204 of that Act shall, on submission of the certificate of sale, register the motor vehicle in the name of the purchaser on the payment of the fees prescribed thereto under that Act.”

11. Section 16 of the principal enactment is hereby amended as follows :-

Amendment of section 16 of the principal enactment.

10 (1) in subsection (3) of that section by the substitution for the words “borrower, or some person on this behalf or same person claiming under a title created by the borrower” of the words “borrower or the mortgagor or any person on behalf of the borrower or mortgagor or some person claiming under a title created by the borrower or mortgagor” ;

15 (2) by the repeal of subsection (4) of that section and the substitution therefor of the following subsection :-

20 “(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 by virtue of an agreement entered into by and between the borrower or the mortgagor and the tenant or other person prior to the execution of the mortgage bond in favour of the bank provided that written notice of sch agreement was given to the bank by the borrower or the mortgagor on or before the execution of the mortgage bond, 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 any other customary mode or in such manner as the court may direct, at some convenient place, that the interest of the borrower or the mortgagor, as the case may be, 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.”

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- (3) in subsection (5) of that section, by the substitution for the words "the borrower" of the words "the borrower or where the borrower is not the mortgagor, the mortgagor".

5 12. Section 17 of the principal enactment is hereby amended as follows :- Amendment of section 17 of the principal enactment.

(1) by the substitution for the words "upon the borrower or any person on his behalf" of the words "upon the borrower or mortgagor or any person on behalf of the borrower or mortgagor";

10 (2) by the substitution for the words "in the borrower" of the words "in the borrower or, where the borrower is not the mortgagor, in the mortgagor".

15 13. Section 18 of the principal enactment is hereby amended as follows :- Amendment of section 18 of the principal enactment.

(1) by the renumbering of that section as subsection (1) of that section and by the substitution in the renumbered subsection (1) for the words and figures "subsection (3) of section 16" of the words and figures "subsection (3) of section 15";

20 (2) by the insertion immediately after subsection (1) of the following subsections :-

25 "(2) At the time of the execution of the mortgage bond in favour of the bank on the security of which a loan is granted by the bank, the mortgagor may, in the mortgage bond or thereafter by a separate instrument executed by the mortgagor before a notary and two or more witnesses and duly attested by the notary and the witnesses, authorize the bank, where the bank purchases the property on behalf of the bank, to resell the property mortgaged in divided portions at a price which in the view of the bank would be the market value of the divided portions.

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(Amendment)

5 (3) Where a bank is authorized to sell the property in divided portions under subsection (2), the bank may resell the property as divided portions and transfer to the purchaser by an endorsement on a certified copy of the certificate referred to in subsection (3) of the section 15 all the right, title and interest which would have been acquired by the bank to that divided portion at the original sale. The endorsement shall be liable to the same stamp duty and charges as a certificate of sale to a purchaser at a sale and shall when it is registered in the office of the Registrar of Lands in the appropriate folio, vest such right, title and interest in the purchaser.”

14. Section 19 of the principal enactment is hereby repealed and the following section is substituted therefor :-

Replacement of Section 19 of the principal enactment.

15 “Limit of retention of property by the bank. 19. If at 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 longer period than it is necessary to resell the property in its entirety, or when authorized under subsection (2) of section 18, in divided portions for such sum as will cover the total amount due to the bank on account of the loan, interest, expenses and costs or for such sum, being the highest offer made by any person in pursuance of an offer of sale made by the bank by notice published in three daily newspapers in the Sinhala, Tamil and English languages, if the borrower or where the borrower is not the mortgagor, the mortgagor after notice by the bank dispatched to the borrower or mortgagor, as the case may be, of the highest offer so made, fails within thirty days after the service of such notice of the highest offer, to purchase the property from the bank for such sum.”

15. The following new sections are hereby inserted after section 20 of the principal enactment and shall have effect as section 20A and 20B of that enactment :-

Insertion of the new section 20A and 20B in the principal enactment.

5 "Damage to structures on mortgaged property. 20A. Any person who willfully damages, destroys, removes or alters any buildings or any other immovable structures on a property mortgaged to a bank or causes such buildings or structures to be so damaged, destroyed, removed or altered, which results in a reduction of the value of such mortgaged property shall be guilty of an offence and shall on conviction before a magistrate be liable to a fine not exceeding five thousand rupees or to imprisonment not exceeding six years or to both such fine and imprisonment.

10 Liability of bodies corporate or unincorporated. 20B. Where an offence under this Act is committed by a body of person, then—
15 (a) if that body of persons is a body corporate, every director, manager or secretary of that body corporate ;
(b) if that body of persons is a firm, every partner of that firm ; and
20 (c) if that body of persons is a body unincorporated, every individual who is a member of such body, shall be deemed guilty of that offence :

25 Provided that a director, manager, secretary of such body corporate or a partner of such firm or a member of such unincorporated body shall not be deemed guilty of such offence if such person proves that such offence was committed without the knowledge of such person or that such person exercised all due diligence to prevent the commission of such offence.”.

30 16. Section 22 of the principal enactment is hereby amended as follows :—

(1) by the substitution for the definition of the expressions 'Bank' and 'Board' of the following definitions :—

Amendment of section 22 of the principal enactment.

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(Amendment)

' "bank" means—

- (a) a licensed commercial bank and a licensed specialized bank within the meaning of the Banking Act, No. 30 of 1988 ;
- 5 (b) a Finance Company registered under the Finance Companies Act, No. 78 of 1988 ; and
- (c) the Housing Development Finance Corporation of Sri Lanka established by the Housing Development Finance Corporation of Sri Lanka Act, No. 7 of 1997 ;

10 "Board" in relation to a bank means the board of Directors of the bank or any body of persons by whatever name or description called for the time being charged with the management or administration of such bank and include

15 a liquidator appointed under the Companies Act, No. 17 of 1982 or any authority duly appointed to carry on or wind up the business of such bank'.

(2) by the insertion after the definition of the expression 'property' of the following definitions –

20 "resolution" includes a memorandum or statement in writing recording the decision of the Board under section 4 or section 5, as the case may be, and certified by the Board as a true copy of the decision.

25 "upset price" means the sum due on any loan together with the interest, expenses and cost incurred by the bank in respect of that loan as is referred to in section 15'.

17. The following new section is hereby inserted immediately after section 22 of the principal enactment and shall have effect as section 22A of that enactment :-

Insertion of new section 22A of the principal enactment.

"Avoidance
of doubts.

22A. For avoidance of doubts it is hereby declared that any licensed commercial bank or a licensed specialized bank licensed under the Banking Act, No. 30 of 1988 (other than the Companies Act, No. 17 of 1982) may exercise the powers conferred on a bank under this Act."

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

Sinhala text to
prevail in case
of
inconsistency.

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