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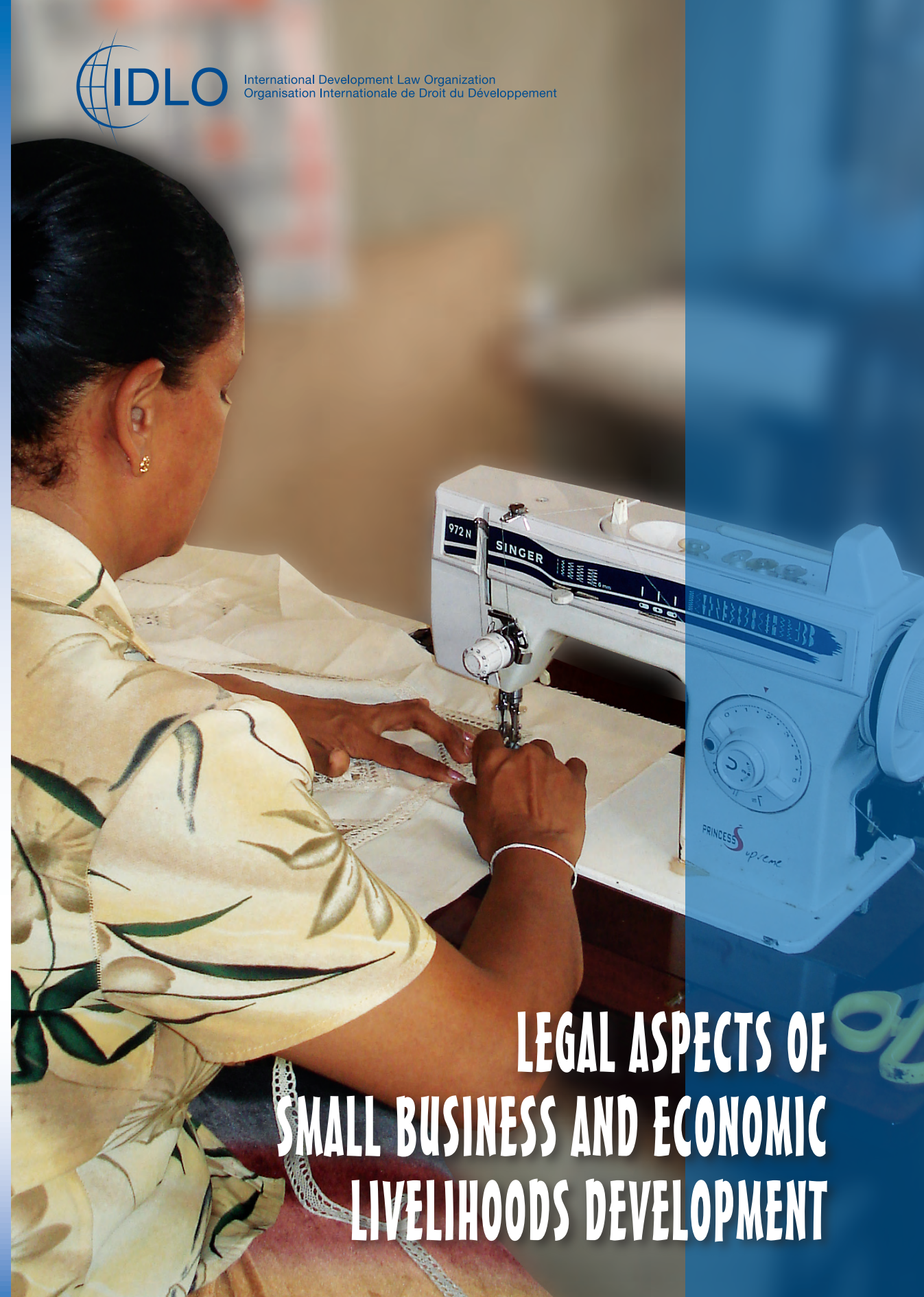
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**LEGAL ASPECTS OF
SMALL BUSINESS AND ECONOMIC
LIVELIHOODS DEVELOPMENT**

Cover photo shows a micro credit beneficiary from a SEEDS project in Galle,
photo by Ms. Harshani Ranasinghe, IDLO 2007

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LEGAL ASPECTS OF SMALL BUSINESS AND ECONOMIC LIVELIHOODS DEVELOPMENT



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Foreword

The International Development Law Organization (IDLO) works for the establishment of the rule of law as an essential pre-condition for economic development and poverty reduction. When the rule of law is operating, a transparent set of rules for economic activity exists which defines the rights and obligations of all economic operators. Where there is transparency and certainty, economic activity will flourish. This idea has guided IDLO's work in Sri Lanka since the devastating Tsunami of December 2004 (the Tsunami) and is the basis for this Guidebook on Legal Aspects of Small Business and Economic Livelihoods Development.

The Tsunami severely affected economic livelihoods in Sri Lanka. Many businesses were destroyed and many income earners lost their lives or suffered serious injuries. In 2005, the United Nations Development Programme in Sri Lanka commissioned an extensive public consultation in Tsunami-affected areas of the country to ascertain the needs, concerns and ideas of affected persons and communities. One of the findings which emerged from those consultations was that after resettlement, affected people and communities assigned the highest priority to the re-establishment of their livelihoods.

As part of their post-Tsunami support, the Governments of Finland, Ireland, and Italy provided funding for the implementation of IDLO's Post-Tsunami Legal Assistance Initiative. Under the Initiative, IDLO has provided assistance to Tsunami-affected communities and institutions in Sri Lanka through a range of law-based activities. The Livelihoods Project, which IDLO implemented in partnership with Sarvodaya Economic Enterprise Development Services Guaranteed Ltd (SEEDS) and Sewalanka Foundation (Sewalanka), is an important component of the Initiative. It builds upon the innovative 'microfinance-plus' approach of SEEDS and Sewalanka under which they serve poor and vulnerable communities through a combination of micro loans, training, and associated services. Their work in communities affected by the Tsunami has supported the building of sustainable businesses and other income-generating activities.

As part of a collaborative effort, IDLO provided appropriate legal training to over 400 SEEDS and Sewalanka staff and clients, with priority especially given to those working or living in Tsunami-affected communities. This Guidebook is a compilation of the materials used in that training and will serve as a reference for ongoing efforts by SEEDS and Sewalanka to build understanding and appreciation within the communities they serve of the laws and legal issues relevant to establishing and undertaking business and income-generating activities.

This Guidebook is being distributed widely throughout Sri Lanka and will thus provide to the broader community a body of work that explains laws and legal issues relevant to establishing and undertaking business and income-generating activities. This Guidebook is targeted at non-lawyers, especially those from the disadvantaged and poorer sections of the community, and is therefore written in a way that is easily understood and accessible. IDLO anticipates that the Guidebook will be a practical and useful reference tool, especially for communities seeking to rebuild their economic livelihoods in a legal and sustainable way after the Tsunami.

I wish to recognize the efforts of our partners in this effort, SEEDS and Sewalanka, and IDLO staff in our Rome, Sydney and Colombo offices whose hard work has brought this Guidebook to life and who have worked tirelessly to make the Post-Tsunami Legal Assistance Initiative for Sri Lanka a success. I also wish to thank the Governments of Finland, Ireland, and Italy for providing the generous financial support necessary for this Initiative. Finally, and not least, I wish to acknowledge the courage and determination demonstrated by the Government and people of Sri Lanka to overcome the devastation caused by the Tsunami. Your efforts have inspired us all.



William T Loris
Director-General
International Development Law Organization

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The Guidebook was prepared by a team from the IDLO Sri Lanka Project Office, ably and diligently led by Ms Katarina Woodrow, co-Author and Editor. Overall guidance was provided by Mr Miles Young, Manager of the Post-Tsunami Legal Assistance Initiative for Indonesia and Sri Lanka, and Mr Dinesh Kanagaratnam, Chief of Party, IDLO Sri Lanka Project Office.

The contents of the Guidebook were largely informed by, and drawn from, the training manuals prepared by Mr Ranil Samarasekera, Attorney at Law, and Mr P.B. Tennekoon, for capacity building training workshops that IDLO implemented for staff of Sarvodaya Economic Enterprise Development Services Guaranteed Ltd (SEEDS) and Sewalanka Foundation, and their members and clients from grassroots communities across Sri Lanka, on laws and legal issues relevant to the establishment and undertaking of businesses and income-generating activities.

Contributions to the Guidebook were made by the following: Mr K.H. Muthukuda Arachchi, Deputy Director-General, Environmental Pollution Control, Central Environmental Authority (Chapter 1.2(d) Environmental Protection); Mr Ulf Enqvist, Information Counselling and Legal Assistance Program, Norwegian Refugee Council, Colombo (Chapter 1.4: Obtaining Civil Documentation); Mrs C.N. Thilakaratna, Director, Consumer Affairs and Information, Consumer Affairs Authority (Chapter 2: Consumer Affairs); Mr Mano Sritharan, President, Court No. 1, Labour Tribunal (Chapter 4 Labour Law); Mr Nimal A. Fernando, Principal Finance Specialist (Microfinance), Office of the Director-General, East Asia Department, Asian Development Bank, and Ms Anuradha K. Rajivan, UNDP Asia Pacific Human Development Reports Unit, UNDP Regional Centre, Colombo (Chapter 5: Microinsurance) and Mr Naomal Goonewardena, Attorney-At-Law (Chapter 6 - Taxation).

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Preface

In Sri Lanka, the provision of microfinance has assisted individuals and community-based organisations establish businesses and income generating activities, especially in poorer sections of society. It is important that the provision of microfinance, which is a financial loan contract, and the establishment and undertaking of businesses and income generated activities, are in accordance with the law-recipients of microfinance loans and the providers of such loans should be aware of their respective legal rights and obligations, while businesses and income-generation should be conducted in an environment in which the legal rights and obligations of all players are understood and respected. Where there is certainty and transparency, microfinance loans are more likely to be repaid, economic activity is more likely to flourish, and businesses and income generating activities are more likely to be sustainable.

Throughout 2007, IDLO provided training to over 400 staff and members and clients of Sarvodaya Economic Enterprise Development Service Guarantee Ltd (SEEDS) and Sewalanka Foundation Ltd within the framework of its Post-Tsunami Legal Assistance Initiative for Sri Lanka. The training focused on laws and legal issues relevant to establishing and undertaking sustainable businesses and income-generating activities.

The contents of this Guidebook are informed by and drawn from the training manuals used in the training provided to the staff and members and clients of SEEDS and Sewalanka Foundation. In the course of preparing the Guidebook, IDLO consulted extensively with experts and stakeholders to ensure non duplication, relevance and usefulness of the contents of the Guidebook.

This Guidebook is intended to be used as a reference tool for establishing and undertaking a business in accordance with the laws of Sri Lanka and for ensuring that the operation of the business is legal and sustainable. The Guidebook is intended to identify and highlight relevant legal considerations, rather than be a complete set of information, as each business is different and therefore governed by different laws, procedures and concerns. Applicable laws and relevant authorities are listed as a starting point for finding further information, and preparing and submitting application forms where necessary.

Chapter 1 - Setting up your business - Legal procedures and documentation, has four parts. Part 1.1 contains information for setting up a business structure, and describes common types of business structures and the procedures to register a business in accordance with the relevant laws. Part 1.2 explains why it is important to obtain the proper licences, permits and certification to operate the business to ensure its operation is legal, and as an example explains the procedure to obtain environmental protection licences and import/export licences. As it is impossible to list every licence, permit or certification that exists in Sri Lanka, Part 1.2 serves as a starting point of reference only to assist in identifying which licence, permit or certification may be required for your business. Part 1.3 contains information on banking, including the rights and obligations of a Bank and customer, how to open a bank account, different types of Banks and Bank accounts available in Sri Lanka, as well as remittances and cheques. Part 1.4 describes the process of obtaining original or copies of identification documents such as a birth, death or marriage certificate, national identity card, and land deeds.

Chapter 2 - Consumer protection, explains the role of the Consumer Affairs Authority, the importance of protecting the rights of the consumer, the duties of traders and manufacturers (such as correct labelling and maintaining standards of quality), penalties for breaches/non-compliance, and how to make a complaint to the Consumer Affairs Authority.

Chapter 3 - Contracts, sets out a person's rights and obligations under a contract, as well as essential elements to include in a contract to ensure it is enforceable. It includes useful information to consider before entering into a contract (including legal capacity, informed consent and guarantors), and explains elements that can make a contract void (such as mistake, misrepresentation, duress and undue influence).

Chapter 4 - Labour Law, provides information on the rights and obligations of both the employer and employee, including employment contracts, entitlements, common employment disputes, particular rights of women, young people and children, Employees Provident Fund (EPF), Employees Trust Fund (ETF), payment of gratuities, termination of employment, and resolution of industrial disputes.

Chapter 5 - Microinsurance, explains why it is important to consider obtaining insurance for business assets, what microinsurance is (and how it differs from traditional insurance policies) and why insurance cover for accidents and health are important to protect against personal loss and loss or damage to economic livelihoods.

Chapter 6 - Taxation, provides information on taxation concerns for individuals and businesses.

Chapter 7 - Dispute resolution, provides an overview of the different ways of resolving disputes in Sri Lanka, either by formal litigation in a court of law, or by alternative dispute resolution mechanisms such as through mediation, facilitation or arbitration.

Chapter 8 - Microfinance institutions in Sri Lanka, serves as a contact directory for Microfinance Institutions operating in all Districts across Sri Lanka.

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CHAPTER - I

Setting up Your Business Legal Procedures and Documentation



Setting up your business at a glance:

- Before a business can lawfully commence operation in Sri Lanka, the business must be registered with the appropriate government department.
- To register a sole proprietorship or partnership, you must register the business name and owner's/partners' name(s) with the appropriate government department.
- To register a company, the company must become incorporated.
- If an existing business changes its name, its business particulars or ceases operation, these changes must also be registered.
- If you fail to register your business (or changes to your business) you and/or your business may be subject to substantial penalties, such as fines or imprisonment.
- A business must obtain the proper licences, permits and/or certification to ensure that it operates in accordance with the relevant laws, standards and procedures.
- You must consider any effect your business may have on the environment and obtain an Environment Protection Licence if necessary.
- If you import or export goods, you may have to obtain an import or export licence.
- You should consider whether you need to open a bank account to manage any money that the business may generate.

1.1 Business Registration

There are several procedures to complete before a business can lawfully commence operation in Sri Lanka. The first step is to ensure that your business is legally registered with the appropriate government authority. There are different registration requirements and procedures for different types of businesses.

(a) Types of businesses

The most common types of businesses are:

- sole proprietors;
- partnerships; and
- companies.

A sole proprietor is a business with only one owner who is personally responsible for all assets and liabilities of the business.

A partnership is a business that is managed and owned by two or more 'partners' (with a maximum of 15 partners). The assets and liabilities of the business are shared between the partners.

A company is a business that is managed by directors and owned by shareholders. It has the most formal business structure and only comes into existence after it is 'incorporated'. (For further information on how to incorporate a company, refer to section 1.1(c)(ii) of this chapter). Once incorporated, a company becomes its own legal entity (a body corporate), meaning that it has the same legal capacity as an individual person. It can carry on business, buy property, employ people, borrow money, enter in to contracts, sue and be sued in its own name. The assets and liabilities of the company are separated from the assets and liabilities of the company's directors and shareholders. A company also has perpetual succession which means that if a director or shareholder dies, the company can continue to exist.

The most common types of companies are:

- **private company** - a company that is limited to having between 2 to 50 shareholders. A private company is prevented from offering its shares to the general public or to its employees;

- **public company** - a company that is limited by shares and has at least 7 or more shareholders. The public company's shares are available for the public to invest in and can also be listed on the stock exchange;
- **limited liability company** - companies that have a similar structure to a partnership but its shareholders are not personally liable for the company's debts and liabilities. Shareholders may participate in the management of the company without risking personal liability. That is, they cannot be asked to pay the company's creditors if the company is wound up; and
- **people's company** - a company where the nominal value of a share is limited. It must have a minimum of 50 members.

(b) Why should you legally register your business?

You should legally register your business because it is required by law. The *Business Names Ordinance No.6 of 1918* requires every sole proprietor and partnership in Sri Lanka to register their business name. If you conduct business with an unregistered business name, you will be committing a crime. Each owner/partner of the unregistered business may be subject to substantial penalties, such as fines or imprisonment. The main purpose in registering a business name of a sole proprietorship or a partnership is to ensure accountability of those businesses.

All companies are legally required to be registered at the **Registrar of Companies** ("Samagam Medura") in accordance with the terms of the provisions of the *Companies Act No. 07 of 2007*. Companies also have to register their business name, but this process is carried out through the general process of incorporation of the company.

Similarly, any changes to an existing business name or its particulars must also be registered. The Registrar of Companies must be notified in writing of the nature and date of the change. If the Registrar is not notified of the change, the business and its owners will be subject to penalties (a fine). The owners will also be subject to a fine (up to Rs.100/- for each day that the business remains unregistered, commencing either from the date that the new business commenced, or from the date the name or particulars were changed).

The Registrar of Companies must be notified if a business is terminated. The owners of the business must notify the Registrar of Companies within three months after the date on which the business ceased to operate. If you do not notify the Registrar of Companies that the business has been terminated, you may be liable to pay a fine of up to Rs. 300/-.

The only time that it is not mandatory to register a company with the Registrar of Companies is when:

- the addition of a name merely indicates that the business is carried on in succession to a former owner of the business; or
- the business is carried on by the assignee of an insolvent's estate, or a receiver or manager or curator appointed by any court.

A purchase or other acquisition of property by two or more persons, whether or not the owners share any profits arising from the sale, is not classified as carrying on a business and therefore does not need to be registered with the Registrar of Companies.

(c) How to register your business

To set up any kind of business in Sri Lanka, you will need to lodge an application form with the relevant government authority. You may also be required to pay a lodgement fee with your application.

Many of the application forms will require you to provide documentation to confirm your identity, such as a National Identity Card, Passport, Birth Certificate and/or Marriage Certificate. If you do not already have these documents, you will need to obtain them. (*To learn how to obtain identification documents refer to section 1.4 of this Chapter, titled "Obtaining Civil Documentation"*).

Other information that is commonly required for an application to register a business includes:

- the business name you intend to register;
- the general nature of the business;
- the principal place of business;
- if the business is a sole proprietor:
 - the owner's present name (in full) and any former name (in full)
 - the owner's nationality, and if that nationality is not the nationality of origin, the owner's nationality of origin

- the owner's usual residence, and
- the owner's other business occupation (if any);
- if the business is a partnership:
 - the present name and any former name of the partnership
 - the full names and National Identity Card numbers of each of the partners
 - the nationality of the partners, and where that nationality is not the nationality of origin, the partners' nationality of origin
 - the usual residence, and the other business occupation, if any, of each partner, and
 - the corporate name and registered or principal office of every corporation which is a partner;
- if the business is a company: its corporate name and registered or principal office and the names and nationalities of its directors; and
- the date of the commencement of the business (if the business commenced after the passing of the Business Names Ordinance).

You must complete the relevant application form and submit it to the Registrar of Companies within fourteen days of the business commencing operation. An extension of the 14 day time limit may be granted at the discretion of the Registrar of Companies, approved on a case by case basis.

(i) Procedures for registering a sole proprietorship or partnership

The registration system in Sri Lanka for sole proprietors and partnerships is quite simple; only the business name and owner's/partners' name(s) must be registered.

If the sole proprietorship or partnership is located in Colombo, the business name and owner's/partners' name(s) must be registered at the **Provincial Companies Registrar's Office** in Colombo. If the sole proprietor or partnership is situated outside of Colombo, the business name and owner's/partners' name(s) will need to be registered at the **Office of the Divisional Secretariat**.

If you are registering a partnership, it is best to include a written *partnership agreement* with your application. A partnership agreement is an agreement between the partners that sets out the terms and conditions of the partnership

relationship (including the entitlements and liabilities of each partner and how to resolve a dispute within the partnership). It is not mandatory to include this agreement with your application for business name registration. However, if you do not include it, then all of the partners will, by default, be equally responsible for the assets and liabilities of the business (including any debts or losses incurred) and the partners would have to fall back on the *Partnership Ordinance No 21* of 1866 in order to resolve the dispute. It is important to note that the *Prevention of Frauds Ordinance*, requires a partnership to have a written partnership agreement if the partnership's capital exceeds Rs. 1,000/-.

(ii) Procedures for registering a company

Before a company can lawfully commence operation in Sri Lanka, the company must become *incorporated*. A company is incorporated when it has been legally recognised as a separate entity having its own privileges, rights, and liabilities distinct from other businesses and persons. To become incorporated, the company must be registered at the **Registrar of Companies** ("Samagam Medura") in accordance with the provisions of the *Companies Act No. 07 of 2007*.

Any person or persons can apply to incorporate a company (other than a company limited by guarantee) by lodging an application for registration to the Registrar of Companies. The application must be provided in the prescribed form (*available from the Registrar of Companies office, or online at <http://www.drc.gov.lk/App/ComReg.nsf?Open>*) signed by each of the initial shareholders, and be accompanied by the following documents:

- a declaration stating that to the best of such person or persons knowledge, the name of the company is not identical or similar to that of an existing company;
- the company's articles of association signed by each of the initial shareholders. (A company's *articles of association* set out the regulations governing the internal management of the company. It should describe the rights of the shareholders, duties and powers of the directors, how to issue and transfer shares, how to alter capital or borrow funds, matters regarding general meetings, voting rights, dividends, account management, audit processes and winding up);

- consent from each of the initial directors to act as a director of the company (consent must be in the form proscribed by section 203 of the *Companies Act*); and
- consent from the initial secretary to act as secretary of the company (consent must be in the form proscribed by section 221(2) of the *Companies Act*).

Once the Registrar of Companies approves the application for registration, the Registry will issue a Certificate of Incorporation as confirmation that the company is registered and authorized to carry out business in Sri Lanka. You must then publish the name of the company in Sinhalese, Tamil and English newspapers, within one month of incorporation. Any queries in relation to the format of the publication should be directed to the Registrar of Companies.

Please note that the registration process may differ depending on the type of company that is to be incorporated. You should always enquire with the Registrar of Companies as to specific registration process for your company before making an application for registration. The Registrar of Companies' contact details are listed at the end of this chapter.

1.2 Licences, Permits and Certification

Once a business has been registered, the proper licences, permits and/or certification must be obtained to ensure that the business operates in accordance with the relevant laws, standards and procedures. There are many different types of licences, permits and certification.



(a) Types of licences, permits and certification

The licences, permits and/or certifications you will need to obtain for your business will depend on the type of business and business activities you carry out. If you operate one or more of the following business activities, it is most likely that you will need to obtain at least one licence, permit and/or a certificate of some kind:



- Producing small scale garments (dress making);
 - Producing dry fish products;
 - Producing handicrafts;
 - Producing home based food items (jam, hoppers, string hoppers, etc);
 - Operating grinding mills;
 - Packaging food items;
 - Operating a tea kiosk;
 - Operating a restaurant;
 - Manufacturing cement based products;
 - Poultry farming;
 - Manufacturing Confectionaries (sweets);
 - Operating a beauty parlour;
 - Operating agriculture collecting centers;
 - Patchworking and painting;
 - Small scale dairy farming;
- Manufacturing coir based products;
- Vegetable cultivation;
- Paddy farming;
- Selling fish, either alive (for aquariums) or for consumption;
- Manufacturing furniture;
- Mushroom cultivation;
- Manufacturing jewellery;
- Operating communication or video centers;
- Operating small boutiques;
- Selling goods that have been imported;
- Exporting goods;
- Providing a service such as carpenter, plumber, electrician, welder, or builder;
- Operating any kind of a factory; or
- Operating a metal quarry.

It is important to note that this list is not conclusive; it is impossible to list every licence, permit and/or certification that is required for each type of business or business activity. Accordingly, you will need to seek advice from your relevant local authority. The local authority will be able to inform you of the application process for each particular licence, permit or certificate that you need. Application processes will most likely differ for each licence, permit or certificate. (*A list of the relevant local authorities' contact details can be found at the end of this chapter.*)

(b) Why should you obtain licences, permits and/or certification for your business?

It is important to obtain all required licences, permits and/or certifications for your business to ensure that your business complies with the law. If you do not obtain a licence, permit and/or certification that you are required by law to obtain, government authorities could issue substantial penalties against you and your business. Such penalties include fines, closure of the business, and in some cases imprisonment, which could affect your business and your ability to sustain your livelihood.

Common excuses made for not obtaining a licence, permit and/or certification:

It is too expensive

- If you get caught without a required licence, permit or certification, the fine will be more expensive than the original cost of the license (and in most cases you will still be required to pay for the licence).
- A legally certified business will be more reputable and attract more customers. More customers mean more profit.
- If you obtain certification, you will often be taught methods to improve the way you operate your business, making it more successful in the long run.

I don't have time

- Some licences and permits can be issued on the spot, after you lodge an application form and pay the required fee.
- Depending on the type of certification required, some courses are offered outside of business hours.

I don't know who to contact

- Ignorance of the law or mistake of the law is not a valid defence against prosecution for operating a business without the relevant licences, permits or certificates. A list of useful contacts for information on licenses, permits and certification can be found at the end of this chapter.

Case Example

Mr Gunasekera was a government servant who took an early retirement from government service and started his own yoghurt manufacturing business. He had personally saved Rs. 250,000/- and got a loan for another Rs. 100,000/- from a cooperative rural Bank to start up the business. He invested the entire amount of money and employed 3 people for this business. However, he did not obtain the proper food and hygienic certificate from the relevant local authority to undertake his business in accordance with the law. Instead, he fraudulently printed a pretend licence number on the yoghurt containers. After six months someone discovered that he was pretending to be properly licenced, and informed the relevant local authority. The local authority ordered that his business be closed down, and that he pay a substantial fine to the government. Mr Gunasekera is now without an income and was forced to move out of his house as he was unable to repay his loan.

(c) How to obtain relevant licences, permits and/or certification

Different government departments and agencies issue licences, permits or certification, depending on the nature, scale and activities of the business to be conducted. To ensure your business is being conducted in accordance with the relevant regulations, you should contact the relevant government department or local authority. Each government department or local authority has different procedures for applying for or renewing licences, permits or certification, so it is best to contact them directly. A list of government departments and useful contact details are listed at the end of this chapter.

(d) Environmental Protection Licences

When setting up a business, either small, medium or large scale, it is important to consider any possible effects on the environment, and prevent any environmental damage.



(i) Why you should care about environmental protection

Pollution can cause your workers, your family, and you to become sick. It also has lasting effects on the environment around you and negatively affects crops, food security, ecosystems and biodiversity.

Industries of all sizes are subject to environmental standards. Business activities and processes that release particles, liquids, gases or solid waste into the air, water or land are regulated by the **Central Environmental Authority** and must obtain an Environmental Protection Licence (EPL) from the Central Environmental Authority before conducting their business activities.

The Central Environmental Authority will prosecute any business found without an EPL if they are required to have one in accordance with the *National Environmental Act No. 47 of 1980* and the *Gazette Notification No. 1159/22* dated 22 November 2000. Any person found in violation of the terms and conditions of an EPL are criminally liable, that is, they are guilty of a criminal offence and subject to punishment (being a fine no less than Rs.10,000/-, or a term of imprisonment not less than one year, or both).

In addition, physical waste (including rubbish and water) is actually an indicator of an inefficient production system, and changes to the mode of production to reduce waste can save the business money and resources. Consider recycling your organic waste rather than burning it, or better still, improving your business practice to reduce the amount of waste produced in the first place.

(ii) The Central Environmental Authority

The Central Environmental Authority is the body that monitors, regulates and enforces environmental protection and improvement of the quality of the environment in Sri Lanka. The Central Environmental Authority is responsible for regulating, maintaining and controlling the volume, types, constituents and effects of waste, discharge, emissions, deposits or other sources and sub sources of pollution which are of danger or potential danger to the quality or the environment, especially pollution caused by industry.

Section 33 of the *National Environmental Act* provides definitions of “waste”, “environment” and “pollution” as follows:

Waste includes any matter prescribed to be waste and any matter, whether liquid, solid, gaseous or radioactive, which is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration of the environment.

Environment means the physical factors of the surroundings of human beings including the land, soil, water, atmosphere, climate, sounds, odours, tastes and the biological factors of animals and plants of every description.

Pollution means any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the environment by the discharge, emission, or the deposit of wastes so as to effect any beneficial use adversely or to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, aquatic life, or to plants of every description.

(iii) Who must obtain an Environmental Protection Licence?

It is mandatory for certain types of businesses to obtain an EPL from the Central Environmental Authority. According to the *National Environmental Act* and the *Gazette Notification No. 1159/22* dated 22 November 2000, industries that must obtain an EPL from the Central Environmental Authority before commencing operation are listed in the 'Part A' table, below. For other types of businesses, you can request an EPL from local authorities, although it is not mandatory to obtain one. Activities where an EPL is optional are listed in the 'Part B' table, below.



Part A Industries that must obtain an Environmental Protection License from the Central Environmental Authority
Caustic soda manufacturing industries
Soaps, detergents or any other cleansing preparations manufacturing industries where 25 or more workers are employed
Acid (inorganic or organic) manufacturing or repacking industries
Chemical fertilizer manufacturing, formulating, processing or repacking industries
Insecticides, fungicides, herbicides, pesticides manufacturing, formulating or repacking industries
Oil (mineral oil or petroleum)
Bulk petroleum liquid storage facilities having a total capacity of 150 or more metric tons
Dye and dye intermediate manufacturing or formulating business
Paints (emulsion or enamel), inks, pigments, vanish, polish manufacturing or formulating industries
Petrochemical (basic or intermediates) manufacturing or formulating industries
Explosives manufacturing or formulating industries
Matchsticks manufacturing industries
Industrial gas manufacturing, processing or refilling industries excluding auto gas filling stations
Asphalt processing plants
Industries involved in the manufacture of polymers or polymer based products (i.e. polyethylene, polyvinyl chloride (PVC), polyurethane, polypropylene, polyester, nylon, polystyrene, resins, fiberglass or other man-made fibers etc)
Industries involved in the use of fiberglass as a raw material where 10 or more workers are employed
Synthetic rubber manufacturing or processing or rubber based industries excluding industries which manufacture 100Kg or less per day of ribbed smoke rubber sheets
All types of tyres, tubes manufacturing or tyre rethreading industries
Activated carbon, carbon black manufacturing or coconut shell burning industries having the total input capacity of 10000 or more coconut shells per batch within a single production cycle
Battery manufacturing or reconditioning industries
Any industry involved in the use of asbestos fibers as a raw material
Industries involved in manufacturing, extracting or formulating pharmaceuticals or cosmetic products including intermediates
Industries involved in manufacturing or extracting or formulating Ayurvedic, indigenous medicinal products where 25 or more workers are employed
Printing presses with lead smelting
Batik industries where 10 or more workers are employed

Textile processing (i.e. bleaching, dyeing, printing) industries or garment washing industries
Commercial laundries with dry cleaning operations using organic solvents where 10 or more workers are employed
Tanneries
Leather finishing industries having effluent generating wet operations
Jute processing industries
Industries involved in bleaching or dyeing of natural fiber
Power looms having 25 or more machines or power looms with sizing activities
Sugar factories or sugar refineries
Fermentation industries (Distilleries, Breweries) or alcoholic beverages bottling plants
Vegetable, fruit, meat, seafood, milk-processing industries where 25 or more workers are employed
Abattoirs
Plants (other than coconut) or animal oils/fats extracting industries
Coconut oil extraction industries where more than 25 or more workers are employed
Bakery products, biscuits, confectionery manufacturing industries where 25 or more workers are employed
Instant tea or coffee processing industries
Non-alcoholic beverages manufacturing industries where 25 or more workers are employed
Bottling plants having bottle washing operations using caustic soda
Desiccated coconut mills
Rice mills having wet process and having a production capacity of 5000 kilograms or more per day
Poultry farms having 2500 or more birds
Hatcheries
Piggeries, cattle, and goat farms having 50 or more animals
Animal feed manufacturing industries having a capacity of 25 or more metric tons per day
Cigarettes or other tobacco products manufacturing industries where 50 or more workers are employed
Zoological gardens
Electrical power generating utilities having a cumulative capacity of 300 KW or more excluding hydro solar or wind power generation
Surface treatment of metal or plastic industries including electroplating, galvanizing industries
Iron and steel mills
Foundries and cupolas, furnaces or induction furnaces
Non-ferrous metal processing industries such as lead, zinc, copper, aluminum smelting, secondary lead processing or recovery of metals including silver recovery from photographic chemical solutions
Cement industries (clinker grinding, manufacturing or repacking)

Concrete batching plants having a capacity of 50 or more cubic meters per day
Glass or glass product manufacturing industries
Lime kilns having a production capacity of 20 or more metric tons per day
Ceramic industries where more than 25 or more workers are employed
Processing of non-metallic minerals (i.e. limestone, shell, dolomite, apatite, rock phosphate, sand stone, feldspar, quartz, illmenite, rutile, zircon, mica, graphite, kaolin etc)
Granite crushing or processing industries having a total production capacity of 25 or more cubic meters per day
Paper and pulp industries excluding hand-made papers
Any chemical manufacturing industry not elsewhere mentioned in this list
Any common wastewater (industrial or sewage) treatment plants
Incinerators having an input capacity of 5 or more metric tons per day and crematoriums
All hazardous waste disposal sites
Water treatment plants having 10000 or more cubic meters per day
Industries involved in chemical treatment and preservation of wood (excluding Boron treatment)
Saw mills having a milling capacity of 50 or more cubic meters per day
Hotels, guest houses, rest houses with 20 or more rooms
Hostels having a boarding capacity of 200 or more boarders
Any industry where 200 or more workers per shift are employed
Mechanized mining activities with multi bore-hole blasting with delay detonators
Single bore hole blasting activities with production capacity having 600 or more cubic meters per month
Granite boulders, making or processing industries
Metal fabricating industries, machinery, machine tools, equipments manufacturing or assembling industries where 25 or more workers are employed
Automobile assembly industries
Vehicle service stations or container yards having vehicle service activities
Any industry not indicated above which discharges 3 or more cubic meters of wastewater per day or using toxic chemicals in its process
Any chemical manufacturing industry not elsewhere mentioned in this list

Part B Industries for which an Environmental Protection Licence is issued by a Local Authority
Soaps, detergents or any other cleansing preparations manufacturing industries where less than 25 workers are employed
Bulk petroleum liquid storage facilities having a total capacity less than 150 metric tons
Ribbed smoke rubber sheets manufacturing industries having a production capacity of more than 50 kilograms per day and less than 100 kilograms per day
Coconut shell burning industries having a total input capacity of more than 1000 coconut shells and less than 10000 coconut shells per batch within a single production cycle
Industries involved in manufacturing, extracting or formulating ayurvedic, indigenous medicinal products where more than 10 workers and less than 25 workers are employed
Printing presses excluding lead smelting
Batik industries where less than 10 workers are employed
Industries involved in the use of fiberglass as a raw material where less than 10 workers are employed
Commercial laundries with dry cleaning operations using organic solvents where less than 10 workers are employed
Leather finishing industries other than effluent generating wet operation
Coconut fiber mills excluding those where bleaching or dyeing processes of natural fiber are carried out
Power looms having less than 25 weaving machines
Hand looms having more than 10 looms
Sugar cane industries excluding sugar factories or sugar refineries
Vegetables, fruits, meat, seafood, milk-processing industries where more than 5 workers and less than 25 workers are employed
Coconut oil extraction industries where more than 10 workers and less than 25 workers are employed
Bakery products, biscuits, confectionery manufacturing industries where more than 5 workers and less than 25 workers are employed
Non-alcoholic beverages manufacturing
Industries where more than 10 workers and less than 25 workers are employed
Bottling plants other than plants having bottle washing operations using caustic soda
Rice mills having wet process and having a production capacity of less than 5000 kilograms per day
Rice mills having dry operation process (other than having wet process)
Grinding mills
Poultry farms having more than 50 birds and less than 2500 birds
Piggeries having more than 5 animals and less than 50 animals
Cattle or goat farms having more than 10 animals and less than 50 animals

Animal feed manufacturing industries having a capacity of less than 25 metric tons per day
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Electrical power generating industries having a total capacity of more than 100 KW and less than 300 KW excluding hydro or solar or wind power generation

(iv) How to obtain an Environment Protection Licence

To apply for an EPL you will need to lodge an application form and pay a lodgement fee (of approximately Rs. 112/50, including tax) with the Central Environmental Authority or the relevant local authority. Application forms or renewal forms for EPL's can be obtained from the offices of the Central Environmental Authority or your relevant local authority. A list of the Central Environmental Authority contact details are listed at the end of this chapter.

The Central Environmental Authority will only issue an EPL if it is satisfied that:

- the licence will not be used to contravene the provisions of the *National Environmental Act* or its regulations;
- no irreversible hazard to humankind and/or the environment or any nuisance will result from the acts authorised by the licence; and
- the applicant has taken adequate steps for the protection of the environment in accordance with the requirements of the law.



When considering whether to grant an EPL the Central Environmental Authority will, at its discretion, review an application in the context of the regulations, which expand on the provisions of the *National Environmental Act* and provide standards and criteria for assessing eligibility.

If the Central Environmental Authority considers it necessary, they can refer an application for an EPL on to another government department or public corporation and request a report to be prepared on the application. The finding of the report will assist the Central Environmental Authority in deciding

whether to grant the EPL or not. However, the Central Environmental Authority has complete discretion as to whether an EPL is granted. If the Central Environmental Authority agrees to grant an EPL to a business, they will issue a licence to the business that authorises the discharge, deposit or emission of waste into the environment in accordance with the standards prescribed under the *National Environmental Act*. All EPL's are valid for a maximum period of 12 months and are renewable.

The Central Environmental Authority may suspend or cancel an EPL if:

- a person violates any terms, standards or conditions of the EPL;
- the environment has been altered or changed due to natural factors or otherwise; or
- the continued discharge, deposit or emission of waste into the environment authorised will or could adversely affect any beneficial use. **Beneficial use** is defined in the *National Environmental Act* as “a use of the environment or any portion of the environment that is conducive to public benefit, welfare, safety or health and which requires protection from the effects of waste, discharges, emissions and deposits”.

(v) Renewal of an Environmental Protection Licence

EPL's are granted for a maximum period of 12 months and are renewable upon application. Businesses that have already obtained an EPL from the Central Environmental Authority (or their local authority), should apply for a renewal of the license at least three months before the date of expiry. The fee for an application for renewing a licence is approximately Rs. 56/25 (including tax). Renewal forms can be obtained from the offices of the Central Environmental Authority or your relevant local authority. A list of the Central Environmental Authority contact details are listed at the end of this chapter.

If the business intends to make a qualitative or quantitative change in their discharge of waste into the environment or a change in their prescribed activities under the EPL, the business should inform the Central Environmental Authority or the relevant local authority at least one month prior to the proposed change.

Case study:

After the tsunami, Mr Sirisena received a grant from a community organization to re-establish his livelihood to set up a concrete batching plant, and he invested Rs. 50,000/-. The business started off slowly and after 2 years he had a very good market and made a huge profit so he soon expanded the business and purchased another machine and employed two more workers. By this time the business was producing 50 or more cubic meters of concrete per day. However, Mr Sirisena did not obtain the correct environmental protection licence from the Central Environment Authority (in accordance with the National Environmental Act and the Gazette Notification No. 1159/22 dated 22 November 2000). One day Mr Sirisena was visited by the Central Environment Authority and was notified that his business was not in compliance with the law. The Central Environment Authority ordered that Mr Sirisena be fined a substantial sum of money. Two workers left his business because he could no longer pay their salary and he was forced to close the business down.

One day Mr Sirisena was visited by the Central Environment Authority and was notified that his business was not in compliance with the law.

(e) Import/Export Licences and Foreign Exchange Control

If your business involves importing or exporting certain raw materials, resources or goods, you will need to obtain an import or export licence. The **Department of Import and Export Control** functions under the Ministry of Commerce and Consumer Affairs and is responsible for issuing import and export licences in accordance with the *Imports and Exports (Control) Act No. 1 of 1969* and amendments *No. 48 of 1985* and *No. 28 of 1987*.



(i) Licences

Some licences that the Department of Import and Export Control may issue include:

Import Licences	Export Licences
Coral chunks and shells	Conch shells
Timber including wood and articles made of wood, household utensils of wood and manufactured articles of wood (excluding ebony, coconut or charcoal)	Wood including logs and sawn timber
Articles made of wood	Articles made of wood
Ivory and ivory products	
Motor vehicles registered in Sri Lanka prior to 1 January 1945	

If you are intending to import any other items that are not listed above, you are required to obtain an import control license (ICL), which is issued on the recommendations of relevant authorities as indicated below.

Import Control Licences		
Category	Item	Relevant Authority
Chemicals	Agro Chemicals and Pesticides	Registrar of Pesticides
	Laboratory Chemicals	Ministry of Defense
	Petroleum Products	Ceylon Petroleum Corporation
	Other Chemicals	Sri Lanka General Trading Company
Animal & Animal Products	Live Animals	Department of Animal Production and Health
	Animal Products	Department of Animal Production and Health
Drugs	Western Drugs	Cosmetic Devices and Drugs Authority
	Ayurvedic Drugs	Commissioner of Ayurved
	Veterinary Drugs	Veterinary Drugs Authority
	Homoeopathy Drugs	Homoeopathy Council
Miscellaneous	Telecommunication Equipment	Sri Lanka Telecommunication Regulatory Commission
	Used Refrigerators/ Air Conditioners/ Deep Freezers/ Refrigerator Gas	Ministry of Environment
	Marine Boat Engines	Ministry of Defense
	Coins	Central Bank of Sri Lanka
	Sports Goods	Ministry of Sports

For further information on import and export regulations or to download the relevant application forms, go to the website of the Department of Import and Export Control of Sri Lanka:

<http://www.imexport.gov.lk/intro.html>.

(ii) Foreign exchange transactions

A foreign exchange transaction is a transaction that takes place between persons/entities of two different countries using two different foreign currencies. Laws regulating foreign exchange transactions in Sri Lanka are contained in the *Exchange Control Act No.24 of 1953* and in several other regulations, notices and operating instructions issued by the Controller of Exchange and Orders made by the Minister of Finance under the *Exchange Control Act*.

It is important to ensure that any foreign exchange transaction that you or your business participates in is made in accordance with the restrictions imposed by the Controller of Exchange and Orders. In addition, if your business is required to obtain an import or export licence (see above), the Controller of Exchange and Orders may impose restriction on the ways in which you can import and/or export goods or services.

The Central Bank of Sri Lanka is responsible for carrying out the provisions of the *Exchange Control Act* on behalf of the Sri Lankan Government. The Central Bank of Sri Lanka has published a booklet titled “A Guide to Foreign Exchange Transactions” that you should refer to if you are engaging in foreign exchange transactions, particularly if you are an authorized dealer in foreign exchange, financial institution, local or foreign company, or a foreign investor. A copy of the booklet can be found at http://www.cbsl.gov.lk/info/10_publication/p_5.htm. In addition, it is best that you consult with the Controller of Exchange before entering into a foreign exchange transaction.

1.3 Banking and Finance

(a) Types of Banks in Sri Lanka

There are three traditional types of banking institutions in Sri Lanka:

- Savings Banks;
- Commercial Banks; and
- Development Banks/Licensed Specialised Banks.

Savings Banks usually offer two types of accounts:

- *Savings accounts*, used for depositing money with a view to saving. The

- Bank usually pays the customer a nominal variable interest rate on all money kept in the account. Generally, the customer can withdraw their money from the savings account at any time without incurring a fee; and
- *Fixed term deposit accounts*, opened for a fixed term (generally up to three years), which has a higher fixed interest rate payable compared to savings accounts. The customer will often only be allowed to withdraw their money at the end of the fixed period. If a customer withdraws their money before the fixed period expires, the interest payable by the Bank will most likely be reduced.

Commercial Banks offer various facilities, including:

- savings accounts;
- current accounts;
- fixed deposit accounts;
- money transfer facilities;
- ATM cards;
- Credit cards;
- housing loans;
- business loans;
- trade finance including letters of credit, import loans, purchasing of Export Bills;
- leasing facilities;
- pawning facilities;
- safety deposit boxes;
- foreign currency accounts; and
- specialised credit schemes launched by different Banks.

Development Banks offer various facilities, including:

- project financing;
- industrial loans;
- credit facilities for small and medium businesses;
- start-up project loans;
- micro finance; and
- sector based rural credit schemes (including for paddy, coconut and tea farmers).

In addition to traditional banking institutions, *Rural Microcredit Schemes* (operated by government and non government organizations) provide small scale borrowings, savings and other microcredit services to individuals (who are generally self-employed or have low incomes), small businesses or societies that would not normally be reached by the traditional banking institutions. Some of the credit schemes are operated nationally, others are operated regionally or are industry specific. There are many microcredit schemes in Sri Lanka including in the following industries:

- paddy cultivation and processing;
- coconut production;
- tea production;
- rubber production;
- spices;
- perennial crops;
- agricultural equipment; and
- micro, small and medium enterprises.

(b) How to open a bank account

To open a bank account, you will need to lodge the appropriate application form with your chosen Bank or Financial Institution. Your chosen Bank or Financial Institution should provide you with this application form. The information required to complete an application form will vary according to the Bank/Financial Institution, the type of bank account and/or whether the bank account is for business purposes.

All application forms will require you to provide documentation that confirms your identity, such as a National Identity Card, Passport, Birth Certificate and/or Marriage Certificate. If you do not already have these documents, you will need to obtain them. *(To learn how to obtain these documents refer to section 1.4 of this Chapter, titled “Obtaining Civil Documentation”).*

If you apply for any form of loan or leasing facility, the Bank/Financial Institution may ask you to submit to a credit check. A *credit check* is a process undertaken to determine your ability to comply with the financial responsibilities under the loan or leasing facility (your *credit worthiness*). Other information you may be required to provide to determine your credit worthiness include:

- your employment history (including employment contact details and your salary);
- details of any other loans or bank accounts (including their balances) that you have;
- what assets or liabilities you have (including any joint assets or liabilities); and
- if you are self employed, your tax returns and business financial reports.

(c) Nature of a contract between a Bank and a customer

A loan contract is a legally binding agreement between the Bank/Financial Institution (Bank) and the borrower (the customer). In essence, the Bank agrees to lend money to a borrower on the basis that they are paid back in accordance with certain terms and conditions. Both parties must acknowledge and consent to the creation of the legally binding loan contract.

Given the legal relationship that is created between the Bank and the borrower, it is crucial that:

- each borrower (including guarantors where applicable) understand their rights and obligations arising from the loan contract;
- the loan contract is in writing and is signed by the Bank, the customer(s) and guarantor(s);
- the customer(s) and guarantor(s) receive and retain a copy of their loan contract. It is common practice for Banks and/or Financial Institutions not to provide a copy of the loan contract to a borrower or guarantor. This is very bad practice as borrowers and guarantors are entitled to a copy of the contract so that they can refer to the contract when necessary. Borrowers and guarantors should always request a copy of their loan contract.

In addition, you should make sure that your loan contract clearly identifies:

- all the parties (including any guarantors) to the contract. Each party should be identified by their full name, address and NIC number;
- the amount of money to be borrowed;
- the agreed security/collateral to the loan - for example, a mortgage or guarantee (*for further information on mortgages and guarantees, see Chapter 3.4*);
- the applicable interest rate that is to be paid;
- the repayment procedure specifying when, how and how much the borrower must repay;
- circumstances where the customer will be in default of the loan;
- when and how the agreement can be terminated; and
- the agreed dispute resolution mechanisms.

(i) Rights and obligations of a Bank or Financial Institution

A Bank's or Financial Institution's rights and obligations arise from:

- the loan contract; and
- banking regulations.

The rights of a Bank or Financial Institution under a loan contract will often include:

- the right to require repayment of the principle loan amount;
- the right to charge interest on the amount owing. (Note: the amount of interest payable will usually be calculated on a percentage basis carried over time and calculated at either a variable or fixed rate.) The lender may also have the right to charge a higher rate of interest (often significantly higher) if the customer falls into default under the loan.
- the right to charge for any fees and charges associated with maintaining or enforcing the loan contract;
- if the customer goes into 'default' under the loan contract or becomes bankrupt:
 - the right to commence recovery action against the borrowers and/or guarantors for recovery of the total amount owing including interest, fees (including legal and court fees) and charges incurred, and
 - the right to exercise their 'power of sale' granted to them under a mortgage over security/collateral. This means that the Bank or Financial Institution may (with the consent of the court) sell the property or assets securing the loan and use the proceeds of sale to reduce the debt.

The obligations of a Bank or Financial Institution under a loan contract will often include:

- to allow the borrowers and/or guarantors to pay out their loan earlier than stipulated in the loan contract, although in this case the Bank will charge a fee;
- to discharge their interest in any security/collateral once the loan is paid out;
- to protect a customer's privacy and personal information by:
 - seeking the borrower's permission before sharing their personal information with anyone else,
 - only using the borrower's personal information in the way in which it

- was intended to be used under the loan contract (such as to operate an account or to contact the borrower when necessary), and
 - storing the borrower’s information securely to prevent unauthorized access;
- to preserve the confidentiality of all information a borrower provides them; and
- to only recover the amount owed in accordance with the default procedures set out in the loan contract (for example, giving the borrower written notice of their default and an opportunity to rectify the default).

(ii) Rights and obligations of the borrower

Similarly to the Bank’s or Financial Institution’s rights and obligations, a borrower’s rights also arise from:

- The loan contract; and
- Banking regulations.

The rights of a borrower under a loan contract will often include:

- the right to obtain a copy of the loan contract and any other documents that contain the terms and conditions of the loan contract (such as the fees and charges schedules, mortgage memorandums or product disclosure statements usually contained in separate brochures);
- the right to be informed of any material changes to their loan contract including variations of interest rates and/or fees and charges;
- the right to know the balance of their loan and receive Bank Statements; and
- the right to complain to the **Consumer Affairs Authority** or the **Central Bank of Sri Lanka** about the operations of the Bank or Financial Institution (*see contact details at the end of this chapter*).

The obligations of the borrower under the loan contract will often include:

- to make their repayments according to the time frame and payment structure set out in the loan contract;
- to pay the reasonable fees and charges incurred by the Bank or Financial Institution for maintaining or enforcing the loan contract;
- to keep their personal contact details held by the Bank or Financial Institution accurate and up to date; and
- not agreeing to another Bank or Financial Institution obtaining (including

taking possession of or taking a second mortgage over) the same collateral/security used under the existing loan contract without the original lender consenting to such an arrangement.

(d) Negotiable bank instruments (including cheques)

A *negotiable bank instrument* is a specialized type of contract for the payment of money which is unconditional and capable of transfer by negotiation. The two main types of negotiable bank instruments are:

- a *promissory note*, which is a written promise by one person to another to pay money. (For further information on promissory notes, refer to Chapter 3.5 titled “Promissory Notes”); and
- a *bill of exchange*, which is a written order by one person to another to pay money to a third party (the *payee*). The most common type of bill of exchange is a cheque.

A *cheque* is a negotiable bank instrument, payable on demand, which instructs a Bank to pay the specified amount to the party named on the cheque from funds held on deposit. In order for the recipient of the cheque (the *payee*) to be paid the amount specified on the cheque, they present the cheque to their Bank, who will credit their account with the funds.



Cheques are often a very efficient and cheap way of

transferring money from one person to another. They are one of the most acceptable forms of money transfers and are valid indefinitely (unless otherwise indicated). However, given their popularity and relatively easy execution, cheques can be forged.

Therefore, when writing a cheque, you should ensure that you:

- date the cheque on the day you sign the cheque;

- correctly identify the payee (the person you want to pay);
- write the amount you wish to pay (rupees and cents) in both letters and numbers;
- sign the cheque only when all the above steps have been done;
- fill in and keep your cheque 'stub' for your records as to how much you agreed to have paid, and to whom; and
- store the cheque book in a safe and secure place.

When receiving a cheque as payment, you should check that the payee (the person paying you) has also followed the above steps when writing out the cheque.

(e) Remittances

A *remittance* is when money is sent from one place or person to another. The clearest examples of remittances are transfers of money by foreign workers to their home countries.



Money sent from migrants living overseas to family and friends living

in Sri Lanka accounts for a substantial proportion of the financial inflow of money into Sri Lanka. Remittances contribute to economic growth and to the livelihoods of low income earners. Remittances and other foreign exchanges in Sri Lanka are exercised by the Central Bank of Sri Lanka through the Exchange Control Department (ECD) established under the *Exchange Control Act No. 24 of 1953*.

Many Banks and Financial Institutions offer services (including online or telegraphic transfer services) to make or receive remittances. Remittance procedures, forms and fees will differ amongst service providers. However, general information you will need in order to make a remittance includes:

- the beneficiary's full name and account details;
- your name and account details;
- the country of the beneficiary;

- your employment status in the country of the remitter (the payor); and
- the currency in which you want the transfer to be made and the amount in which you wish to transfer.

It is important to retain the remittance number, which is a unique invoice number on your remittance form that allows you to track the progress of your remittance payment.

1.4 Obtaining Civil Documentation

Civil documentation is any type of documentation that proves your identity and includes:

- Birth Certificates;
- Death Certificates;
- Marriage Certificates;
- Land Deeds/Permits/Grants;
- National Identity Cards; and
- Passports.

These documents are very important and should be stored safely at all times. If you lose any of your civil documentation, Sri Lankan law allows you to obtain another copy. You should obtain another copy as soon as possible. If any of your civil documentation is stolen, misplaced, lost or destroyed, you should apply for another copy of the stolen document as soon possible.

If you do not hold sufficient civil documentation, you may have difficulty in proving your identity and/or your legal entitlement to land or other financial benefits.

(a) Birth Certificates

You need a Birth Certificate in order to:

- claim a pension;
- cast your vote;
- get a driving licence;
- get a National Identity Card;
- get married;
- open a bank account;
- get a Birth Certificate for your children;
- go to school or university;
- get a passport;
- inherit property; and
- get a job in the government or the private sector.

If you have lost your Birth Certificate, you should obtain another copy as soon possible.

(i) How to obtain a copy of a Birth Certificate

You can obtain a copy of your Birth Certificate by following these steps:

1. Go to the Registry office for the District Secretariat Division in which you were born;
2. Ask for an application form number “B63” titled “*Application for Birth Certificate and/or Search of Registers*”;
3. Complete the application form;
4. Return the completed application form to the Registrar; and
5. The Registrar will give you a receipt and tell you when you can come back to collect your Birth Certificate.

It may take up to one month to receive your Birth Certificate. However, if you need a copy urgently (for example, for an examination or interview) you can make an appointment with the Registrar who can help you get a copy within a day.

(ii) What to include in an application

You will need to include the following information in your application:

- your name and address;
- your Birth Certificate number (this was written on the front of your original Birth Certificate);
- the District and District Secretariat Division where you born;
- your date of birth;
- place of your birth;
- full name of your parents and grandparents; and
- the date your birth was registered.

(b) Death Certificates

If you have lost your relative’s Death Certificate, you should obtain a copy as soon as possible from the Registry for the District Secretariat Division in which your relative died. A Death Certificate may be used for the following purposes:

- if you have a joint bank account with the deceased relative you need to show that they have died to access the money in the joint account;
- if your relative had a bank account before they died and you are entitled to the money, you will need to give the Bank a copy of their Death Certificate in order to access the money in their account;

- if your relative owned property before they died and you are entitled to inherit that property, you will need to show their Death Certificate to gain access to that property and to transfer the property into your own name;
- to obtain compensation payable on death. If you are eligible to receive compensation for another person's death, you will need to show your relative's Death Certificate;
- to receive insurance money or a pension following the death of your spouse, parent or relative; and
- to obtain student scholarships available to orphaned children. To be eligible to apply for a scholarship, children will need to show their parent's Death Certificates.

(i) How to obtain a copy of a relative's Death Certificate

You can obtain a copy of a relative's Death Certificate by following these steps:

1. Go to the Registry office for the District Secretariat Division in which your relative died;
2. Ask for an application form number "B63A" called "*Application for Death Certificate and/or Search of Registers*";
3. Complete the application form;
4. Return the completed application form to the Registrar; and
5. The Registrar will give you a receipt and tell you when you can come back to collect the copy of your relative's Death Certificate. It may take up to one month to receive the Death Certificate.

(ii) What to include in an application

You will need to include the following information in your application:

- your name and address;
- the name of your deceased relative;
- cause of death of your relative;
- full names of the deceased's father and mother;
- date of the deceased's death;
- place of the deceased's death;
- the number of your relative's original Death Certificate (it was written on the front of the certificate);
- district and District Secretariat Division where your relative died; and
- the date the death was originally registered.

(c) Marriage Certificates

Your Marriage Certificate may be necessary for the following purposes:

- to prove your marital status;
- to get a Birth Certificate for your children;
- to inherit your spouse's property;
- to get a passport in your married name;
- to get financial benefits or compensation including pension benefits and/or insurance payouts;
- to file for divorce, claim maintenance and to adopt children;
- to open a joint bank account; and
- to prove your family status for some benefits.

(i) How to obtain a copy of a Marriage Certificate

You can obtain a copy of your Marriage Certificate by following these steps:

1. Go to the Registry office for the District Secretariat Division in which you married;
2. Ask for an application form number “B121” titled “*Application for Certificate of Marriage (General/Kandyan) and/or for Search of Registrars*”;
3. Complete the application form;
4. Return the completed application form to the Registrar; and
5. The Registrar will give you a receipt and tell you when you can come back to collect your Marriage Certificate. It may take up to one month to receive the Marriage Certificate.



(ii) What to include in an application

You will need to include the following information in your application:

- your full name and your spouse’s full name and address;
- the number of your Marriage Certificate (this was written on the front of your Marriage Certificate);
- the District and District Secretariat Division where you married;
- name of the Registrar who registered your marriage;
- place you married; and
- date of your marriage and the date you registered your marriage.

(d) National Identity Cards

Your National Identity Card (NIC) is a very valuable document and can be used to prove your identity in numerous circumstances including:

- at various police checkpoints in Sri Lanka to gain access to controlled areas including buildings;
- to vote in Sri Lankan elections;
- to open bank accounts, claim compensation, insurance or pension benefits; and
- it is always a good idea to carry your NIC in case you have an accident so the police can inform your family.

(i) How to obtain a replacement National Identity Card

You can obtain a replacement National Identity Card by following these steps:

1. Report your lost NIC card to the police. The police will ask you to fill out a short report with your name, address, NIC number and details of where and when you lost your NIC. The police will give you a copy of this police report;
2. Take this police report, your Birth Certificate and five photographs of yourself, to your local Grama Niladhari office;
3. Ask the Grama Niladhari for an application form “E” (which is green in colour) for lost NIC’s;
4. Complete the application form. Your Grama Niladhari will help you to fill out the form;
5. Return the completed form to the Grama Niladhari;
6. Once the Grama Niladhari has signed and stamped the form; take the completed form to the **Registry Office for the District Secretariat Division**. Sometimes your Grama Niladhari will take the form to the District Secretary for you. Check with your Grama Niladhari whether they provide this service; and
7. The District Secretary will also sign the form, give you a receipt and then send it to the Registrar of Persons in Colombo.

It is very important that you hold onto your receipt until you get your new NIC. It can take a while to get a replacement card from Colombo, and the receipt shows that you are in the process of getting a replacement NIC.

(ii) What to include in an application

You will need to include the following information in your application:

- your full name and address;
- your Birth Certificate;
- your NIC number (this was written on the front of your card);
- your date of birth;
- place of your birth; and
- the District Secretary and Grama Niladhari division numbers of where you live.

(e) Land Deed/Permit/Grant

Your land deed/ permit/grant proves that you own your land. You might need to prove ownership of your land for all sorts of reasons, including to:

- obtain grants or subsidies;
- receive compensation such as under the Government's Unified Assistance Scheme;
- be eligible for a housing scheme;
- apply for a loan using your land as security; and
- to settle a land dispute.



(i) How to obtain a replacement land deed/permit/grant

You can obtain a copy of your land deed/permit/grant by following these steps:

1. Go to the Land and District Registry office where your land is located;
2. Ask for an application form number “A32b” titled “*Land Registration - Application for Copy*”;
3. Complete the application form;
4. Return the completed form to the Registrar; and
5. The Registrar will give you a receipt and will tell you when to come back to collect your deed.

(ii) What to include in an application

You will need to include the following information in your application:

- your name and address;
- deed, permit or grant number (written on the front of the deed/permit or grant);
- date of the deed, permit or grant;
- name of the notary who wrote the deed; and
- the reason you want a copy (e.g. because you are the land owner).

Contact details and further information

1.1 Business Registration

Relevant Law	Available online at:
Business Names Ordinance No.6 of 1918 as amended by Act No.7 of 1987	<a "&path='3"' href="http://www.lawnet.lk/process.php?st=1956Y6V149C&hword=">http://www.lawnet.lk/process.php?st=1956Y6V149C&hword=""&path=3 <a "&path='2"' href="http://www.lawnet.lk/process.php?st=1987Y0V0C7A&hword=">http://www.lawnet.lk/process.php?st=1987Y0V0C7A&hword=""&path=2
Companies Act No. 7 of 2007	http://www.drc.gov.lk/App/ComReg.nsf?Open
Partnership Ordinance no. 21 of 1866	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y8V179C&hword=">http://www.lawnet.lk/process.php?st=1981Y8V179C&hword=""&path=5
Prevention of Frauds Ordinance No. 7 of 1840 as amended by Act No.60 of 1947	http://www.lawnet.lk/list_cat_page.php?page=3&cat=p&id=1&year=0

Relevant Agencies	Contact details
Registrar of Business Names	Department of Registrar of Companies 400, D R Wijewardena Mawatha, Colombo 10. Ph: 011-268 9209, 011-268 9207 Fax: 011-268 9211 Email: inquiries@drc.gov.lk Website: www.drc.gov.lk
Registrar of Companies	Department of Registrar of Companies 400, D R Wijewardena Mawatha, Colombo 10. Tel: 011-268 9209, 011-268 9207 Fax: 011-268 9211 Email: inquiries@drc.gov.lk Website: www.drc.gov.lk
Grama Niladhari	A Grama Niladhari is a government officer appointed for a Grama Niladhari Division which may consist of one or more villages. The GN can be contacted at their office.
Divisional Secretariats	A Divisional Secretariat is in charge of a division which consists of a number of Grama Niladhari Divisions. They can be contacted at the Divisional Secretariat's office.

1.2 Licences and Certification

Relevant Law	Available online at:
Agrarian Services Act, No. 58 of 1979	<a "&path='2"' href="http://www.lawnet.lk/process.php?st=1979Y0V0C58A&hword=">http://www.lawnet.lk/process.php?st=1979Y0V0C58A&hword=""&path=2
Agricultural Products Regulation Ordinance No. 29 of 1939 (Regulation of the importation of the agricultural commodities)	http://www.commonlii.org/lk/legis/con-sol_act/ap197415.pdf
Agricultural Products (Guaranteed Prices and Control of Hulling and Milling) Acts Nos. 33 of 1961, 17 of 1964.	<a "&path='2"' href="http://www.lawnet.lk/process.php?st=1961Y0V0C33A&hword=">http://www.lawnet.lk/process.php?st=1961Y0V0C33A&hword=""&path=2

Agricultural Produce Agents (Registration) Ordinance No. 28 of 1941	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y9V199C&hword=">http://www.lawnet.lk/process.php?st=1981Y9V199C&hword=""&path=5
Agricultural Produce (Grading and Marking) Ordinance No. 8 of 1940	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y9V198C&hword=">http://www.lawnet.lk/process.php?st=1981Y9V198C&hword=""&path=5
Animals Act No. 29 of 1958	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y17V570C&hword=">http://www.lawnet.lk/process.php?st=1981Y17V570C&hword=""&path=5
The Board of Investment of Sri Lanka (GREATER COLOMBO ECONOMIC COMMISSION) Law No. 4 of 1978	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y9V227C&hword=">http://www.lawnet.lk/process.php?st=1981Y9V227C&hword=""&path=5
Bureau of Ceylon Standards Act No. 38 of 1964	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y9V218C&hword=">http://www.lawnet.lk/process.php?st=1981Y9V218C&hword=""&path=5
Butchers Ordinance No. 9 of 1893	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y19V608C&hword=">http://www.lawnet.lk/process.php?st=1981Y19V608C&hword=""&path=5
Ceylon Tea Board Act, No. 15 of 1970.	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1970Y0V0C15A&hword=">http://www.lawnet.lk/process.php?st=1970Y0V0C15A&hword=""&path=5
Clothing Industry Training Institute Act, No. 3 of 1984	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1984Y0V0C3A&hword=">http://www.lawnet.lk/process.php?st=1984Y0V0C3A&hword=""&path=5
Coast Conservation Act, No. 57 of 1981	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y0V0C57A&hword=">http://www.lawnet.lk/process.php?st=1981Y0V0C57A&hword=""&path=5
Coconut Development Act No. 46 of 1971	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y11V260C&hword=">http://www.lawnet.lk/process.php?st=1981Y11V260C&hword=""&path=5
Coconut Fibre Act. No. 17 of 1967	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y9V195C&hword=">http://www.lawnet.lk/process.php?st=1981Y9V195C&hword=""&path=5
Coconut Products Ordinance No. 13 of 1935	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=2001Y6V160C&hword=">http://www.lawnet.lk/process.php?st=2001Y6V160C&hword=""&path=5
Companies Act, No. 07 of 2007	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=2007Y0V0C7A&hword=">http://www.lawnet.lk/process.php?st=2007Y0V0C7A&hword=""&path=5
Consumer Affairs Authority Act No. 9 of 2003.	<a "&path='2"' href="http://www.lawnet.lk/process.php?st=2003Y0V0C9A&hword=">http://www.lawnet.lk/process.php?st=2003Y0V0C9A&hword=""&path=2
Consumer Protection Act No. 1 of 1979	<a "&path='2"' href="http://www.lawnet.lk/process.php?st=1979Y0V0C1A&hword=">http://www.lawnet.lk/process.php?st=1979Y0V0C1A&hword=""&path=2
Excise Ordinance No. 8 of 1912	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=2001Y2V52C&hword=">http://www.lawnet.lk/process.php?st=2001Y2V52C&hword=""&path=5
Felling of Trees (Control) Act No. 9 of 1951	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y11V284C&hword=">http://www.lawnet.lk/process.php?st=1981Y11V284C&hword=""&path=5
Fertilizers Act No 21 of 1961	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y11V281C&hword=">http://www.lawnet.lk/process.php?st=1981Y11V281C&hword=""&path=5
Fisheries and Aquatic Resources Act No. 2 of 1996.	<a "&path='2"' href="http://www.lawnet.lk/process.php?st=1996Y0V0C2A&hword=">http://www.lawnet.lk/process.php?st=1996Y0V0C2A&hword=""&path=2
Fisheries Ordinance No. 24 of 1940	http://www.commonlii.org/lk/legis/consol_act/f240153.pdf
Food Act No. 26 of 1980	<a "&path='2"' href="http://www.lawnet.lk/process.php?st=1980Y0V0C26A&hword=">http://www.lawnet.lk/process.php?st=1980Y0V0C26A&hword=""&path=2

Food Control Act No.25 of 1950	http://www.commonlii.org/lk/legis/consol_act/fc214190.pdf
Food Control (Possession) Act No. 4 of 1956	http://www.commonlii.org/lk/legis/consol_act/fc215312.pdf
Food Supplies Ordinance No.30 of 1947	http://www.commonlii.org/lk/legis/consol_act/fs546209.pdf
Forest Ordinance No. 16 of 1907	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y11V283C&hword=">http://www.lawnet.lk/process.php?st=1981Y11V283C&hword=""&path=5
Hector Kobbekaduwa Agrarian Research and Training Institute Act No. 5 of 1972	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y11V263C&hword=">http://www.lawnet.lk/process.php?st=1981Y11V263C&hword=""&path=5
Homoeopathy Act No. 7 of 1970	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y6V117C&hword=">http://www.lawnet.lk/process.php?st=1981Y6V117C&hword=""&path=5
Imports and Exports (Control) Act, No. 1 of 1969	<a "&path='2"' href="http://www.lawnet.lk/process.php?st=1969Y0V0C1A&hword=">http://www.lawnet.lk/process.php?st=1969Y0V0C1A&hword=""&path=2
Inland Revenue Act No. 10 of 2006	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=2006Y0V0C10A&hword=">http://www.lawnet.lk/process.php?st=2006Y0V0C10A&hword=""&path=5
Marine Pollution Prevention Act No. 59 of 1981	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y0V0C59A&hword=">http://www.lawnet.lk/process.php?st=1981Y0V0C59A&hword=""&path=5
Mines and Minerals Law No. 4 of 1973	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1973Y0V0C4A&hword=">http://www.lawnet.lk/process.php?st=1973Y0V0C4A&hword=""&path=5
Mines, Quarries, and Minerals Ordinance No. 55 of 1947	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1956Y7V210C&hword=">http://www.lawnet.lk/process.php?st=1956Y7V210C&hword=""&path=5
National Environmental Authority Act No. 47 of 1980	http://www.commonlii.org/lk/legis/consol_act/cea554407.pdf
National Aquatic Resources Research and Development Agency Act No. 54 of 1981	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y0V0C54A&hword=">http://www.lawnet.lk/process.php?st=1981Y0V0C54A&hword=""&path=5
National Crafts Council and Allied Institutions Act No. 35 of 1982	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1982Y0V0C35A&hword=">http://www.lawnet.lk/process.php?st=1982Y0V0C35A&hword=""&path=5
National, Economic, Social, Educational and Cultural Foundation of Sri Lanka (Incorporation) Act No. 38 of 1991	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1991Y0V0C38A&hword=">http://www.lawnet.lk/process.php?st=1991Y0V0C38A&hword=""&path=5
National Gem and Jewellery Authority Act No. 50 of 1993.	<a "&path='2"' href="http://www.lawnet.lk/process.php?st=1993Y0V0C50A&hword=">http://www.lawnet.lk/process.php?st=1993Y0V0C50A&hword=""&path=2
National Institute of Fisheries and Nautical Engineering Act No. 36 of 1999	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1999Y0V0C36A&hword=">http://www.lawnet.lk/process.php?st=1999Y0V0C36A&hword=""&path=5
National Institute of Plantation Management Act No. 45 of 1979	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y11V266C&hword=">http://www.lawnet.lk/process.php?st=1981Y11V266C&hword=""&path=5
National Institute of Technical Education of Sri Lanka Act No. 59 of 1998	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1998Y0V0C59A&hword=">http://www.lawnet.lk/process.php?st=1998Y0V0C59A&hword=""&path=5
Natural Resources, Energy and Science Authority of Sri Lanka Act No. 78 of 1981	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y0V0C78A&hword=">http://www.lawnet.lk/process.php?st=1981Y0V0C78A&hword=""&path=5
Paddy Lands Act, No. 1 of 1958	<a "&path='2"' href="http://www.lawnet.lk/process.php?st=1958Y0V0C1A&hword=">http://www.lawnet.lk/process.php?st=1958Y0V0C1A&hword=""&path=2

Plantation Management Institute Act no. 45 of 1979	<a "a&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y11V266C&hword=">http://www.lawnet.lk/process.php?st=1981Y11V266C&hword=""a&path=5
Poisons, Opium, and Dangerous Drugs Ordinance No. 17 of 1929	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y17V549C&hword=">http://www.lawnet.lk/process.php?st=1981Y17V549C&hword=""&path=5
Sale of Goods Ordinance No. 11 of 1896	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=2001Y3V84C&hword=">http://www.lawnet.lk/process.php?st=2001Y3V84C&hword=""&path=5
Sri Lanka Export Development Act No. 40 of 1979	<a "a&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y9V228C&hword=">http://www.lawnet.lk/process.php?st=1981Y9V228C&hword=""a&path=5
Sri Lanka Standards Institution Act No. 6 of 1984.	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1984Y0V0C6A&hword=">http://www.lawnet.lk/process.php?st=1984Y0V0C6A&hword=""&path=5
Tea Control Act No. 51 of 1957	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y11V251C&hword=">http://www.lawnet.lk/process.php?st=1981Y11V251C&hword=""&path=5
Tea (Tax and Control of Export) Act No. 16 of 1959	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y11V254C&hword=">http://www.lawnet.lk/process.php?st=1981Y11V254C&hword=""&path=5
Textile Training and Service Centre Act No. 4 of 1984	<a "a&path='5"' href="http://www.lawnet.lk/process.php?st=1984Y0V0C4A&hword=">http://www.lawnet.lk/process.php?st=1984Y0V0C4A&hword=""a&path=5
Udarata Development Authority of Sri Lanka Act No. 26 of 2005	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=2005Y0V0C26A&hword=">http://www.lawnet.lk/process.php?st=2005Y0V0C26A&hword=""&path=5
Weights and Measures Ordinance No. 37 of 1946	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=2001Y6V158C&hword=">http://www.lawnet.lk/process.php?st=2001Y6V158C&hword=""&path=5

Relevant Agencies	Contact details
Agrarian Services Department	Ph: 011-269 1060,011-269 4732 dadsl@mail.ewisl.net
Coconut Cultivation Board	No. 9/428, Dencil Kobbekaduwa Mawatha, Bata-taramulla. Ph: 011-255 49501 Fax: 011-255 49507 Email: ccb@sltnet.lk
Consumer Affairs Authority	1st and 2nd Floor, CWE Secretariat Building, P.O. Box 1581, 27, Vauxhall Street, Colombo 02 Ph: 011-244 5897,011-239 3577,011-239 3495 Fax:011-239 9148 www.consumeraffairs.gov.lk
Department of Import and Export Control	Controller Department of Imports & Exports Control 1st Floor, Hemas Building, No. 75-1/3, York Street, Colombo 1 Ph: General Office 011-232 6774 Controller 011-223 4386 Deputy Controller 011-232 4673 Asst. Controller I 011-232 3922 Asst. Controller II 011-232 7113 Fax: 011-232 8486 Email: imexport@sltnet.lk www.imexport.gov.lk

Department of Rubber Development	Rubber Development Department 55/75, Vauxhall Lane, Colombo 02 Ph: 011-239 5561 Fax: 011-239 5561 Email: rubberdg@slt.lk www.rubberdev.gov.lk
Department of Textile Industries	Ph 011-244 6966 dt555@sltnet.lk
Ministry of Environment and Natural Resources	82, Sampath Paya, Rajamalwatte Road, Battaramulla. Ph: 011-286 3652, 011-288 2112, 011-288 2113 Fax: 011-286 3652 Email: promotion@menr.lk www.menr.lk
National Gem and Jewellery Authority	25, Galle Face Terrace, Colombo 3 Ph:011-232 5364, 011-232 9295,011-232 0758 Fax: 011-232 9697 Email: ngja@sltnet.lk www.srilankagemautho.com

1.2(d) Environmental Protection

Relevant Law	Available online at:
National Environmental Act No 47 of 1980 (and amendments No. 53 of 2000)	http://www.lawnet.lk/section.php?file=http://www.lawnet.lk/docs/statutes/cons_stat_up2_2006/indexes/1980Y0VOC47A.html
Gazette Notification no. 1159/22, dated 22 November 2000	Can obtain a copy from the CEA
Flora and Fauna Protection Act No.38 of 1949	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y17V567C&hword=">http://www.lawnet.lk/process.php?st=1981Y17V567C&hword=""&path=5
Marine Pollution Prevention Act No. 59 of 1981	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y0VOC59A&hword=">http://www.lawnet.lk/process.php?st=1981Y0VOC59A&hword=""&path=5

Relevant Agencies	Contact details
Central Environment Authority - Head Office	Central Environmental Authority Head Office: No.104, Denzil Kobbekaduwa Mawatha “Parisara Piyasa” Battaramulla ph: General: 011-287 2263, 011-287 2278, 011-287 2415, 011 287 2419, 011-287 3447-9, 011-287 3451 www.cea.lk
Central Environment Authority - Regional Offices	NNo. 56 Kachcheri Complex, Matale Or 165 Gunawardene Mawatha, Pallimulla, Matara
Ministry of Environment and Natural Resources	82, Sampath Paya, Rajamalwatte Road, Battaramulla. Ph: 011-286 3652, 011-288 2112, 011-288 2113 Fax: 011-286 3652 Email: promotion@menr.lk www.menr.lk

1.2(e) Import/Export Licences

Relevant Law	Available online at:
Imports and Exports (Control) Act No. 01 of 1969	<a "&path='2"' href="http://www.lawnet.lk/process.php?st=1969Y0V0C1A&hword=">http://www.lawnet.lk/process.php?st=1969Y0V0C1A&hword=""&path=2
Imports and Exports (Control) (Amendment) Act No. 28 of 1987	<a "&path='2"' href="http://www.lawnet.lk/process.php?st=1987Y0V0C28A&hword=">http://www.lawnet.lk/process.php?st=1987Y0V0C28A&hword=""&path=2
Exchange Control Act No. 24 of 1953	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y12V325C&hword=">http://www.lawnet.lk/process.php?st=1981Y12V325C&hword=""&path=5
Excise Act No. 41 of 1954	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=2001Y2V52C&hword=">http://www.lawnet.lk/process.php?st=2001Y2V52C&hword=""&path=5

Relevant Agencies	Contact details
Controller Department of Import and Export Control of Sri Lanka	1st Floor, Hemas Building No. 75-1/3 York Street Colombo 1. General Office 011-232 6774 Controller 011-223 4386 Deputy Controller 011-232 4673 Asst. Controller I 011-232 3922 Asst. Controller II 011-232 7113 http://www.imexport.gov.lk/intro.html
Ministry of Commerce and Consumer Affairs	Ministry of Trade, Commerce, Consumer Affairs and Marketing Development 6th Floor, “Rakshana Mandiraya”, 21, Vauxhall Street Colombo 02 Ph: 011-243 5601-4 011-233 3274 Fax: 011-244 7669 Email: comsec@commerce.gov.lk
Agrarian Services Department	Ph: 0112691060,0112694732 dadsl@mail.ewisl.net
Department of Rubber Development	Director - General Rubber Development Department, 55/75, Vauxhall Lane, Colombo 02. Ph: 011-239 5561 Fax: 011-230 4815 Email: rubberdg@slt.lk www.rubberdev.gov.lk
Coconut Cultivation Board	No. 9/428, Dencil Kobbekaduwa Mawatha, Bat- taramulla. Ph: 011-255 49501 Fax: 011-255 49507 ccb@sltnet.lk
National Gem and Jewellery Authority	25, Galle Face Terrace, Colombo 3 Ph: 011-232 5364 011-232 9295 011-232 0758 Fax: 011-232 9697 Email: ngja@sltnet.lk www.srilankagemautho.com
Department of Textile Industries	Ph: 011-244 6966 dt555@sltnet.lk
Cosmetic Devices and Drugs Authority	Cosmetic Devices & Drug Authority C/O Director - Medical Technology & Supplies No 120 Norris Canal Road Colombo 10 Ph: 011-244 6966
Commissioner of Ayurveda	Old Kottawa Road, Nawinna, Maharagama. Ph: 011-289 6910 Fax: 011-284 5537 E mail: ayuradmin@sltnet.lk www.ayurveda.gov.lk

Veterinary Drugs Authority	Registrar / Veterinary Drug Control Authority Ph: 081-238 8462/3 Fax: 081-238 9342 email: aphtpw@slt.net.lk
Ministry of Defence	No.15/5, Baladaksha Mawatha, Colombo 3 Ph: 011 2430860-9 011 2430878-9 Fax: 011 2446300 Email: sas.mod@slt.net.lk www.mod.gov.lk
Registrar of Pesticides	Office of the Registrar of Pesticides Department of Agriculture Ministry of Agriculture 1056 Getambe, P.O. Box 49, Peradeniya Ph: 081-238 8134 E-mail: pest@slt.lk
Ceylon Petroleum Corporation	109 Rotunda Tower Galle Rd Colombo 3 Ph: 011-247 3644, 011-247 3652 Fax. 011-247 3979 E-Mail - cpcsec@ceypetco.gov.lk http://www.ceypetco.gov.lk
Sri Lanka General Trading Company	STC General Trading Co Ltd 100, Nawam Mawatha, PO Box 1686 Colombo-2 Ph: 011-243 6233 Fax: 011-238 4603 011-244 7970 011-243 6234 e-mail: lankagen@slt.net.lk
Department of Animal Production & Health	Director General Department of Animal Production & Health P.O Box 13 Peradeniya Ph: 081-238 8195 081-238 8462/63 Fax: 081-238 8619 email kodi@slt.net.lk
Sri Lanka Telecommunication Regulatory Commission	Telecommunications Regulatory Commission of Sri Lanka 276, Elvitigala Mawatha, Colombo 08 Ph: 011-268-9343, 011-268 9345 Fax : 011-268 9341 E mail : ddsptrc@slt.net.lk
Ministry of Environment	82, Sampath Paya, Rajamalwatte Road, Battaramulla. Ph: 011-286 3652 011-288 2112 011-288 2113 Fax: 011-286 3652 Email: promotion@menr.lk www.menr.lk

Central Bank of Sri Lanka	Central Bank of Sri Lanka P.O. Box 590, 30, Janadhipathi Mawatha, Colombo 01 Ph: 011-247 000 011-244 0330 011-233 0220 E-mail: cbslgen@cbsl.lk
Ministry of Sports and Youth Affairs	No 420, Buddhaloka Mawatha, Colombo 07 Ph: 011-266 9237 011-268 3569 011-268 3569 Email: info@sportsministry.gov.lk www.sportsministry.gov.lk

1.3 Banking and Finance

Relevant Law	Available online at:
Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990.	<a "&path='2"' href="http://www.lawnet.lk/process.php?st=1990Y0VOC4A&hword=">http://www.lawnet.lk/process.php?st=1990Y0VOC4A&hword=""&path=2

Relevant Agencies	Contact details
Consumer Affairs Authority	1st and 2nd Floor, CWE Secretariat Building, P.O. Box 1581, 27, Vauxhall Street, Colombo 02 Ph: 011-244 5897,011-239 3577,011-239 3495 Fax: 239 9148 www.consumeraffairs.gov.lk
Central Bank of Sri Lanka	<p>Head Office Central Bank of Sri Lanka P.O. Box 590, 30, Janadhipathi Mawatha, Colombo 01 Tel : 94 -11 -247000, 2440330, 2330220 E-mail: cbslgen@cbsl.lk http://www.cbsl.gov.lk/</p> <p>Regional Manager Regional Office - Matale 8, Vidyala Mawatha, Matale Tel: 066 2222167 Fax: 066 2222175 E-mail: rmcbslm@sltnet.lk</p> <p>Regional Manager Regional Office - Anuradhapura 341, 1st Stage, Anuradhapura Tel: 025 2222024 Fax: 025 2225689 E-mail: cbslapr@sltnet.lk</p> <p>Regional Manager Regional Office - Matara 35, Anagarika Dharmapala Mawatha, Matara Tel: 041 2222269 Fax: 041 2222719 E-mail: romatara@sltnet.lk</p>

1.4 Obtaining Civil Documentation

Relevant Law	Available online at:
Births and Deaths Law No. 40 of 1975	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=2001Y5V110C&hword=">http://www.lawnet.lk/process.php?st=2001Y5V110C&hword=""&path=5
Marriages (General) Ordinance No. 19 of 1907	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=2001Y5V112C&hword=">http://www.lawnet.lk/process.php?st=2001Y5V112C&hword=""&path=5
Registration of Persons Act No. 32 of 1971	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y1OV250C&hword=">http://www.lawnet.lk/process.php?st=1981Y1OV250C&hword=""&path=5

CHAPTER - 2

Consumer Protection



Consumer protection at a glance:

- A consumer is any actual or potential user of any product or service made available for consideration by any trader or manufacturer.
- All traders, suppliers and manufacturers in Sri Lanka must comply with relevant laws, standards and procedures relating to consumer protection.
- The Consumer Affairs Authority assists aggrieved consumers to settle any problems they encounter regarding the purchase of goods and services that are found to be below agreed standards.
- If a consumer's rights have been violated the consumer may take legal action.
- If a trader or manufacturer is found guilty of violating their duties they may be penalized with a fine and/or imprisonment.

A basic principle in marketing is that *the customer is always right*. However, many business owners are not aware, or simply do not adhere to this principle. Instead, they focus on maximizing short term profits by minimizing costs through using low quality materials, and/or not adhering to quality standards.

Consumer rights in Sri Lanka are protected by the *Consumer Affairs Authority Act No. 09 of 2003*, the *Food Act No. 26 of 1980* and the *Sales of Goods Ordinance No. 11 of 1896* (the Consumer Protection Regulations). The **Consumer Protection Regulations** set out the rights of consumers and the obligations and liabilities of manufacturers and traders.

The Consumer Protection Regulations are administered by the Consumer Affairs Authority (CAA) which forms part of the Sri Lankan Ministry of Trade, Commerce, Consumer Affairs and Marketing Development. The CAA has the power to make inquiries into a customer's complaints regarding the production, manufacturing, supplying, storage, transportation or sales of any goods and the supply of

services which do not conform to the standards and specifications determined by the Consumer Protection Regulations. Its main purpose is to assist aggrieved consumers to settle problems surrounding the purchase of goods and services that fall below the agreed standards.

2.1 Definition of ‘Consumer’, ‘Trader’ and ‘Manufacturer’

A consumer is defined in the Consumer Affairs Authority Act, as any actual or potential user of any product or service made available for consideration by any trader or manufacturer.

A *trader* is defined as any person who:

- sells or supplies goods whole-sale to other persons;
- sells or supplies goods at retail rates to consumers;
- imports goods for the purpose of sale or supply; or
- provides services for a fee.

A *manufacturer* is defined as any person who:

- makes any article or goods;
- assembles or joins any article or any goods by chemical process or otherwise; or
- adapts any article or goods for sale.



All traders and manufacturers in Sri Lanka are subject to the Consumer Protection Regulations and must adhere to their principles and standards.

2.2 Why Should Traders and Manufacturers Care About Consumer Protection?

Ensuring customers are happy is the way to a successful business. If a consumer is disgruntled with the goods or services that you provide, consumers may negatively comment to others, which in turn creates a bad reputation for your business and negatively affects sales.

More importantly, if you contravene the provisions of the Consumer Protection Regulations, you will be guilty of an offence. If convicted of an offence, a trader or manufacturer may be required to:

- pay a substantial financial penalty;
- pay compensation to an aggrieved party;
- replace the goods or refund the amount paid for goods or service; and/or
- do anything else that a Magistrate orders, including, possible imprisonment and/or closure of your business.

Consumers
may negatively
comment to
others, which
in turn creates
a bad
reputation
for your
business.

Case Study

Mr Gunapala started a bakery in 1999 with the support of his wife. He worked hard and developed the business to a very successful level within four years. They supplied very tasty and hygienic products to the market and became popular in the area. When the business developed to a certain level he employed many people to work in the business. By then Mr Gunapala and his wife were very busy with the management of the business and had no time to taste and check the quality of their products. One evening, a customer came to the bakery with a policeman and a public health inspector, and made a complaint that they had found pieces of cockroach inside a loaf of bread purchased at Mr Gunapala's bakery. This complaint was published in the newspapers, and people in the community started talking about how Mr Gunapala's bakery was unhygienic and made people sick. Because of the reaction within the community, people stopped buying bread from Mr Gunapala's bakery, and even long term customers stopped coming. Eventually Mr Gunapala was forced to let his employees go and had to close down the business.

**If you
contravene the
provisions of
the Consumer
Protection
Regulations,
you will be
guilty of an
offence.**

2.3 Duties of a Trader or Manufacturer

The *Consumer Affairs Authority Act* sets out the obligations of manufacturers and traders in Sri Lanka.

Under the *Consumer Affairs Authority Act* it is an offence for a manufacturer or trader to:

- fail to label or price mark goods or violate the directives on packing and manufacturing;
- violate the directives relative to manufacturing, importing, marketing, sorting, selling and stocking of goods;
- remove, alter, obliterate, erase or deface a label or description on any goods or produce such a good for sale, or sell or offer for sale any such goods from which the label, description or price mark has been removed altered, obliterated, erased or defaced; and
- manufacture or sell goods which fail to comply with the stipulated standards and quality.

In addition to the above offences, it is also an offence for a trader to:

- sell any goods above the price marked on the goods;
- refuse to sell any goods in their possession or custody or under their control for the purpose of trade within Sri Lanka;
- deny the possession of such goods in their control for the purpose of trade;
- offer goods for sale subject to a condition, for example, requiring the purchase of any other goods or service, other than the condition that the buyer shall pay the price of the goods;
- make a false representation that any goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, or that goods and services have sponsorship, approval, performance characteristics, accessories, users or benefits that they do not have;
- violate conditions pledged in the warranty or guarantee by implication or otherwise on the supply of goods and services;
- fail to provide services with due care and skill;
- fail to ensure any materials supplied in connection with, provision of services will be reasonably fit for the purpose for which they are supplied;
- fail to ensure the goods supplied or services provided will be in

conformity with the standards and specifications that are reasonably fit for the purpose for which they are supplied; and

- fail to keep a notice board for display of any notice, direction or warning issued under the *Consumer Affairs Authority Act* in a conspicuous place in the place of business.
- engage in any type of conduct that is misleading or deceptive or is likely to mislead or deceive the consumer or any other trader in the course of a trade or business.

This includes:

- not falsely representing that goods or services are of a particular standard, quality, grade, style or model;
- not falsely representing that goods are new;
- not representing that goods or services have sponsorship, approval, performance, characteristics accessories, uses or benefits they do not have;
- not representing that the trader has a false sponsorship approval or affiliation;
- not making false or misleading statements concerning the existence of, or amounts of price reduction or price increase;
- not making false or misleading statements concerning the need for any goods, services, replacements or repairs;
- and
- not making false or misleading statements concerning the existence or effect of any warranty or guarantee;

The CAA can issue:

- **Orders** concerned with specifying goods and services for regulation of their prices;
- **General directions** that may address issues relating to labelling, price marking, picketing, sale or manufacture of any goods; and
- **Special directions** aimed at a class of manufacturers or traders with specifications on time and place of sale, and conditions on manufacturing, importing, marketing, storing, selling and stocking of goods.

Every order or direction is published in the Gazette and in Sinhalese, Tamil and English newspapers. Any manufacturer or trader who fails to comply with such orders and directions is guilty of an offence under the *Consumer Affairs Authority Act*.

The *Food Act No. 26 of 1980* reiterates the liabilities of manufacturers and traders as they are set out in the *Consumer Affairs Authority Act*. However the *Food Act* only applies to activities relating to food including the manufacture, import, sale, distribution, preparation, preservation, packaging, storing, labelling, processing, treatment and/or advertising of food.



2.4 How to Make a Complaint

A consumer can lodge a complaint to the Director-General of the CAA. The complaint must be in writing, supported with any relevant documents or other evidence (such as photos or labels) and lodged with the CAA within three month of the date of purchase.

Contact details and further information

Relevant Law	Available online at:
Consumer Affairs Authority Act No. 09 of 2003	http://www.consumeraffairs.gov.lk/legislation.php
Food Act No. 26 of 1980	http://www.consumeraffairs.gov.lk/legislation.php
Sales of Goods Ordinance No. 11 of 1896	http://www.consumeraffairs.gov.lk/legislation.php

Relevant Agencies	Contact details
Consumer Affairs Authority	1st & 2nd floor, CWE Secretariat Building 27 Vauxhall Street, Colombo 3 Tel: (011) 2445897 Fax: (011) 2399148 email: caaoffice@sltnet.lk http://www.consumeraffairs.gov.lk

CHAPTER - 3

Contracts



Contracts at a glance:

- For an agreement to be legally binding, a number of elements must be present. If a contract does not have all elements present, the whole or part of the contract will be void and unenforceable.
- A contract can be verbal, written or implied. However, certain contracts such as Land Deeds are required by law to be in writing.
- As a general rule, everyone is capable of entering into a legally binding contract. However a person's capacity may be affected by their mental health, intoxication or if the person is a minor.
- Each party to a contract must be fully aware of their rights and obligations under the contract.
- If a party to the contract can prove that they made an honest mistake entering into the contract, it may be unenforceable.
- You cannot make a misrepresentation (an untrue statement of fact or nondisclosure of a material fact), make a threat or abuse your power to induce another to enter into a contract.
- Financial loan contracts are often significantly detailed contracts and you should always make sure you understand your rights and obligations under the contract before signing any documents.

3.1 Elements of a Contract

A microfinance loan is a financial loan contract, and each party to the loan (the lender and the borrower) have rights and obligations (such as repayment obligations or termination of the contract) that are set out in the written contract. Those rights and obligations can only be enforced if the contract is valid, and legally binding. Under the general principles of law relating to contracts, not all agreements are legally binding.

For an agreement to be legally binding, the following elements must be present:

- an offer and an unqualified acceptance of that offer;
- valuable consideration;
- capacity of the/all parties;
- the possibility of performance;
- an intention to create legal relations;
- genuine informed consent by all parties;
- legality (If the purpose for which the contract was entered into is/was illegal, the whole contract will be void); and
- clearly stated essential terms of the contract.

In general, there is no requirement by law that a contract should be in writing and a valid contract may be made either:

- verbally;
- in writing; or
- by implication (assumed to exist by the conduct of the parties).

However, certain contracts are required by law to be in a particular form. If a contract is not in a prescribed form, a court of law may find that the contract is not valid and may not provide any relief to the parties under that contract.

Some examples of contracts that must be in writing include:

- *Land Deeds* - the *Prevention of Frauds Ordinance No 84 of 1981* states that all agreements relating to immovable property (including houses, land, etc) should be in the format of a deed - that is, in writing, signed by the parties, and witnessed by two people and a notary public. (For further information on how to obtain a copy of a deed if you lose one, see Chapter 1.4 titled “Obtaining Civil Documentation”).

- *Bills of exchange and cheques* - the *Bills of Exchange Ordinance No 82 of 2001* provides that bills of exchange and cheques must always be in writing. (For further information on bills of exchange and cheques, see Chapter 1.3 titled “Banking and Finance”).

3.2 Legal Capacity to Enter into Contracts

As a general rule, everyone is capable of entering into a legally binding contract. However, a person’s capacity may be affected by their mental health (for example, insanity), intoxication or if the person is a minor.

An *intoxicated or insane person* is deemed to be incapable of entering into a contract. If a person is aware that they are entering into a contract with an insane or intoxicated person, the contract will be invalid unless they can prove that despite the fact that the person was insane or intoxicated, they were still able to understand the nature of their activity at the time of making the contract.

A *minor* is someone under the age of 18 years. The law presumes that minors do not have the required mental capacity to understand the nature and consequences of their actions, and therefore do not have the capacity to enter into a contract. A person who enters into a contract with a minor may not be able to enforce all or part of the contract. However, a minor is bound by a contract when it is made for their necessities (including all the items/commodities and services reasonably necessary for a person to sustain life such as food, clothing, housing, medicine and education).

3.3 Informed Consent

It is important to obtain the genuine informed consent for each and every clause contained in the contract. If a party did not give informed consent to a contract, the contract will likely be invalid. Informed consent is when each party is fully aware of their rights and obligations under the contract. In the case of a dispute over a contract, simply having a party’s signature on the contract is not enough to prove to a court that they were fully aware and consented to all the rights and obligations set out in the contract.

Very often people get into trouble when they have signed a contract without understanding their obligations under that contract. The general rule is that a person who signs a document will be bound by the contents (even if they have not read it). However, there are some exceptions to the rule including:

- when a party was not given an opportunity to read the contract;
- the contract was incorrectly explained to them;
- when a party was forced to consent to the contract;
- their consent to the contract was fraudulently obtained; or
- there was a genuine misunderstanding (for example due to an honest mistake).

(a) Mistake

If the party can prove that they have made an honest mistake, the contract may be declared invalid. Common examples of an honest mistake are when a party signs a document that they could not read because of illiteracy or blindness.

There are three types of mistakes - common mistake, mutual mistake, and unilateral mistake.

Common mistake occurs when both parties make the same mistake on a fundamental point regarding details of the subject matter of the contract. The main instance in which a party can get a contract declared invalid on the basis of a common mistake is where the subject of the contract is non-existent or has ceased to exist at the time of entering into the contract.

Mutual mistake occurs when both parties make mistakes, but each make a different mistake regarding the details of the subject matter of the contract. This can occur when the contracting parties mean different things or make a mistake in correctly identifying the details in the contract and sign the contract without realizing that the details are incorrect.

Unilateral mistake occurs when one party to the contract makes a mistake and the other party is aware of the truth. Most of the cases of unilateral mistake are related to the mistaken identity of one party as a result of a misrepresentation by the other party.

b) Misrepresentation

Misrepresentation occurs when one party to a contract makes either an untrue statement of fact or does not disclose a material fact with a view to induce the other party to enter into a contract. When the innocent party becomes aware of the true facts, the innocent party can seek to have the contract declared void.

There are 3 types of misrepresentations - innocent misrepresentation, negligent misrepresentation, and fraudulent misrepresentation.

Innocent misrepresentation is a false representation made honestly. It is an untrue statement made by a person believing it to be true with reasonable grounds for that belief.

Negligent misrepresentation is an untrue statement made by a person believing it to be true without any reasonable grounds for that belief.

Fraudulent misrepresentation is an untrue statement made by a person with the knowledge that it is untrue. If a fraudulent misrepresentation has been made in entering into a contract, the innocent party can seek to have the contract declared void and seek damages for any loss incurred because of the contract.

In order to claim any of the 3 types of misrepresentation, the innocent party must prove the following:

- there was a false (untrue) statement of fact (not just a mere opinion);
- the innocent party relied on the statement made by the other party;
- the misrepresentation induced the party to enter into the contract; and
- the misrepresentation happened before the contract was entered into.

In contracts that are made in good faith, all material facts (however small) must be included in the contract. In particular, all material facts should be included in insurance contracts and contracts with a Bank.

c) Duress

Duress is a threat to cause physical harm to the other party, or their family, for the purpose of forcing the other party into enter into the contract. The innocent party has not given free and genuine consent to enter into the contract and therefore the contract can be declared void.

d) *Undue influence*

Undue influence is when one person takes advantage of their position of power to coerce another person to enter into a contract that they otherwise would not have entered into. A contract can be made void for any person that was unduly influenced.

Some examples of undue influence include where there is a relationship of trust and confidence between the parties of such a nature that it can be presumed that the wrongdoer abused that relationship in procuring the other to enter into the contract that was significantly disadvantageous to them - such as doctor and patient, lawyer and client, teacher and student, trustee and beneficiary or religious adviser and disciple. Other examples may be where a person was threatened with exposure of some past activity or secret.

3.4 Financial Loan Contracts

Financial loan contracts are often significantly detailed documents that are at times difficult to understand. You should always make sure you understand the loan contract before signing any documents. In addition, you should make sure that your loan contract clearly identifies:

- all the parties (including any guarantors) to the contract. Each party should be identified by their full name, address and NIC number;
- the amount of money to be borrowed;
- the agreed security/collateral to the loan (for example, a mortgage or guarantee);
- the applicable interest rate that is to be paid;
- the repayment procedure specifying when, how and how much the borrower must repay;
- circumstances where the customer will be in default of the loan;



(a) *Security/collateral*

Security or *collateral* describe assets that secure a loan. The Bank secures a borrower's assets against the default risk of the borrower not being able to meet the interest payments. In case of default the Bank can sell the secured asset and get its money back. The most common types of securities are mortgages and guarantees.

(i) *Mortgages*

A *mortgage* is a conveyance of an interest in property as security for the repayment of money borrowed. If immovable property (a house, land, etc) is mortgaged as security for a loan, the mortgage often must be provided in the form of a bond which is executed in writing by a notary public and registered at the relevant Land Registry. A mortgage on movable property (a car, a boat, etc) must be by way of a mortgage bond executed by a notary public, but need not be registered at the Land Registry. If the mortgaged property is movable, it is advisable to have a clause in the agreement to the effect that the lender has the right to obtain possession of the property in the event of default by the borrower.

A properly executed mortgage bond can be enforced in a court of law by the lender instituting a recovery action in the district court for the enforcement of the mortgage bond. However, if the instrument through which the property is mortgaged is not certified in the proper way, it may not be enforced in a court of law.

(ii) *Guarantees*

A *guarantor* is a person who agrees to repay a loan amount (with interest) for someone else in the event that the original borrower defaults on the loan repayments and is no longer able to repay the loan amount to the lender. The guarantor provides a *guarantee* that the loan amount will be paid by them, if the borrower is unable to do so. Most lenders will require that the guarantee be in the form of a written contract (called a guarantor's bond).

In the case of default, the lender sends a letter of demand to the guarantor and then has the option to institute legal proceedings in court against the guarantor to seek payment of the loan within six years from the date of that letter of demand.

It is very important to note that the guarantor becomes liable for all of the terms and conditions of a contract with the lender in the same way the original borrower was bound. Therefore, every legal position discussed under legal capacity and informed consent are applicable to the guarantor as well. *(For further information on legal capacity and informed consent, see sections 3.2 and 3.3 of this chapter).*

(b) Default - What happens if you cannot repay your loan

If a person has entered into a loan contract, that person has agreed to repay the lender in accordance with their loan contract. However, sometimes circumstances arise that make it difficult or impossible to repay the lender as required. If a borrower fails to repay the loan in accordance with the terms and conditions of the loan contract, the borrower goes into **default** and the lender is entitled to enforce their rights under the contract, including their right to recover the debt.

Lenders must recover the debt in accordance with the provisions of:

- the loan contract;
- the mortgage (if held); and
- the *Debt Recovery (Special Provisions) Act No. 2 of 1990* (for some lenders).

The *Debt Recovery (Special Provisions) Act* sets out how some lenders must go about recovering the debt. Common debt recovery procedures include the requirement to send a letter of demand to the borrower, demanding payment of the outstanding amount and giving the borrower the opportunity to rectify the default. If a customer does not rectify the default in accordance with the letter of demand, the lender can commence recovery proceedings in the District Court to either compel the borrower to repay the loan immediately or to enforce their right to sell the security/collateral.

If you find yourself in default of a loan contract, you should attempt to pay the outstanding money as soon as possible. Offering to pay some of the money you owe is better than not offering any money at all as your lender is likely to appreciate on your attempts to rectify your default. This may prevent the lender from commencing court proceedings against you or enforcing their collateral.

(c) Rights and obligations of group borrowers

Individuals that borrow as a group remain individually bound by the terms and conditions of the contract. Therefore each member of the group will be made a party to the loan contract.

Each person identified in the contract is liable for any default of payment of the total amount that the group borrowed, as well as being liable to repay the individual amount that they borrowed. Therefore the group has a collective and individual responsibility to repay the loan amount.

(d) Can my family inherit my loan repayment obligations?

Yes. In the same way that you can inherit the assets of the deceased, you can also inherit their liabilities. The legal heirs of a deceased inherit their estate which consists of property, assets as well as liabilities such as debts of the deceased.

3.5 Promissory Notes

A promissory note is another form of a loan contract. It is in essence a 'promise to pay' whereby one party agrees to pay a particular sum of money to another either with or without interest. The repayment could take place either on demand or on a particular date.

If the borrower goes into default under a promissory note, the lender has the right to institute legal action against the borrower for the amount specified in the promissory note. Promissory notes are governed by the provisions of the *Bills of Exchange Ordinance No. 25 of 1927*.

Further information

Relevant Law	Available online at:
Unfair Contract Terms Act, No.26 of 1997	<a "&path='2"' href="http://www.lawnet.lk/process.php?st=1997Y0V0C26A&hword=">http://www.lawnet.lk/process.php?st=1997Y0V0C26A&hword=""&path=2
Debt Recovery (Special Provisions) Act No. 2 of 1990	<a "&path='2"' href="http://www.lawnet.lk/process.php?st=1990Y0V0C2A&hword=">http://www.lawnet.lk/process.php?st=1990Y0V0C2A&hword=""&path=2
Bills of Exchange Ordinance No. 25 of 1927	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=2001Y3V82C&hword=">http://www.lawnet.lk/process.php?st=2001Y3V82C&hword=""&path=5

CHAPTER - 4

Labour Law



Labour Law at a glance:

- An individual can be engaged to undertake work for a business as either an employee or independent contractor. Employees are protected under Sri Lankan Labour laws whereas independent contractors are protected under contract law.
- The terms and conditions of employment should be agreed upon before the commencement of employment and drafted in a written contract.
- Both employees and employers have rights and duties towards each other. However, employers are required under various Labour laws to provide minimum employment standards for their employees.
- The *Shop and Office Employees Act* covers the regulations of employment standards, hours of work, holidays and remuneration of shop and office employees.
- For employees not governed by the *Shop and Office Employees Act*, the *Wages Boards Ordinance* governs an employee's minimum wage, working conditions, and other entitlements.
- The *Employment of Women, Young Persons and Children Act* sets out particular restrictions on the employment of women, young people and children in Sri Lanka.
- The Employees Provident Fund is a mandatory retirement scheme for individuals employed on a permanent, casual, contract or temporary basis in the private and state sectors. Employers and employees must contribute to this fund.
- The Employees Trust Fund is separate from the Employee Provident Fund. The employer is required to contribute every month to the Employees Trust Fund *in addition* to the Employee Provident Fund.
- There are numerous ways in which an employment contract can be terminated.
- A gratuity is an amount of money given by the employer to the employee at the time of the termination of services as a gratitude for the services rendered by the employee, and is mandatory in some instances.
- To resolve an industrial dispute, employees and employers may seek relief from either the Labour Commissioner or Labour Minister.

4.1 Employees and Independent Contractors

An individual can be engaged to undertake work for a business as either an:

- **Employee** (a person who performs work for an employer under a verbal or written contract); or
- **Independent contractor** (a person who is not employed by a business but does work for the business).

In Sri Lanka the rights and obligations of employers and employees are regulated by a number of different laws, depending on the nature of the work being undertaken and type of employment (*Labour laws*). Sri Lankan Labour laws regulate matters affecting *employees* such as conditions of employment, remuneration, social security, freedom of association and collective bargaining. The Labour laws focus on the contract of employment, that is, the relationship between an employer and their employees as set out in a written agreement.

Unlike employees, *independent contractors* are not afforded protection under these Labour laws; instead any disputes regarding independent contractors are resolved under general contract law. Therefore it is important to recognize the differences between an employee and an independent contractor to determine what types of benefits, rights and obligations apply. (For further information on contract law, see Chapter 3 titled “Contracts”).



Differences between employees and independent contractors	
Employees	Independent Contractors
An employer has many liabilities and obligations to employees such as conditions of employment, remuneration, social security, and freedom of association	Employers have fewer liabilities and obligations to contractors
An employee is expected to use the employer's equipment to carry out their work	A contractor is expected to use their own equipment to carry out their work
There is no set time duration of employment	Work is to be undertaken within a set timeframe
Work is paid according to time, price or performance	Work is price rated, paid upon completion of the job and usually based on results
An employee is an integral part of the business	A contractor is an accessory to the business
Employees can claim EPF, ETF, and gratuity payments from their employer	A contractor cannot claim EPF, ETF, or gratuity payments from their employer
An employee works exclusively for one employer	A contractor can be engaged in various jobs for various businesses, and carries on independent business records of work undertaken
An employer has direct control over the employee	A contractor has control over their own work
Employers are liable to pay compensation for any injuries suffered by an employee that are work related	An independent contractor cannot claim compensation for injuries

4.2 Employment Contracts

Employment contracts set out the agreed terms and conditions of employment and can be:

- expressed or implied; and
- oral or written.

While it is common for employees to commence employment based on a verbal contract, verbal contracts are not the most effective way to regulate an employment relationship. To avoid lengthy and costly resolution of disputes, the terms and conditions of the employment should be agreed upon before the commencement of the employment. In the case of disputes, the best way to determine the agreed terms and conditions is by reference to a written contract. *(For further information on dispute resolution, see Chapter 7, titled "Dispute Resolution").*

However, whether there is a written contract or not, the *Industrial Disputes Act No.43 of 1950* states that an employee has a right to any relief or redress granted by a Labour Tribunal, notwithstanding anything to the contrary in any contract of service between the employee and employer.

When an application is made under the *Industrial Disputes Act* to either the Labour Tribunal, Industrial Court, Arbitrator or Labour Commissioner, the deciding authority will hear all such evidence that is considered necessary and only make a decision and issue any orders that are just and equitable, regardless of what is contained in the contract of employment.

The following table shows some of the advantages of written employment contracts over verbal agreements:

Advantages of a Written Employment Contract Over a Verbal Employment Contract	
Written employment contracts	Verbal employment agreements
Implies that the parties gave informed consent to the contract.	It can be difficult to verbally state every term and condition of a contract. An employee cannot be kept in the dark about their obligations.
Provides proof that an agreement exists between the parties.	It can be difficult to prove that an agreement exists. It is one person's word against another.
Terms and conditions can be listed to create a clear understanding of each parties rights and obligations.	Interpretation could change over time or between parties, from what was originally verbally agreed.
If in doubt, the parties can refer back to their contract to avoid or resolve any misunderstanding.	There is a higher chance of a legitimate misunderstanding by one or both of the parties as to the terms and conditions of the employment.

4.3 Terms and Conditions of Employment

The minimum standards of employment terms and conditions are set out in trade-specific legislation. For example, the minimum standards for working hours and pay rates for shop assistants are set out in the *Shop and Office Employees Act No. 19 of 1954*, and the minimum standard for working hours and pay rates for factory workers are set out in the *Factories Ordinance No.45 of 1942*. So it is important to know which regulations apply to the type of work that you are doing, and therefore know whether the employees are being treated in a accordance with the law (and avoid disputes).

4.4 Common Employment Disputes

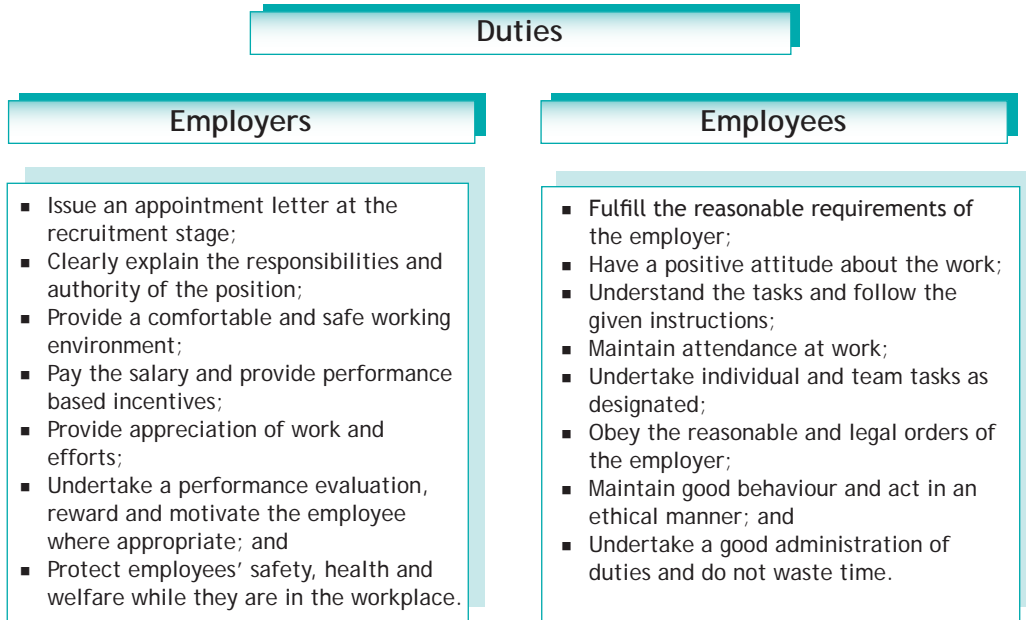
It is important that both the employer and potential employee have a clear understanding of the terms and conditions of the employment to avoid or clearly resolve disputes. Common disputes can arise when:

- the employer denies that they ever employed a person;
- the employer claims the employee vacated their employment;
- the employer refuses to grant an extension after the optional age of retirement;
- the employee claims their employment was “constructively terminated” (including by way of reduction in rank or status, etc); or
- the employer claims the applicant was on a fixed term contract, in seasonal employment or was an independent contractor.

The best way to ensure that both parties have a clear understanding of their employment relationship is to have a written contract of employment that sets out the terms and conditions, the expected roles and responsibilities of the position. It may be convenient for parties to enter into a *collective agreement*, which addresses the issues mentioned above. A collective agreement is an agreement made between the employer and all their employees. In some cases a trade union may be the representative party acting for the employees in the agreement. A collective agreement is a binding contract on all parties including each employee individually. (*For general principles of rights and obligations under contract, refer to Chapter 3, titled “Contracts”.*)

4.5 Rights and Duties of Employers and Employees

Both employees and employers have rights and duties towards each other as illustrated below.



As a general rule, it is the duty of an employer to ensure a safe workplace for employees and protect their safety, health and welfare while they are at the workplace. For example, the *Factories Ordinance No. 22 of 1946* and *Factories Act No. 54 of 1961* (and respective amendments) set out the obligation of an employer to protect the safety, health and welfare of employees where the employees undertake manual labour in:

- making any article or part of any article;
- altering, repairing, ornamenting, finishing, cleaning, washing, breaking up or demolishing any article;
- adapting any article for sale; or
- slaughter of cattle, sheep, swine, goats, horses, asses.



The employer has a responsibility to ensure that the building plans of the factory are approved to ensure they comply with safety and health requirements. Employers should also ensure that there are systems in place to notify employee when there is an accident, industrial disease or other dangerous occurrence. Employers are required to implement safety measures such as:

- fire prevention and fire controlling systems;
- adequate ventilation, lighting and control of excessive noise and temperatures;
- provision of employee facilities such as drinking water, toilets, meal rooms, canteens, washrooms, changing rooms, etc;
- safe access to and from the building;
- physical guarding to reduce or avoid hazards;
- safe storage and safe handling of materials; and
- safeguarding machinery.

Work-related accidents may result in an interruption of work, damage to property and injury to persons. Therefore compliance with the workplace health and safety principles will eliminate the risk of these dangers from occurring, and result in a more productive workplace and happy workers.





4.6 Employee Entitlements

(a) *The Shop and Office Employees Act*

The *Shop and Office Employees Act No. 19 of 1954* covers the regulations of employment, hours of work, holidays and remuneration of shop and office employees.

Under the *Shop and Office Employees Act*, shops are defined as:

- places that undertake retail or wholesale business;
- hotels and places where food and beverages are sold;
- saloons;
- laundries; and
- studios.



Temporary business premises operated for less than one month and funeral undertakers are not considered shops.

An **office** is defined as being a Bank, brokerage, insurance company, shipping company, stock company, estate agent, advertising agency, commission agent, forwarding agent, consultancy firms, any professional association or trade association; or any administration office or clerical department of any shop, factory, estate, mine, hotel, club, or any other industrial or commercial business organization.

The following table lists the entitlements that the *Shop and Office Employees Act* requires an employer to provide to their employees:

Entitlements that an employer must provide under the Shop and Office Employees Act		
Working hours	Holidays *	Maternity Leave for Female Employees
<ul style="list-style-type: none"> • A maximum of 8 hours of work per day (excluding 1 hour for rest and lunch) • A maximum of 45 hours of work per week (excluding intervals) • Additional hours (over 45 hours) must be treated as over time • 1 ½ hours remuneration should be paid for 1 our of over time 	<ul style="list-style-type: none"> • Weekends = 1 ½ days/ week • Mercantile holidays = approximately 7-8 days/year • Poya days = 12 days/ year • Casual holidays = 7 days/year • Annual Leave = 14 days/year (7 days can be consecutive) <p>*Note: for new recruits, the annual holiday entitlement varies from 4 to 14 days depending on when an employee was recruited</p>	<ul style="list-style-type: none"> • For the first and second child = 84 days (excluding holidays) • For third or more children = 42 days (excluding holidays)

(b) The Wages Boards Ordinance

For employees who are not governed by the *Shop and Office Employees Act*, the *Wages Boards Ordinance No. 27 of 1941* governs the minimum wage, working conditions, and other employee entitlements.

Wages Boards are committees set up to make decisions on matters concerning the industry such as:

- Minimum rates of wage for time work;
- Minimum rates of wage for piece work;
- Minimum rates for over time work;
- Allowances to be paid for employees by the employer;
- Hours of work;
- Weekly holidays;
- Annual leave;

Most industries have a Wages Board made up of a variety of different people involved in that industry including Ministry representatives, employees representatives (usually unions), employers representatives (such as the Employers Federation), and occasionally persons nominated by the Minister. The following table lists the entitlements that the *Wages Boards Ordinance* requires an employer to provide to their employees:

Entitlements that an employer must provide under the Wages Boards Ordinance		
Working hours	Holidays *	Maternity Leave for Female Employees
<ul style="list-style-type: none"> • 9 hours per day (including 1 hr interval) • Working hours per day should not exceed 12 hrs including overtime • Working hours should not exceed 48 hrs per week 	<ul style="list-style-type: none"> • Annual leave 21 days • Poya days • One holiday/week • Mercantile holidays 	<ul style="list-style-type: none"> • 12 weeks (84 days) paid leave for the first two children (including public holidays) • 6 weeks (42 days) paid leave for third or more children • An employee’s contract cannot be terminated because of pregnancy or confinement

It is important to note that both the *Shop and Office Act* and *Wages Boards Ordinance* are having a reduced role in determining wages actually paid to employees. There is an increasing reliance on performance based agreements to determine salary, entitlements and conditions of employment. Therefore, in the case of a dispute between employer and employee, there is an increasing reliance on the interpretation of the contract. (*For further information on contract law, see Chapter 3 titled "Contracts".*)

4.7 Employment of Women, Young Persons and Children

The *Employment of Women, Young Persons and Children Act 1956* (EWYC Act) provides certain restrictions on the employment of women, young people and children at night, in industrial workplaces (either public or private), and at sea.

In accordance with the EWYC Act, an '*industrial workplace*' includes:

- mines or quarries, or in other works for the extraction of minerals from the earth;
- a business where articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, or broken up or demolished or in which materials are transformed;
- ship building or in the generation, transformation or transmission of electricity or motive power of any kind; and
- building and civil engineering work or in construction repair, maintenance, alteration or demolition work.

Any person found to be employing a woman, young person or child in contravention of any part of the EWYC Act will be punished and subject to a fine and in some cases, imprisonment.

(a) Women

In relation to industrial work, the EWYC Act provides the following restrictions for women:

- women are prohibited from working before 6am and after 8pm;
- no woman shall be compelled to work at night against her will;
- the Labour Commissioner must grant written approval for a woman to work after 10pm at night;
- if a woman has worked between the hours of 6am to 6pm, that woman shall not be employed after 10pm on the same day;
- a woman that works at night shall be paid one and a half times the normal hourly payment;
- the business must appoint female wardens to oversee the welfare of women who work at night;
- restrooms and refreshments must be provided by the employer to every woman that works at night; and
- it is an offence to require a woman to work at night for more than ten days per month.



The EWYC Act does not apply to:

- women holding responsible positions of managerial or technical character;
- women employed in health and welfare services who are not ordinarily engaged in manual work; or
- an industrial undertaking that employs members of the same family only.

(b) *Young Persons*

The EWYC Act defines a **young person** as an individual who is aged between 14 and 18 years old. The EWYC Act provides the following restrictions for employment of young people:

- it is an offence to engage a young person in either a public or private industrial undertaking, or branch thereof;
- young people are prohibited from working before 6am and after 8pm;
- the maximum working hours for a young person is 9 hours per day, including a time allowance for meals;
- for males aged between 14 and 18 years, employment is permitted between 6pm and 8pm in a residential hotel, restaurant or a place of entertainment;
- where a person between 16 and 18 years is required to work during the night for the purposes of an apprenticeship or vocational training in an industrial undertaking, they must be granted a rest period of 13 consecutive hours between two working periods;
- it is an offence to employ a person under the age of 15 years on any ship or vessel registered in Sri Lanka, or that is owned by any person or body resident or carrying on business in Sri Lanka;
- it is an offence for a person under the age of 18 years to take part in a public performance that endangers “life or limb”; and
- it is an offence to employ a person under the age of 18 years in a hazardous occupation, as determined by the Minister.

The *Shop and Office Employees Act* also prohibits the employment of a male between the age of 14 and 18 years, and any female in or about the business of a shop or office before 6 am or after 6 pm on any day.

The prohibition in the EWYC Act does not apply:

- to persons under the age of 15 years on school ships or training ships, if such work has been approved and is supervised by a public authority; or
- to male persons between the age of 16 and 18 years for the purposes of apprenticeship or vocational training in an industrial undertaking.

(c) Children

The recruitment of children into forced labour is of significant international concern. Various international bodies such as the United Nations (UN), the International Organization for Migration, the International Labour Organization and other organizations have been working for several decades to combat the recruitment of children into forced labour to make it illegal in all countries.

The *UN Convention on the Rights of the Child 1989 (CRC)* recognises that it is a child's right to be *protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development* (at Article 32(1)).

The CRC goes on to state that countries who have signed up to the convention shall:

- provide for a minimum age or minimum ages for admission to employment;
- provide for appropriate regulation of the hours and conditions of employment; and
- provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

In Sri Lanka, the EWYCA was enacted to adhere to the CRC and to protect the best interests of the child (including prohibiting the employment of children in certain circumstances). The EWYCA Act defines a child as a person under the age of 14 years old.

The EWYCA Act states that it is illegal:

- to employ any child under the age of 12;
- to employ a child in a public or private industrial undertaking, or at sea; and
- for a child to take part in an entertainment performance with an admission fee.

The *Shop and Office Employees Act* also prohibits the employment of a person under the age of 14 years in or about the business of a shop or office.

The EWYC Act does not apply to children employed:

- by their parents or guardian in light agricultural, horticultural or similar work (as undertaken by the same members of the family) before or after school hours; or
- in any school or institution supervised by a public authority, imparting technical education or other training for the purpose of trade or education.

If a child is employed in such a manner that is prejudicial to the child's health or physical development, or makes the child unfit to obtain proper benefit of their education, an authorized officer of the Labour Commissioner, may either prohibit or impose conditions on the child's employment. Any person found to be employing a child in contravention of any part of the EWYC Act will be punished and subject to a fine, and/or imprisonment.

4.8 Employees Provident Fund

The Employees Provident Fund (EPF) is a mandatory retirement scheme for individuals employed on a permanent, casual, contract or temporary basis in the private and state sectors. The fund is administered and enforced by the Labour Commissioner and the Employee's Provident Fund Division of the Central Bank of Sri Lanka.

However EPF is not compulsory for the following types of employment:

- domestic servants;
- employees in charitable institutions of social service or religious organizations;
- members of the family employed in a business owned by that person's family;
- employees who provide industrial training for disabled persons;
- self employed persons;
- persons under 14 years of age; or
- those who undergo on-the-job training at institutions such as the National Apprentice and Industrial Training Authority (NAITA).

(a) Compulsory contributions

Both employees and employers must make contributions to the EPF; the employer is required to contribute 12% of the *employee's total salary* into the fund and employees are required to contribute 8% of their total salary into the fund. The employee's total salary includes the basic salary, any living allowance received, payment in lieu of annual leave, cash value of the food provided by the employer, and any other permitted allowance. The total salary does not include any bonuses given, overtime, rent allowance, travelling allowance, or hotel service charges.

There is no age limit regarding making contributions to the EPF. An employee can make a contribution at any stage of life.

If an employer fails to make a contribution into an employee's EPF on or before the last day of the succeeding month, they will be subject to a penalty consisting of a fine of between 5% and 50% of the original amount due. This penalty will increase according to the delay of payment and should be paid into the employee's bank account. Exceptions will be made at the discretion of the Labour Commissioner if the employer can prove that non-payment of the contribution was because of circumstances beyond their control.

(b) Withdrawal of funds from the EPF

The purpose of the EPF is to provide a uniform scheme for employees to save for their retirement. Interest accrues on the employee's EPF balance even if a contribution is not sent in time by the employer and interest continues to accrue until withdrawal of the employee's funds. Given that the intention of the fund is to help people save for retirement, the funds held in the EPF are only payable to the employee in certain circumstances:

- upon retirement (55 years for male and 50 years for female);
- upon early retirement of a woman because of marriage;
- if the person becomes permanently incapable of work (certified by a medical practitioner);
- if the person leaves the country permanently;
- if a person ceases to be employed in a business due to the take-over of the business by a public corporation;

- retrenchment from a public corporation or if the public corporation closed;
- if the business is bought and taken over by another company, and the person's position is no longer available; and
- when a person leaves a private company to become an employee of the Sri Lankan Government Public Service as a permanent and pensionable employee.

4.9 Employees Trust Fund

The Employees Trust Fund (ETF) is managed by the Employees Trust Fund Board (ETF Board). ETF is different to the Employee Provident Fund (EPF). The employer contributes 3% of the employee's salary every month into the ETF. If an employee is entitled to the EPF, then they are also entitled to the ETF. Some of the benefits available to members of the EFT include:

- free life insurance;
- permanent disability insurance;
- financial assistance for heart surgery;
- re-imbursement of the cost of an intra-ocular lens implanted following cataract surgery; and
- financial awards for members children passing the grade V exam with merit.

(a) Withdrawal of funds from the ETF

An employee can withdraw funds from the ETF in the following circumstances:

- On termination of employment (only once in 5 years);
- At retirement (age 55 years old);
- On the death of an employee (a nominee can withdraw on their behalf);
- When moving to a pensionable job with the local or Sri Lankan Government; and
- When an employee permanently leaves the country.

However, an employee may receive the benefits of the ETF only after a period of 2 years of continuous employment.

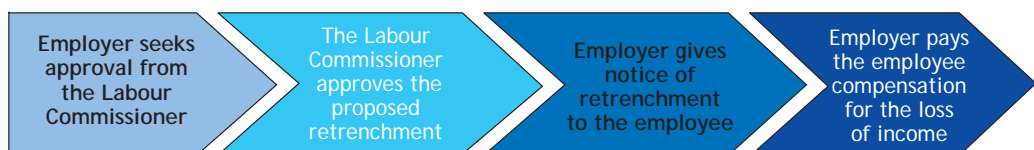
(b) ETF Opportunity for self-employed persons

A person that is self employed should send an enquiry, in writing, to the ETF Board if they wish to set up their own ETF. The ETF board will provide directions on how to apply for, obtain, and make contributions into their ETF. Once a member of the ETF, the self employed person must contribute 3% of their total earnings each month.

4.10 Termination of Employment

A contract of employment can be terminated (that is, come to an end) if one of the following situations occur:

- death of employee (or sometimes employer);
- termination by mutual consent (including by expiry of the contract period);
- termination by the employee either:
 - voluntarily
 - by non performance of the contract of employment
 - by abandonment of employment, or
 - because of misconduct or breach of contract by the employer;
- termination by operation of law (for example, by frustration); and
- termination by the employer by:
 - notice, through a letter or verbal notification,
 - on disciplinary grounds for:
 - serious misbehaviour
 - habit of late attendance
 - negligence
 - drunkenness
 - damaging employer's property
 - bribery/ Corruption, or
 - disobedience,
 - on non-disciplinary grounds by:
 - retrenchment/ Redundancy, or
 - closing down the business.



4.11 Gratuities

A *gratuity* is an amount given by the employer to the employee at the time of the termination of services as gratitude for the services rendered by the employee. A business may be required to pay its employee's a gratuity payment upon termination of their employment.

A business must pay a gratuity to an employee, if:

- the business employs fifteen or more workers;
- the employee has worked for that business for five or more years; and
- the employee's employment has been terminated. It does not matter how the employment was terminated (that is, it does not matter whether the employee resigned, retired or if the employer terminated the employment).

Personnel chauffeurs, domestic servants and employees of non-contributory pension schemes are not eligible. *(Further information can be found in the Payment of Gratuity Act No. 12 of 1983.)*

(a) Payment of a gratuity

An employer must pay the employee their gratuity payment within 30 days of termination of employment. If an employer fails to pay the required gratuity within the 30-day limit, they may be required to pay a surcharge ranging from 10% to 30% of the original gratuity amount. When one employer sells the business to a new employer, the new employer is liable to pay the gratuity.

Gratuities are paid based on the number of years worked. To calculate gratuities use the following formula:

$\text{Employee's Gratuity} = \frac{\text{(Amount of employee's salary received last month x Years worked)}}{2}$
--

Note: In some cases damages and liabilities incurred by the employer can be deducted from the gratuity payment.

4.12 Resolution of Industrial Disputes

The *Industrial Disputes Act No. 43 of 1950* applies to disputes between employees and employers in the following sectors:

- the private sector;
- semi-government corporations;
- boards;
- Non-governmental organizations (NGO's);
- associations;
- federations;
- professional institutes; and
- others.

It does not apply to Sri Lankan Government or Local Government employees, or the Sri Lankan Armed Forces.

In a dispute the employees may seek relief from either the **Labour Commissioner** or **Labour Minister**. The Labour Minister can refer the dispute to either an arbitrator appointed by the Labour Minister, Labour Tribunal, or Industrial Court.

(a) Labour Commissioner

The Labour Commissioner may settle the dispute in any of the following ways:

By reference to a collective agreement - A *collective agreement* is an agreement between an employer and any workman or trade union relating to terms and conditions of employment, privileges, rights, or manner of settlement of any industrial dispute. The Labour Commissioner tries to settle the dispute in accordance with the terms of the collective agreement, if one exists.

Through conciliation - *Conciliation* is when a third party intervenes to settle the dispute. A third party is appointed by the Labour Commissioner to negotiate with both parties to come to a settlement. Once a settlement is agreed, the terms of the settlement are drafted into an agreement and signed by both parties.

Through Arbitration - *Arbitration* is when the Labour Commissioner invites both parties involved in the dispute to appoint an arbitrator (both parties should agree on the appointed arbitrator) to resolve the dispute. The decision of the arbitrator is final and binding. If the parties have not appointed an arbitrator, the Labour Commissioner will appoint an arbitrator to settle the dispute. (*For further information on arbitration refer to Chapter 7.2(c), titled "Arbitration"*).

By referring the matter to the Labour Tribunal - The *Labour Tribunal* functions as an arbitrator. Once the parties come to an agreement, the agreement should obtain the Labour Commissioner's approval. The Labour Commissioner will then investigate the terms of the agreement and consider similar industry standards.

(b) Labour Tribunal

Labour Tribunals were established under the *Industrial Disputes Act* to offer special services to the employees, especially in unfair termination and gratuity matters. An employee or a trade union (on behalf of an employee) can apply directly for the services of the Labour Tribunal to hear their case.

The Labour Tribunal provides services on the following issues:

- termination;
- non payment of gratuity, gratuity made in terms of the *Payment of Gratuity Act No. 12 of 1983* or any other termination benefits; and
- other such matters regarding terms of employment.

Applications to have a dispute heard in front of the Labour Tribunal must be produced within 3 months of the alleged termination of employment.

(c) Industrial Court

Only the Labour Minister can refer matters to an Industrial Court. Employees and/or employers do not have the right to directly apply to the Industrial Court. The Industrial Court consists of five members appointed by the President of Sri Lanka.

The main functions of the Industrial Court are:

to hear disputes referred by the Minister; to hear appeals from awards made by the Labour Commissioner; and to reconsider the awards made by another Industrial Court (on appeal).

Contact details and further information

Relevant Law	Available online at:
Employees' Trust Fund Act No.46 of 1980	http://www.lawnet.lk/process.php?st=1980Y0V0C46A&hwo''=''&path=2
Employees' Provident Fund Act No. 15 of 1958	http://www.lawnet.lk/process.php?st=1958Y0V0C15A&hwo''=''&path=2
Employment of Women, Young Persons and Children Act No. 47 of 1956	http://Labourdept.gov.lk/Legislations/Empl of%20WomYouPersonsChi.pdf
Factories Ordinance No.45 of 1942	http://Labourdept.gov.lk/Legislations/Factories%20Ordinance..pdf
Industrial Disputes Act No.43 of 1950	http://www.Labourdept.gov.lk/Legislations/Industrial%20Disputes.pdf
Industrial Disputes (Conciliation) Ordinance No. 56 of 1999	http://www.lawnet.lk/process.php?st=2001Y5V131C&hwo''=''&path=5
Maternity Benefits Ordinance No. 32 of 1959	http://Labourdept.gov.lk/Legislations/Maternity%20Benefits%20ord.pdf
Payment of Gratuity Act No. 12 of 1983	http://www.lawnet.lk/process.php?st=1983Y0V0C12A&hwo''=''&path=2
Shop and Office Employees Act No. 19 of 1954 (and amendments)	http://Labourdept.gov.lk/Legislations/Shop%20&%20Office%20Employees.pdf
Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971	http://www.lawnet.lk/process.php?st=1971Y0V0C45A&hwo''=''&path=2
Trade Union Ordinance No. 14 of 1935	http://Labourdept.gov.lk/Legislations/Trade%20Unions.pdf
Wages Boards Ordinance No.27 of 1941	http://Labourdept.gov.lk/Legislations/Wages%20Boards%20Ordinance.pdf
Workmen Compensation Ordinance No. 19 of 1934	http://Labourdept.gov.lk/Legislations/Workmens%20Compensation.pdf

Relevant Agencies	Contact details
Ministry of Labour Relations and Manpower	Ministry of Labour Relations and Manpower, 2nd Floor, Labour Secretariat Narahenpita, Colombo 05 Tel: 94-11-2581149, 2581143, 269373 Fax: 94-11-2588950 Web: www.Labour.lk
Department of Labour, EPF Division	Commissioner of Labour (EPF) Tel. +94 11 2564514 Main Office Address : 356, Galle Road, Collupitiya, Colombo 03 Hatton District Labour Office - Tel. 051 2222585 Kegalle District Labour Office - Tel. 035 2222534 Kalutara District Labour Office - Tel. 034 2222838 Matara District Labour Office - Tel. 041 2222184 Badulla District Labour Office - Tel. 055 2222358 Anuradhapura District Labour Office - Tel. 025 2222495
Labour Commissioner	Ministry of Labour Relations and Foreign Employment, Commissioner of General Labour Narahenpita, Colombo 05 Ph: 011-258 1998 Web: www.Labour.lk
Labour Tribunal	Court No. 1 36 Vauxhall St Colombo 02 Labour Tribunals also exist in all major Districts
Ministry of Labour Relations and Manpower	Employees' Provident Fund, Central Bank of Sri Lanka, 30 Janadhipathi Mawatha, Colombo 01 Ph: 011-247 7050, 011-247 7060 Fax: 011-247 7713, 011-247 7714 E-mail : epfhelpdesk@cbsl.lk , epf@cbsl.lk Web: http://www.epf.lk
Department of Labour, EPF Division	Commissioner of Labour (EPF) Tel. +94 11 2564514

For further information on Labour Law, see K. Fernando and V.B.P.K. Weerasinghe, "Employment of Women, Young Persons and Children Act", Chapter 13, *Understanding Labour Law, Ministry of Employment and Labour, Sri Lanka, 2001*),

CHAPTER - 5

Insurance



Insurance at a glance:

- Insurance is the protection of people against risks of financial loss in exchange for a fee. It acts as a form of risk management against financial losses associated with crop damage, loss of livestock, medical expenses, loss of assets through natural disasters, death of a family member, theft and more.
- Microinsurance is tailored to the needs of low-income people against specific dangers in exchange for regular payments proportionate to the likelihood and cost of the risk involved.
- By reducing risks and securing economic livelihoods of the poor and low-income households, effective microinsurance services can have a positive social impact and encourage investment in economic activities.
- Every person's needs for insurance will differ and you should consider your own personal circumstances when considering any insurance policy.

5.1 What is Microinsurance?

Insurance is the protection of people against risks of financial loss in exchange for a fee. It is a form of risk management. An event such as illness, accident, fire, loss of crops or theft can cause severe setbacks for people with low incomes. The ability to re-establish economic livelihoods is low when you have limited financial savings, especially for the self-employed, and any financial loss suffered often causes the poor to sink deeper into poverty.

In Sri Lanka, it is estimated that 23% of households are below the poverty line, and insuring against risks with conventional insurance policies can be expensive. In an attempt to overcome the financial obstacles associated with insurance, a type of insurance called microinsurance has been developed to ensure that insurance is accessible to people with lower incomes so that they can protect their livelihoods.

Insurance aims to reduce the impact of loss due to incidents of accident, natural disaster, theft and the like. Insurance is a useful tool to ensure against loss of income for low income earners and people that have received microfinance loans. However, the ability of an individual to be able to afford to purchase insurance may be limited in those instances. The probability of the risk happening, and the likelihood of that incident happening will determine how much the insurance company will charge to obtain that insurance policy. The insurance companies prefer to cover low impact risks, while the poor want coverage from high impact risks. For example, high impact risks are much harder to cover but are the most important type of risks to be protected from if you are a low-income earner, and low frequency risks are easier to insure but harder for the insurance company to sell.

The relationship between the impact felt if a risk occurs and the likelihood of that risk occurring can be represented in the following diagram:

**Insurance
services
reduce risk
and secure
livelihoods.**

		Probability of Occurrence	
Impact of Risk	High Impact & High Probability	Such as serious illness or disease, loss of crops or livestock, devastation of property through fire	High Impact & Low Probability Such as theft, natural disaster (Such as tsunami), riots, death, drop in crop price, etc
	Low Impact & High Probability	Such as snake bites	Low Impact & Low Probability Such as minor illness or minor accident (e.g. falling out of a coconut tree)

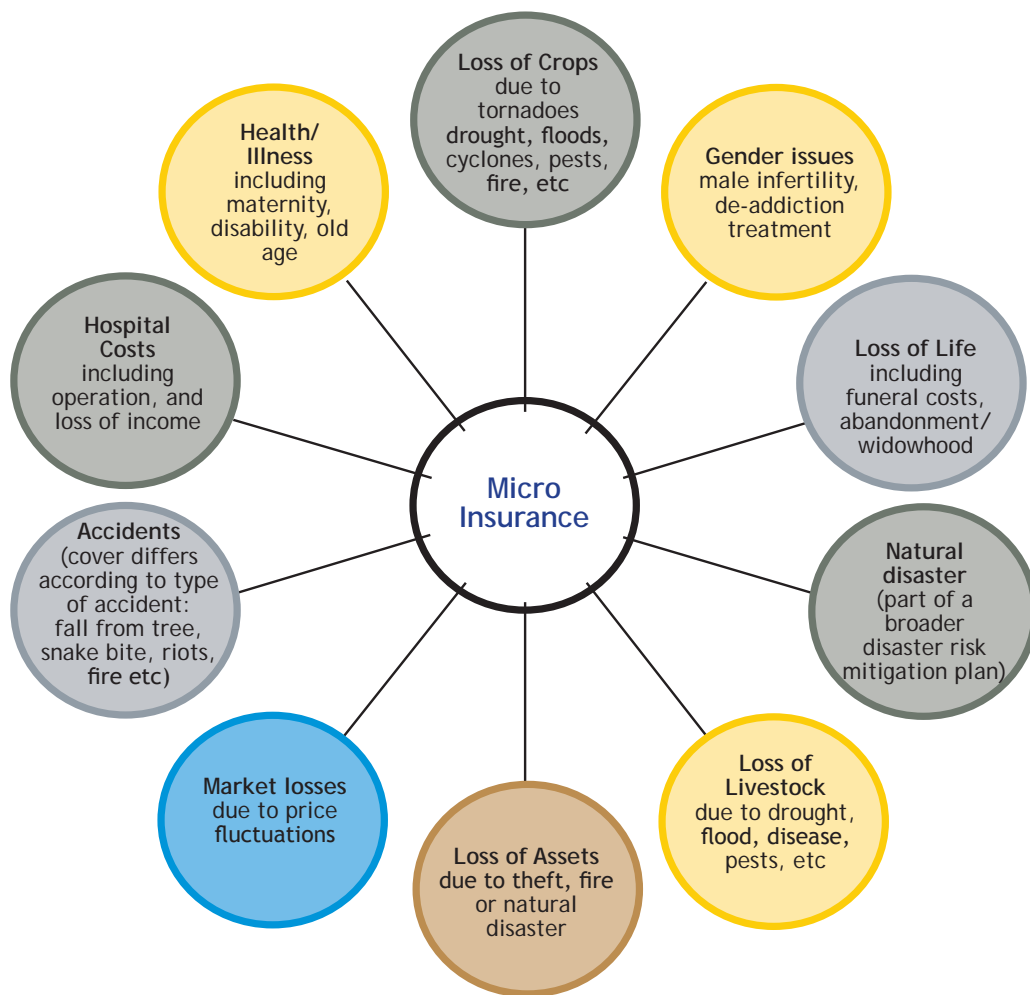
Microinsurance is the insurance of low-income earners against specific dangers in exchange for regular premium payments proportionate to the likelihood and cost of the risk involved (as per the definition in the International Labour Office publication titled “*Protecting the Poor: A Microinsurance Compendium*”, edited by Craig Churchill, November 2006.) It is a type of insurance that is less expensive, and is therefore more accessible for low-income earners.

Typically microinsurance works like any other form of insurance except for the following differences:

- the cost is lower;
- it is mainly administered and distributed by unlicensed agents (such as micro finance institutions) that act as an intermediary between the customer and the provider;
- products are tailored to the needs of low-income earners;
- it is (currently) unregulated by the Sri Lankan Government; and
- a policy can cover a large group of customers (often 5000 people or more).

There are many insurance companies in Sri Lanka that offer a range of products. However, certain companies offer products that have been specifically tailored to the needs of low-income earners, such as recipients of microfinance loans. This generally means that the insurance companies offer insurance for a small price, to cover assets worth only a small amount. This is useful for low income earners, because it makes it easier to access insurance for only what is needed, at an affordable price. A list of companies that provide microinsurance products is below.

5.2 Risks Covered by Microinsurance Policies



(From a presentation at the ADB Regional Microinsurance at Colombo on 28-29 June 2007, by Ms Anuradha K. Rajivan, Regional Programme Coordinator and Policy Advisor for Regional HDRs, United Nations Development Program (UNDP) Asia Pacific Human development Reports Unit, UNDP Regional Centre, Colombo Sri Lanka)

5.3 How Does Insurance Help?

The loss of a family member, loss of income, an increase in medical or living costs can cause significant detriment to a family and their lifestyle. By reducing risks and securing livelihoods of the poor and low-income households, effective insurance services not only have a positive social impact, they also help to encourage investment in economic activities. In this way, effective microinsurance services can complement other services such as credit, in helping the poor to raise income and develop employment opportunities.



By reducing risks and securing livelihoods of the poor and low income households, effective insurance services not only have a positive social impact, they also help to encourage investment in economic activities.

Case study:

In 1995, Mr Piyasena started a grocery business and over time, the business became very successful and well-established. But in 2006, his grocery shop was robbed, and the thieves set fire to the building. He had not insured his business, and because of the fire, he lost everything. He is in great difficulty now. Before the fire, Mr Piyasena had purchased a van on a lease basis, but because the fire burnt down the shop which provided the income to support his family and livelihood, he could not repay the monthly installments on the van. The leasing company seized the van since he did not pay installments, so now Mr Piyasena has no income and no transport.

If Mr Piyasena had been insured at the time of the robbery, his insurance company would most likely have paid for the rebuilding costs of his business and reimbursed him for his loss of income during the rebuilding phase. Mr Piyasena would still have his business and transport.

5.4 Microinsurance Policies in Sri Lanka

Sri Lanka has a number of insurance providers and each insurance policy (whether it be a microinsurance policy or other form of insurance) will differ. Every person's needs for insurance will differ and you should consider your own personal circumstances when considering any insurance policy.

Contact details and further information

Relevant Law	Available online at:
Crop insurance Act No 27 of 1973	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1961Y0V0C13A&hword=">http://www.lawnet.lk/process.php?st=1961Y0V0C13A&hword=""&path=5

CHAPTER - 6

Taxation



Taxation at a glance:

- Sri Lankan individuals and businesses are required to pay income tax to the Sri Lankan government if they earn over a particular tax threshold. Companies do not have a tax threshold. However, the rate of tax payable by a company will vary depending on the level of profit.
- Income tax is paid annually.
- The way in which income tax is calculated depends on how much a person or business earns, and in the case of business, what type of business it is.
- Value added tax (VAT) is a sales tax levied on the sale of goods and services that should be paid by businesses monthly.
- Individuals and businesses should register at the Inland Revenue Department and keep records of their income (and where appropriate VAT) tax payments.

Individuals who earn over a designated level of income pay tax to the government. Companies do not have a designated level of income for the payment of taxes but the rate of tax depends on the level of profit. These tax funds are used to provide services (such as police and government services), develop the infrastructure of the country (such as roads, schools, ports and railways) and meet the costs of the public administration.

The **Inland Revenue Department** holds the overall powers to charge tax in Sri Lanka. Each person and all businesses are required to register at the Inland Revenue Department. They also need to maintain a tax file of all of their tax records.

The Sri Lankan Government changes their tax policies and rules (currently set out in the *Inland Revenue Act No 10 of 2006*) every year depending on their annual budget. This means that the total amount of tax payable by individuals and business is likely to vary from year to year as the Government changes the tax rules and rates.

6.1 Income Tax

Income tax is paid annually. The financial year (the period in which tax is assessed) is the period from 1 April of the current year to 31 March of the following year. (For example, the 2007 financial year is from 1 April 2007 to 31 March 2008.) Income tax is calculated as a percentage of the annual income. All the sources of income are considered to calculate the income tax.

Personal income tax is a tax levied on a person's annual net income. The amount of personal tax payable depends on the amount of their total net income. Net income is your total income minus governmental approved deductions approved under the Inland Revenue Act No. 10 of 2006. Sources of income include an individual's:

- salary;
- fixed allowances;
- profit of the individual business;
- profit of the company shares;
- house rent income; and
- other personal income.

Businesses are also required to pay income tax on the profits made by a business.

(a) Exemption from income tax

Individuals or businesses that earn no more than Rs. 300,000/- per year are currently exempt from paying income tax in Sri Lanka.

The following amounts of money are also exempt from a person's or business' income tax payable:

- an individual's first Rs. 300,000/- earned per year (as personal expenses);
- half of the salary (including benefits) of employees of the Sri Lankan Government;
- instalment payments for insurance up to a maximum of Rs. 25,000/-; and
- donations made to the Government or to a registered charity organization.

(b) Tax calculations for businesses

For *partnerships*, 10% of the partnerships entire profits is payable as income tax. There is no free limit. After paying 10% income tax to the government, the balance of 90% can be divided among the partners. Then the partners are bound to pay personal income tax as outlined above.

For *companies*, if a company earns:

- Rs. 5.0 million or more in profit, the company is required to pay 35% of their total income as income tax; or
- Less than Rs. 5.0 million in profit, the company is required to pay 20% of their total income as income tax.

The following costs can be deducted from the business income to calculate taxable profit:

- Cost of raw material used;
- Salaries and allowances paid;
- Overheads (electricity, water, maintenance, repairs, consultancy, etc);
- Marketing expenses (distribution, promotion, incentives, sponsorships);
- Administration expenses (rent, revenue license, insurance, welfare);
- Depreciation of fixed assets as follows:
 - 12.5% of machinery
 - 25% of IT equipment
 - 100% of software
 - 20% of vehicles, furniture, and
 - 6.6% of permanent buildings;
- Loan interest;
- Installments for leasing;
and
- Unrecoverable debts.

(c) Value Added Tax

Value Added Tax (VAT) is a sales tax levied on the sale of goods and services. VAT is usually added to the price of a good or service as a percentage charge that reflects the incremental value added by a given business activity. The value added to a good or service is the difference between the good or services' 'value of output' (sale price) and its 'value of input' (cost of selling).

Any business that either exceeds the annual turnover of Rs. 1.8 Million or exceeds a quarterly turnover of Rs. 500,000/- is required to pay VAT and must be registered at the Inland Revenue Department. VAT should be paid by businesses quarterly. VAT is exempted for buying and selling agricultural goods, production of essential goods, drugs and some other specialized products.



(d) How to obtain a Taxpayer Identification Number

Upon registration for income tax, a business will be given a Taxpayer Identification Number (TIN) from the Inland Revenue Department. This is a unique identification number that the business will need to use whenever it deals with the Inland Revenue Department. It should take approximately 2 days for a business to receive its TIN.

The process of obtaining a TIN differs depending on the type of business seeking to register for income tax.

For sole proprietorships and partnerships:

- attend the offices of the Inland Revenue Department;
- ask for an application form “C151”;
- complete and sign the application form (each person/partner must sign the form); and

- submit the form along with the following documents:
 - Certificate of Business Registration (if any)
 - the original National Identity Card(s) (NIC) and a photocopy of the NIC(s) for each person/partner applying for a TIN, and
 - a copy of either the business' electricity bill or Bank Statement.

For companies:

- attend the offices of the Inland Revenue Department;
- ask for the following application forms: “C151”, “48” (List of Directors) and “36”;
- complete the application forms (a director and the company secretary must sign the C151 form); and
- submit the forms with the following documents:
 - Memorandum of Articles of Association signed by all Directors, and
 - Company Registration Certificate.

Note: Instead of lodging a “36” form with a company’s TIN application, the company may lodge a business’ electricity bill, water bill, telephone bill or bank statement instead.

If you are obtaining a TIN for the purpose of either importing or exporting goods or services, you may be required to register for Economic Service Charge (form 152). For further information regarding this, you should contact the Deputy Commissioner or the Assessor of the Service Unit of the Inland Revenue Department. Contact details can be found at the end of this chapter.

Case study illustrating how to calculate VAT:

*A company purchases raw materials every three months for Rs.100,000/- (including VAT). To make products from the raw materials, the company employs staff for three months at a cost of Rs.100,000/-.**

The company sells the products for three months and earns Rs. 600,000/-(excluding VAT).

The company is required to pay VAT at the rate of 15%.

The company's VAT is calculated as follows:

Output VAT Rs. 600,000/- (sale price) at 15% = Rs. 90,000.

Less: Input VAT Rs. 100,000/- (bought out goods) at 15% = Rs. 15,000/-.

VAT payable for the quarter is Rs. 90,000 - Rs. 15,000 = Rs. 75,000.

**Salaries are not a bought component and VAT is not paid on the cost of the salary.*

Contact details and further information

Relevant Law	Available online at:
Inland Revenue Act No. 4 of 1963	<a "&path='2"' href="http://www.lawnet.lk/process.php?st=2006Y0V0C10A&hword=">http://www.lawnet.lk/process.php?st=2006Y0V0C10A&hword=""&path=2
Income Tax Act No.	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1956Y8V242C&hword=">http://www.lawnet.lk/process.php?st=1956Y8V242C&hword=""&path=5
Sales Tax Act No. 65 of 1961	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1981Y13V351C&hword=">http://www.lawnet.lk/process.php?st=1981Y13V351C&hword=""&path=5

Relevant Agencies	Contact details
Inland Revenue Department	Department of Inland Revenue Colombo 02 Ph: 011-242 1241, 011-242 1242, 011-242 1243, 011-242 1244, 011 242 1245, 011-242 1246, 011-242 1247, 011-243 0041, 011 243 0042, 011 243 0043, 011-243 0044, 011-243 0045, 011 243 0046, 011 243 0048, 011-232 3848, 011-232 4302, 011 232 6018, 011 232 8865, 011-232 7507, or 011-232 8679. <u>Web: www.inlandrevenue.gov.lk</u>
Deputy Commissioner or the Assessor of the Service Unit	Tel. No. 2324396
Assessor of the Service Unit	Tel. No. 2329116

CHAPTER - 7

Dispute Resolution



Dispute resolution at a glance:

- Sri Lankan Courts are the central authority for resolving disputes and all persons and businesses have a right to bring their grievance before a court of law.
- Litigation is an adversarial process of resolving a dispute and involves two opposing parties arguing out their opposite positions in front of a judge, who makes a legally binding decision.
- Cases are first heard in Primary Courts, District Courts, Magistrates Courts and sometimes High Courts and Provincial High Courts. Each court hears different types of cases.
- Alternative dispute resolution mechanisms are oriented towards reaching an agreeable settlement between the parties based on principles of compromise and achieving the best outcome for both parties.
- The most widely used alternative dispute resolution mechanisms used in Sri Lanka are facilitation, mediation and arbitration.
- Most forms of disputes can be settled by using an alternative dispute resolution mechanism and there are many advantages of using an alternate dispute resolution mechanism over litigation to resolve a dispute.
- Mediation is a process of voluntary conflict resolution in which the parties appoint a neutral third party (the mediator) to assist them to negotiate an amicable resolution to the dispute. Mediation is often used for community, commercial (including employment) and special category disputes.
- The Legal Aid Commission (LAC) of Sri Lanka provides free legal representation to people in the community (including prisoners) who cannot afford legal assistance.

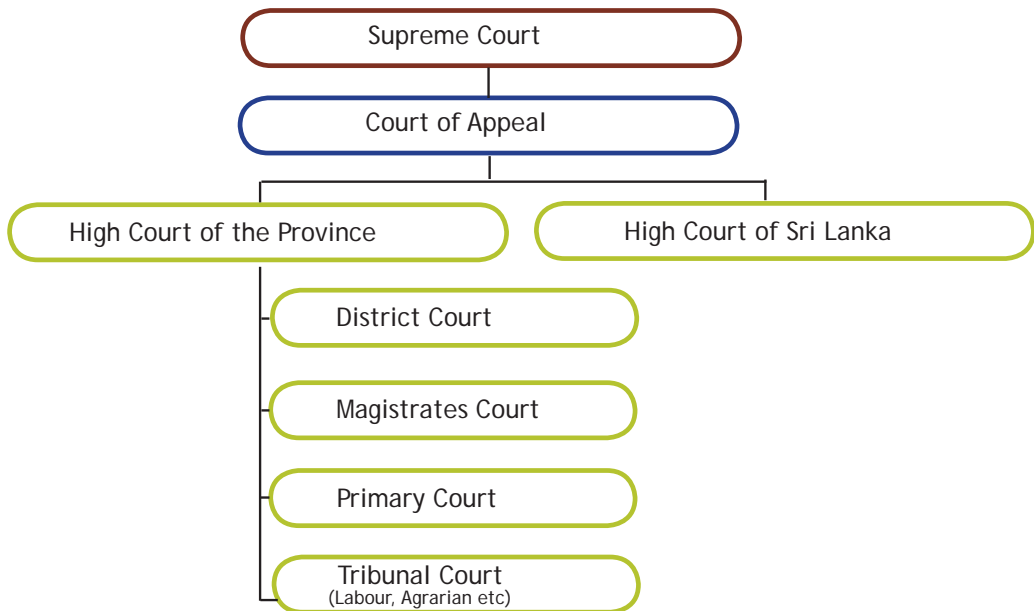
7.1 Litigation

The Sri Lankan court system plays a key role in protecting people’s rights, freedom, and property in a society. Courts are the central authority for resolving disputes and all persons and businesses have a right to bring their grievance before a court of law.

In Sri Lanka the High Courts, District Courts, Magistrates Courts and Primary Courts are “courts of first instance”, where cases are heard by a judge and a decision is handed down. If either party disagrees with that decision, they may make an application to have the case heard again in a court that is superior, such as the Provincial High Court or the Supreme Court or the Court of Appeal. Further information can be found at:

http://www.justiceministry.gov.lk/courts%20of%20Law/courts_of_law1.htm

The following diagram shows the court system in Sri Lanka:



(a) Primary Courts

Primary courts are usually the first court to hear a case. Sri Lanka has two Primary Courts. In some divisions, the Magistrates Courts exercise the jurisdiction of the Primary Courts. The proceedings before a Primary Court are governed by the *Primary Courts procedure Act No. 44 of 1979*. Primary Courts have the jurisdiction to hear matters including:

- disputes about debt, damage, or demand where the claim does not exceed Rs. 1,500/-;
- the enforcement of by-laws of Local Authorities and matters relating to recovery of revenue of Local Authorities;
- criminal matters;
- matters relating to possession of land, which are commonly known as “66 matters”; and
- any offences set out in legislation.



(b) Magistrates Courts

There are 82 Magistrate Courts in Sri Lanka. A Magistrates Court is empowered to hear criminal matters and can award compensation to a victim up to a maximum of Rs. 100,000/-. The penalty given to a convicted criminal will vary on a case by case basis, but the Magistrates Court does not have the power to hand down a penalty of more than 2 years rigorous or simple imprisonment. If a party is not satisfied with the decision regarding a conviction, sentence or order made by the Magistrates Court, they may apply for an appeal to the Provincial High Court to have the case re-heard.

(c) District Courts

There are 57 District Courts in Sri Lanka, one in each judicial district. District Courts can hear cases on all civil, revenue, trust, insolvency and testamentary matters other than such matters assigned to any other court by law. A commercial dispute claiming an amount under Rs. 3 million/- can be heard in the District Courts. Appeals on judgments made by the District Court are made in the Provincial High Courts.

(d) High Courts

Every judicial zone in Sri Lanka has a High Court, known as the High Court of the Republic of Sri Lanka. The High Court is a court of first instance that deals with all serious criminal matters. The cases in the High Court are initiated by the Honourable Attorney-General, and the prosecutions are conducted by State Counsel. Appeals from the High Court are made to the Court of Appeal.

(e) High Courts of the Province

Every Province has a High Court of the Province, which hears cases on appeal. High Courts can hear appeals from judgments made by Magistrates Courts, District Courts, Primary Courts, and Tribunals (including Labour and Agrarian Tribunals) within the Province. High Courts can affirm, reverse, correct or modify any order or judgment made by a Court of First Instance, or tribunal or institution, and can order a new trial. A High Court of the Province discharges functions of the Court of Appeal in respect of matters arising within the respective province. A High Court can also hear matters including:

- disputes or offences committed at sea; and
- commercial disputes claiming more than Rs. 3 million.

(f) The Court of Appeal

The Court of Appeal can correct all errors in fact or in law made by the High Court, Primary Court, Magistrates Court, District Court and any tribunal. A Court of Appeal can also grant injunctions and issue writs.

Every judicial zone in Sri Lanka has a High Court, known as the High Court of the Republic of Sri Lanka that deals with all serious criminal matters.



(g) The Supreme Court

The Supreme Court is the highest and most superior court of Sri Lanka. The Supreme Court is vested with power to adjudicate on matters including:

- matters relating to the powers set out in the constitution;
- protection of fundamental rights; and
- appeals from judgments made by the Court of Appeal, High Court or any other court or tribunal in Sri Lanka.

7.2 Alternative Dispute Resolution Mechanisms

Alternative dispute resolution mechanisms are processes that are available for the resolution of disputes, other than through a litigation process in a court. Litigation is 'adversarial' in nature, meaning it involves two opposing parties arguing out their opposite positions in front of a judge, and the judge's decision is final. However, alternative dispute resolution mechanisms are oriented toward reaching an agreeable settlement between the parties based on principles of compromise and achieving the best outcome for both parties. Among the many alternative dispute resolution processes used in Sri Lanka, the most widely used are facilitation, mediation and arbitration.

(a) Facilitation

Facilitation (or group facilitation) is a process 'facilitated' by a neutral person to help a group work together more effectively to reach an agreeable outcome. A facilitator is a person who designs and conducts the meeting between the group to attain its goal or purpose.

A facilitator's role is to help the parties design meetings in a way that is consistent with the purpose of the meeting based on an assumption of equality and fairness. The idea is that no individual is permitted to dominate a discussion or hold special privilege over the other parties.

(b) Mediation

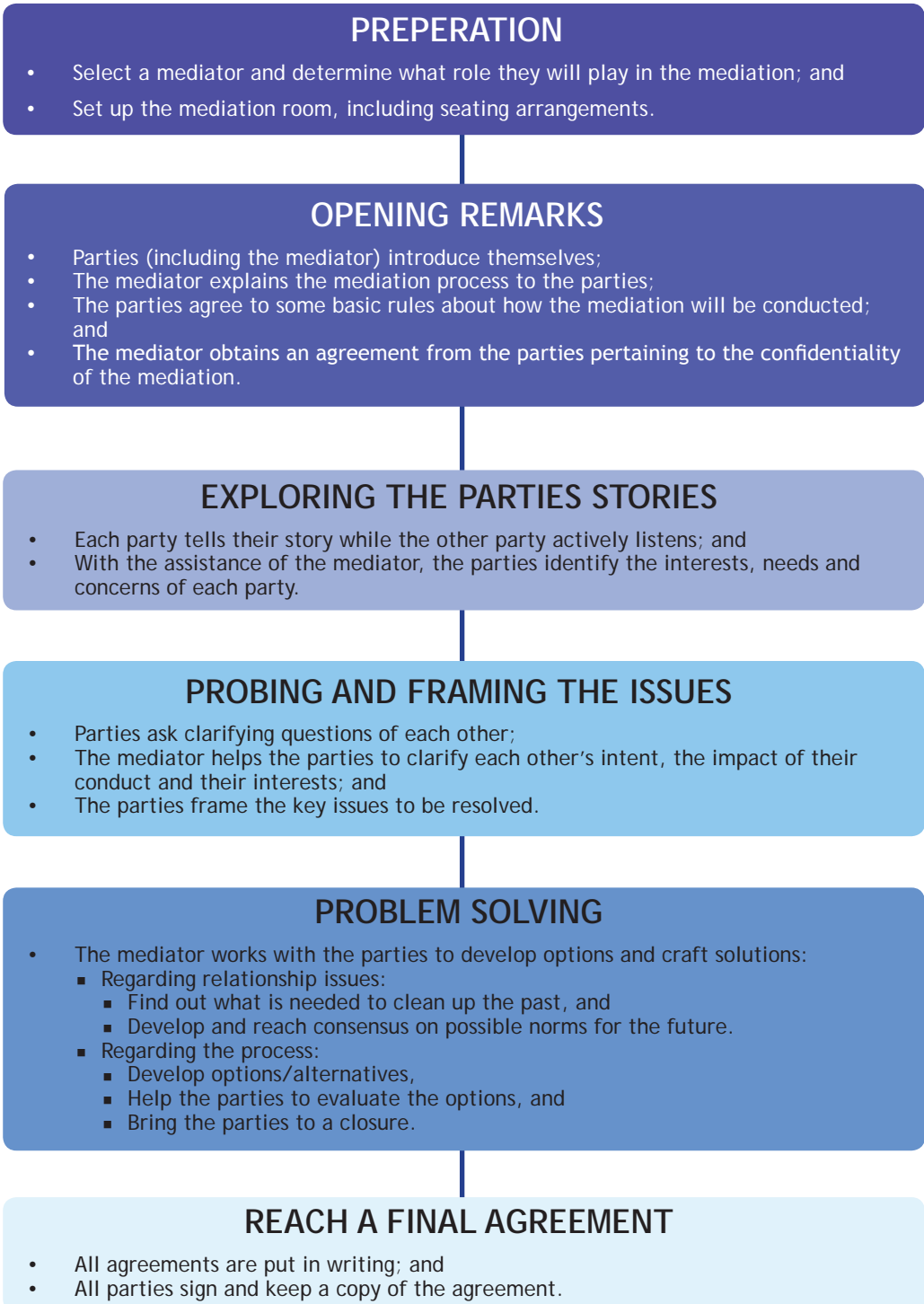
Mediation is a process of voluntary conflict resolution in which the parties appoint a neutral third party (the mediator) to assist them to negotiate a resolution to the dispute. The mediator is often a professional in the subject area of the conflict and does not have any authoritative decision making powers. They provide assistance to the parties to reach an amicable agreement and help to ensure that all parties have an equitable opportunity to participate in coming to the resolution.

(i) Advantages to using mediation instead of litigation to resolve disputes

Some advantages include:

- settlements can be reached cheaply and quickly;
- parties are empowered in the decision making process, allowing them a greater degree of control and certainty that the outcome will be workable and practical;
- outcomes are mutually satisfactory which means mediation outcomes have a higher rate of compliance;
- agreements can be as comprehensive and customised as necessary;
- parties learn creative problem solving skills that can help them with future negotiations;
- mediation preserves an ongoing working relationship or if preservation is not possible, leads to more amicable termination of a relationship; and
- economical decisions can be reached objectively and without bias.

(ii) Process of mediation



(iii) Community mediation

Mediation boards (established under the *Mediation Boards Act No. 72 of 1998*) are empowered to resolve disputes by way of mediation. Disputes are referred to a mediation board by disputing parties and, in certain instances, by the District Court, the Magistrates Court, or the police.

The *Mediation Boards Act* requires certain matters to be referred for mediation prior to the institution of legal action in these courts. It is mandatory to refer civil disputes to mediation when they relate to movable or immovable property or a debt, damage or demand which does not exceed Rs. 25,000/- (unless it gives rise to a cause of action which is exempted). For disputes relating to an amount greater than Rs.25,000/-, the parties can still refer the matter for mediation provided that all parties agree.

Some criminal offences can also be referred for mediation, including assault or use of criminal force, dishonest misappropriation of property, the killing or maiming of livestock, trespass, or defamation.

A large number of the disputes handled by the mediation boards relate to community disputes. However, Banks and other service providers have started to increasingly refer disputes regarding the recovery of debts to mediation as well. Further information can be found at:

http://www.justiceministry.gov.lk/courts%20of%20Law/courts_of_law1.htm

(iv) Commercial mediation

The Commercial Mediation Centre of Sri Lanka (CMCSL) was established under *Commercial Mediation Centre of Sri Lanka Act, No. 44 of 2000* to:

- promote mediation and conciliation as a valid and efficient way of resolving and setting commercial disputes; and
- conduct the settlement of commercial disputes by mediation and conciliation.

The Centre has formulated rules as to the required process of mediation and have set the fees payable for mediating through the Centre.

v) *Mediation of special categories of disputes*

The *Mediation (Special Categories of Disputes) Act No 21 of 2003* deals with disputes specifically related to social and economic issues. For an issue to apply under the *Mediation (Special Categories of Disputes) Act*, it must be gazetted. At present issues arising from the 2004 Tsunami are the only issues to have been gazetted as a special category of disputes. Matters are referred for mediation either by the parties or by the District Court or Labour Tribunal.

(vi) *Employment disputes*

Disputes arising between employers and employees generally relate to either a dispute over termination of the employment or a dispute over payment of salary. There are several options for dispute resolution available to parties and mediation has become a very popular option for employment disputes.

The Employment Mediation Services Centre (EMSC) was established in 2001 and operates as a private Mediation Centre for employers, workers and others. The EMSC's structure and constitution has been set up in such a way to ensure that neither employees nor employers have an undue advantage over one another during mediation. The Centre has its own formulated rules that set out the way in which the mediation sessions will be conducted. In addition, the EMSC has trained mediators available for the disputing parties to use.

Any employment dispute may be referred to the Centre. (*For further information on employment dispute, see Chapter 4.4 titled "Common Employment Disputes"*).

(c) Arbitration

Arbitration is a process where the disputing parties agree in advance to appoint a non-biased person (arbitrator) who is usually an expert in the area of the dispute, and agree to be bound by that arbitrator's decision. The arbitrator acts as a private judge in a closed and private hearing. The arbitrator's decision is final and is based on the evidence and testimony of all parties provided at the hearing.

Any civil dispute and some criminal offences that are not indictable may be submitted to arbitration. A submission to arbitration may be compulsory by order of court, or voluntary by the consent of parties.

Arbitration is not part of the formal court system. However, it is possible and advisable to request a court to make orders in accordance with the arbitrator's decision to ensure the orders are enforceable. It is also prudent to include a clause in a commercial contract that sets out the court that all parties agree to refer to in the case of a dispute.



(d) Legal Aid Commission

The Legal Aid Commission (LAC) of Sri Lanka provides free legal representation to people in the community (including prisoners) who cannot afford to pay for legal representation or advice. The LAC engages the services of professional lawyers who are members of the Panel of Lawyers of the Legal Aid Commission.

The LAC also provides legal aid training for law apprentices and awareness programs for legal practitioners working in Sri Lanka.

Legal representation is generally available to people involved in disputes in all courts that relate to maintenance, divorce, money (damages or accident compensation), land disputes, bail applications, appeals and Labour Tribunals.

Eligibility for legal assistance from LAC is determined by the application of a means test. A person will be eligible for legal assistance if they can prove their income is Rs. 6000/- per month, or less. To prove that you are eligible for legal aid assistance, provide the LAC with a letter that states your legal issue, signed by your local Grama Niladhari office including the amount that you earn per month.

There are currently 32 regional LAC Centres in Sri Lanka; a list of the LAC Centres and contact details can be found below.

Contact details and further information

Relevant Law	Available online at:
Commercial Mediation Centre of Sri Lanka Act, No. 44 of 2000	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=2000YOV0C44A&hword=">http://www.lawnet.lk/process.php?st=2000YOV0C44A&hword=""&path=5
Mediation Boards Act No. 72 of 1998	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=1988YOV0C72A&hword=">http://www.lawnet.lk/process.php?st=1988YOV0C72A&hword=""&path=5
Mediation (Special Categories of Disputes) Act No 21 of 2003	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=2003YOV0C21A&hword=">http://www.lawnet.lk/process.php?st=2003YOV0C21A&hword=""&path=5
Arbitration Act, No. 11 of 1995	<a "&path='5"' href="http://www.lawnet.lk/process.php?st=2001Y4V98C&hword=">http://www.lawnet.lk/process.php?st=2001Y4V98C&hword=""&path=5

Relevant Agencies	Contact details
Commercial Mediation Centre of Sri Lanka	c/o Ceylon Chamber of Commerce building No. 50 Navam Mawatha, Colombo 02 Tel: 011 421745 Fax. 94- 1- 449352 Email - chamber2@sri.lanka.net
Employment Mediation Services Centre	385/J3, Old Kotte Road, Rajagiriya Tel: 011 867966; Email: thamalis@empfed.lk

Legal Aid Commission Offices	Contact details
Head Office:	No. 129, Hulftsdorp Street, Colombo 12. Ph: 011-533 5329, 011-533 5281 fax: 011-243 3618 Email : legalaid@sltnet.lk
LAC Headquarters	Legal Aid Commission No.129, Hulftsdorp, High Court Complex, Colombo 12. Ph: 011-243 3618 011-533 5281
Tsunami Regional Centre	211, Superior Court Complex, Hulftsdorp, Colombo 12. Ph: 011-564 6550

Legal Aid Commission District Offices			
Welikada Prison	Welikada Prison Welikada Ph: 011-533 5329	Chilaw	Courts complex, Chilaw. Ph:032-567 2457
Bandarawela	Courts Complex, Bandarawela Ph: 057-222 4733 057-562 1048	Akkaraipattu	Courts complex, Akkaraipattu. Ph:067-5676542 067-56765333
Matale	Courts Complex, Matale. Ph:071-444 7151 060-266 4588	Balapitiya	No.618, Walagedara Balapitiya Ph:091-225 5753
Avissawella	Courts Complex, Avissawella Ph:060-236 2219	Matara	No.38, Lawyers Complex, Fort, Matara. Ph:041-223 3815
Ratnapura	Courts Complex, Ratnapura Ph:045-222 6899	Vavunia	Court Complex, Vavunia. Ph:024-222 1899
Negombo	Courts Complex, Negombo. Ph:031-222 2221	Trincomalee	Court Complex, Trincomalee Ph:026-222 2293 026-567 6023
Kalutara	Courts Complex, Kalutara. Ph:034-562 8860	Kalmunai	Court Complex, Kalmunai Ph:067-222 3710
Gampaha	Courts complex, Gampaha. Ph:033-567 7998	Jaffna	District Court Complex, Jaffna 060-221 2671 Ph:0777-735910

Polonnaruwa	Courts complex, Polonnaruwa. DC-027-222 2293	Batticaloa	29, Nallaiyah Road, Batticaloa Ph:065-222 6359
Anuradhapura	Courts complex, Anuradhapura. Ph:025-222 4465	Panadura	23, Sri Maha Vihara Rd, Panadura Ph:038-567 7100
Kandy	Courts complex, Kandy Ph:081-238 8978	Kuliyapitya	Court Complex, Kuliyapitya Ph:060-287 6323
Kurunegala	Courts complex, Kurunegala. Ph:037-222 9641	Mahiyanganaya	Badulla Road Mahiyanganaya Ph:055-225 8332
Galle	Courts complex, Galle. Ph:091-222 6124	Mahawa	Court Complex, Mahawa Ph:037-227 5075
Hambantota	Chief Ministers Office Complex, Hambantota Ph:047-222 1092	Horana	New Court Complex, Horana 077-697 5413
Nuwaraeliya	Courts complex, Nuwaraeliya Ph:052-223 5260	Mathugama	Court Complex, Mathugama
Monaragala	Courts complex, Monaragala Ph:055-227 6191	Kegalle	Courts complex, Kegalle. Ph: 035-223 1790
Ampara	Courts complex, Ampara. Ph:063-222 3496		

CHAPTER - 8

Microfinance Institutions in Sri Lanka



Microfinance Institutions:	Contact Details
Agro Micro Finance Head office: Nugegoda Branches: Galle, Matara, Hambantota, Ampara, Moneragala, Kurunegala, Puttlam.	No. 25, Chapel Lane, Nugegoda Ph/Fax: 011 4303533, 011 2818053, 011 2824747 E mail: info@agromicro.org http://www.agromicro.org/
ALL Ceylon Community Development Council, Colombo	380/A, Preethipura Kalalgoda Pannipitiya Kottawa Ph: 0114-300682 0114-303809 Fax 0114-300682 Email: accdc@sltnet.lk http://www.slpsm.com/
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