

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

Part II of July 04, 2003

SUPPLEMENT

(Issued on 07.07.2003)



**DEBT RECOVERY (SPECIAL PROVISIONS)
(AMENDMENT)**

A

BILL

to amend the Debt Recovery (Special Provisions) Act, No. 2 of 1990

Ordered to be Published by the Minister of Finance

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STATEMENT OF LEGAL EFFECT

Clause 2 : This clause amends section 2 of the Debt Recovery (Special Provisions) Act, No. 2 of 1990 and the legal effect of the section as amended will be —

- (i) to enable the institute to increase the monetary value in respect of which any institute may file action for recovery of a loan;
- (ii) to treat the address given to the institution by the defendant as that of the defendants for the institution of action.

Clause 3 : This clause amends section 4 of the principal enactment and the legal effect of the section as amended will be to enable the principal officer of the institution to cause an affidavit to be filed in court either from his personal knowledge or from the knowledge gained from the documents which are available.

Clause 4 : This clause inserts new sections 5D and 5E in the principal enactment and the legal effect of the sections will be —

- (i) to specify the procedure of service of the *decree nisi* on a defendant residing outside Sri Lanka ;
- (ii) to specify the manner of publication of a notice in the event that service cannot be effected.

Clause 5 : This clause amends section 13 of the principal enactment and the legal effect of the section as amended will be to enable the period of validity of the writ to be extended prior to its expiration in order to facilitate the recovery of the loan.

Clause 6 : This clause replaces section 25 of the principal enactment and the legal effect of the section as amended is to create new offences, specify the limitation on the application of the law, and identify the person who can institute action under this section.

Clause 7 : This clause amends section 25A of the principal enactment and the legal effect of the section as amended is to provide for the liability of a body corporate for any offence committed by it and also provides for exclusion of liability of any individual who is a member of an unincorporated body where the offence has been committed without his knowledge.

Clause 8 : This clause amends section 30 of the principal enactment by replacing the definition of the expression “debt” and by the inclusion of “licensed specialized banks” into the definition of the expression a lending institutions.

Debt Recovery (Special Provisions)
(Amendment)

L. D. — O. 48/2000.

AN ACT TO AMEND THE DEBT RECOVERY (SPECIAL PROVISIONS) ACT,
No. 2 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 Debt Recovery (Special Provisions) (Amendment) Act, No. of 2003. Short Title.

2. Section 2 of the Debt Recovery (Special Provisions) Act, No. 2 of 1990 (hereinafter referred to as the ‘principal enactment’) is hereby amended as follows :— Amendment of section 2 of Act, No. 2 of 1990.

(1) in subsection (2) of that section by the substitution for the words “one hundred and fifty thousand rupees” of the words “fifty thousand rupees”; and

(2) by the addition immediately after subsection (2) of that section of the following subsection :—

“(3) For the purposes of subsection (1), a defendant shall be deemed to reside at the address given by the defendant to the institution as the address to which process may be served on the defendant.”.

3. Section 4 of the principal enactment is hereby amended by the repeal of subsection (4) of that section and the substitution therefor of the following subsection :— Amendment of section 4 of the principal enactment.

“(4) The affidavit to be filed by the institution under subsection (1) shall be made by the principal officer of such institution who shall swear or affirm to the matters contained in the affidavit from his personal knowledge or from the knowledge acquired after perusal of the documents available at the institution in relation thereto and shall be liable to be examined as to the subject matter thereof at the discretion of the judge.”.

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4. The following new sections are hereby inserted immediately after section 5C of the principal enactment and shall have effect as sections 5D and 5E of that enactment:—

Insertion of new sections 5D and 5E of the principal enactment.

“Service of
5 *decree nisi*
out side
Sri Lanka.

5D. (1) Where a defendant is resident outside Sri Lanka, leave to serve the decree nisi outside Sri Lanka may be granted by the court on an application made thereto, supported by an affidavit sworn or affirmed to by the principal officer of the institution, specifying from his personal knowledge or on information acquired from the documents available at the institution the place or country in which the defendant is or may be found.

(2) An order granting leave for service of the *decree nisi* outside Sri Lanka shall specify the manner by which service of such *decree nisi* shall, be effected, the manner in which proof of such service may be established and require the institution to denote in or in a note affixed to the *decree nisi* a place at which the plaint, affidavit, instrument, agreement or document sued upon or relied upon by the institution may be examined or copied.

Production of
25 *decree nisi*.

5E. (1) Where service of the *decree nisi* cannot be effected in the manner set out in sections 5A 5B, 5C, or 5D, the court may on an application made by the institution order the *decree nisi* to be published in three daily newspapers in the Sinhala, Tamil and English Languages and the cost of such publication to be borne by the institution.

(2) An order under subsection (1), shall also require the institution to publish in addition to the *decree nisi* a note or memorandum in such

publication denoting a place at which the plaint, affidavit, instrument, agreement or document sued upon or relied on by the institution may be examined or copied.

5 (3) A *decree nisi* shall be deemed to be duly served on the defendant on the day on which the *decree nisi* is last published in accordance with the provisions of subsections (1) and (2).”.

10 5. Section 13 of the principal enactment is hereby amended in subsection (2) of that section by the substitution for the words “execution of writs.” of the following words :—

Amendment of section 13 of the principal enactment.

“the execution of writs :

15 Provided that the writ may at any time before the expiration of its period of validity be extended for further periods till the money due on the writ is recovered in full.”.

6. Section 25 of the principal enactment is hereby repealed and the following section is substituted therefor :—

“Offences.

Replacement of section 25 of the principal enactment.

20 25. (1) Any person who draws a cheque which is returned unpaid by a bank for insufficiency of funds or due to a closure of the account on which the cheque is drawn or because the amount stated on the cheque exceeds the amount arranged to be paid from the account on which the cheque is drawn by an agreement made with the bank shall, subject to the provisions of subsection (2), be guilty of an offence under this Act and shall on conviction by a Magistrate be liable to a fine not exceeding twice the amount for which the cheque was drawn or to a term of imprisonment not exceeding one year or to both such fine and

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imprisonment.

(2) The provisions of subsection (1) shall not apply unless —

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(a) the cheque has been presented to a bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

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(b) the payee, or the holder in due course, of the cheque, as the case may be, makes a demand for the payment of the money stated on the cheque by serving a notice in writing to the drawer of the cheque or where such notice cannot be served on the drawer for insufficiency of the address of the drawer, by publishing such notice in a daily newspaper in the Sinhala, Tamil and English languages within thirty days after the return of the cheque by the bank ;

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(c) the drawer of the cheque fails to make the payment of the money demanded under paragraph (b) within thirty days after the receipt or publication of the notice under that paragraph to the payee, or to the holder as the case may be in due course.

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(3) It shall not be a defence for the accused in any offence under subsection (1) to plead that he had no knowledge of the facts specified in subsection (1).

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(4) A prosecution for an offence under subsection (1) may be instituted by the payee,

the holder in due course, of the cheque as the case may be or by a police officer in the Magistrate's Court within whose jurisdiction –

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- (a) the payee, or the holder in due course, of the cheque resides ;
 - (b) the drawer of the cheque resides ;
or
 - (c) the bank which dishonoured the cheque is situated.

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(5) Whenever a person is convicted of an offence under subsection (1), the Magistrate may, in addition to the penalty imposed for such offence, order the person convicted to pay such sum as may be determined by the Magistrate as expenses incurred in the prosecution of the offence and such sum when recovered shall be paid to the person incurring such expenses.

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(6) Whenever a fine is imposed by a Magistrate for an offence under subsection (1), the Magistrate may direct that the whole or any part of the fine recovered, be paid to the payee, or the holder in due course, of the cheque in settlement of the sum for which the cheque was drawn.

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(7) An offence under subsection (1), shall be deemed to be a cognizable offence within the meaning of the Code of Criminal Procedure Act, No. 15 of 1979.

(8) Any person who –

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- (a) gives an order to a banker to pay a sum of money, which payment is

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(Amendment)

not made by reason of there being no obligation on such banker to make payment or the order given being subsequently countermanded with a dishonest intention ; or

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(b) gives the authority to a 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, of 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 being withdrawn by reason of such person countermanding the authority given or by reason of any one or more of such reasons ; or

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(c) having accepted an inland bill refuses payment dishonestly,

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shall be guilty of an offence under this Act, and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine of ten thousand rupees or ten *per centum* of the full value of the order, authority or inland bill in respect of which the offence is committed, whichever is higher, or to both such imprisonment and fine.

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(9) In this section the expressions ‘cheque’, “dishonoured”, “banker” and “inland 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).

7. Section 25A of the principal enactment is hereby amended as follows :—

Amendment
of section 25A
of the
principal
enactment.

- 5 (1) in paragraph (a) of that section by the substitution for the words “is a body corporate” of the words “is a body corporate, that body corporate and”,
- (2) in the proviso to that section by the substitution for the words “a partner of such firm” of the words “a partner of such firm or an individual who is a member of such unincorporated body”;

10 8. Section 30 of the principal enactment is hereby amended as follows :—

Amendment
of section 30
of the
principal
enactment.

(1) by the repeal of the definition of the expression “debt” and the substitution therefor of the following definition—

15 “ ‘debt’ means a sum of money which is ascertained or capable of being ascertained at the time of institution of the action and which is in default, whether the same be secured or not, or owed by

20 any person or persons jointly or severally or as principal borrower or guarantor or in any other capacity and alleged by a lending institution to have arisen from a transaction in the course of banking, lending, financial or other allied

25 business activity of that institution and includes a sum of money drawn and unpaid by a person on an overdraft facility granted by that institution.”;

(2) in the definition of the expression “lending institution”—

30 (a) by the substitution in item (a) of that definition for the words “licensed Commercial bank” of the words “licensed commercial bank or

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- licensed specialized bank” ; and
(b) by the repeal of items (b), (c), (d) and (e) of that definition.

9. 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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