

## ACTS OF SRI LANKA

### Recovery of loans by Banks (Special Provisions)

Act No 4 of 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.

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

Short title	<b>1.</b> This Act may be cited as the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990.
Registered address of borrower	<p><b>2.</b></p> <p>(1) Every person</p> <p>(a) to whom any loan is granted by a bank on the mortgage of property, or</p> <p>(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</p> <p>(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</p> <p>(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 have been given to him on the day on which such notice is last published.</p>
Action by Board default is	<b>3</b> 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 discretion, 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 and section 4 if the Board deems it advisable or necessary to do so,
Authorization of sale of mortgaged property.	<b>4.</b> Subject to the provisions of Section 7 the Board may by resolution to be recorded in Willing authority 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, together with the money and costs recoverable under section 13.
Authorization of Manager to take possession of mortgaged property.	<p><b>5.</b></p> <p>(1) Subject to the provisions of Section 7 the Board may by resolution to be recorded in Willing authority 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 loan 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.</p> <p>(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 situated, 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.</p>
Procedure where manager is appointed.	<b>6.</b>
	(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 at to fix as remuneration for his services;
  - (f) to remain in possession of well 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 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.

Where borrows **7.**

- (1) Save as otherwise provided in subsection (2) the, provisions of section 4 shall apply in the case of any default is dead, 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 any 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.

Notice of resolution.

**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 dispatched 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.

Notice of sale.

**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-

- (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.

Payment before sale.

**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 installment 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 substitution under section 4 for the sale of that property.

Upset Price.

**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.

Default in respect of one of several loans on same property. **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 previsions of any other written law.

Recovery of expenses and costs incurred by the bank. **13.**

In addition to the am due on any loan the Board amount or any person acting on 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 charge, 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.

Payment of excess. **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 mortgage property is situate.

Certificate **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 die property to the bank, in any court to move or invalidate the sale for any cause whatsoever, or to maintain any 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 pro- visions of this Act.

Order for delivery of possession **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 that property is situate, And upon production of the certificate of sale issued in respect of that property under section 15, be, entitled to obtain 31 order for delivery of possession of the that property

(2) Every application under subsection (1) shall be made and shall be disposed of, by way summary procedure, in accordance with the. provisions of Chapter XXIV of the Civil Procedure code ; and on all documents filed 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, of 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.

	<p>(3) Where the any immovable property sold in pursuance of the preceding provisions of this Act in the occupancy of the borrower or some person on this 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 nay person whom he may appoint to receive possession on His behalf, in possession of the property.</p> <p>(4) Where any immovable property sold in pursuance of the preceding provisions of this Act is in the occupancy of tenant or other person entitle 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 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.</p> <p>(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 2SS 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 judgment debtor and judgment creditor, respectively.</p>
Cancellation of sale.	<b>17.</b> 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, re-vest the said property in the borrower as though the sale under this Act has never been made.
Resale by the lender.	<b>18.</b> If the property so sold has been purchased on behalf of the bank and the sale is 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 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 Land's vest such right, title and interest as aforesaid in the purchaser.
Limit of retention of property by the bank.	<b>19.</b> If at any sale in pursuant, 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 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.
Offence.	<b>20.</b> Any person who without reasonable cause, resists, obstructs or prevents a person authorized by the B land by a resolution under section 4 to sell and 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 imp imprisonment and fine.
Regulations.	<b>21.</b> <p>(1) The Minister may make regulations for or in respect of all matters required by this Act to be prescribed.</p> <p>(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 as may be specified in the regulation.</p> <p>(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</p> <p>(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.</p>
Interpretation.	<b>22.</b> In this Act, unless the context otherwise requires ' <p>"bank" means a licensed commercial bank within the meaning' of the Banking Act, No. 30 of 1988, other than</p> <p>(a) the Bank of Ceylon established by the Bank of Ceylon Ordinance (Chapter 397);</p> <p>(b) the People's Bank established by the People's Bank Act, No. 29 of 1961 ;</p> <p>(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) ;</p> <p>" 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 ;</p> <p>" Joan " means a loan of money and includes any overdraft or advance or any other monetary accommodation by whatever name or designation called ;</p>

sinhala text to prevail in case of inconsistency.

" 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.