

LEGISLATION

Industrial Promotion Act, No. 46 of 1990

[Certified on 6th December, 1990]

AN ACT TO ESTABLISH AN INDUSTRIALISATION COMMISSION, TO SET UP AN ADVISORY COUNCIL OF INDUSTRY, TO SET REGIONAL INDUSTRY SERVICE COMMITTEES, WITH A VIEW TO PROVIDING INCENTIVES, INFRASTRUCTURES, AND THE CREATION OF A SUITABLE ENVIRONMENT, FOR THE PROMOTION AND DEVELOPMENT OF INDUSTRIES IN GENERAL, AND EXPORT INDUSTRIES IN PARTICULAR; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows

1. This Act may be cited as the Industrial Promotion Act, No. 46 of 1990, and the provisions of this Act other than section 24 shall come into operation on such date (herein- after referred to as the " appointed date ") as may be appointed by the Minister by Order published in the Gazette, and section 24 shall come into operation on July 1, 1991.

REGISTRATION OF INDUSTRIAL UNDERTAKINGS

2.

(1) Every person carrying on an industrial under taking commenced on or before the appointed date shall register the site or location at which such industrial under taking is carried on, with the Registrar, within six months of the appointed date.

(2) Every person carrying on an industrial undertaking commenced after the appointed date shall register the site or location at which such industrial undertaking is carried on, with the Registrar, within three months of the commencement of such industrial undertaking

(3) Nothing in this section shall apply to an area enterprise or a licenced enterprise within the meaning of the Greater Colombo Economic Commission Law, No.4 of 1978.

3. (1) Every application for registration under section 2 shall be made to the Registrar in the prescribed form and shall contain the prescribed particulars, including -

- a. the name and address of the owners of the industrial undertaking
- b. the site or location at which the industrial undertaking is being carried on
- c. the industrial products manufactured at such Industrial Undertaking
- d. the number of employees employed in such industrial undertaking and
- e. the specifications of the land, buildings and structures utilised for the purpose of such industrial undertaking.

(2) In the case of an industry specified in the Second Schedule to this Act an application for the registration of the site or location at which such industrial undertaking is carried on, shall be accompanied by the licence issued in respect of that industrial undertaking under section 26.

4. (1) The Registrar shall on receipt of an application registration. made under section 3 and on being satisfied that an industrial undertaking is being carried on at the site or location referred to in such application, issue a certificate of registration to the applicant in the prescribed form.

(2) Where a certificate is issued under subsection (1) in respect of an industrial undertaking the owner of such industrial undertaking shall furnish to the Registrar an annual return containing the particulars specified in paragraphs (a) to (e) of subsection (1) of section 3 as well as the turnover and the total production of that industrial undertaking for that year, before March thirty first of the succeeding year.

5.(1) Where a person carries on an industrial undertaking in contravention of the provisions of section 2, the Registrar may make an application to the High Court established under Article 154p of the Constitution for the province within which such industrial undertaking is carried , on for an order requiring the person carrying on such industrial undertaking to register the site or location at which such industrial undertaking is carried on in compliance with section 2.

(2) Every such application shall be made by petition in writing addressed to such High Court and shall be heard and determined in accordance with the procedure laid down in Chapter XXIV of the Civil Procedure Code.

6. A certificate under the hand of the Registrar to the effect that an industrial undertaking is being carried on at the site or location specified in such certificate and that such site or location has not been registered under this Part of this Act shall be admissible in evidence in any proceedings , instituted under section 5 and shall be prima facie evidence of the facts stated therein.

THE INDUSTRIALIZATION COMMISSION

7. There shall be established a Commission to be called The Industrialization the Industrialization Commission (hereinafter referred to as "the Commission") .

8. (1) The Commission shall consist of

- a. the Secretary to the Ministry of the Minister
- b. the Secretary to the Ministry of the Minister in charge of the subject of Finance
- c. the Secretary to the Ministry of the Minister in charge of the subject of Policy Planning and Implementation
- d. the Secretary to the Ministry of the Minister in charge of the subject of Trade and Commerce
- e. the Secretary to the Ministry of the Minister in charge of the subject of Textile Industries
- f. the Secretary to the Ministry of the Minister in charge of the subject of Small Industries
- g. the Secretary to the Ministry of the Minister in charge of the subject of Agriculture and Dairy Development
- h. the Governor of the Central Bank of Sri Lanka
- i. the Director-General of the Greater Colombo Economic Commission, established by the Greater Colombo Economic Commission Law, No.4 of 1978
- j. the Chairman of the Export Development Board. established by the Export Development Board Act, '1 No. 40 of 1979 ; and
- k. not less than five and not more than seven persons appointed by the President in consultation with the Minister, from among persons who appear to the Minister to have wide experience and have shown capacity in the field of industry.

(2) A person shall be disqualified from being appointed or continuing as a member of the Commission if he is a Member of Parliament or member of a Provincial Councilor a member of any local authority.

(3) A member of the Commission appointed under paragraph (k) of subsection (1) may resign from the Commission by letter addressed to the President.

(4) The President may without assigning a reason remove any member of the Commission appointed under paragraph (k) of subsection (1).

(5) Subject to the provisions of subsections (3) and (4), the term of office of a member of the Commission appointed under paragraph (k) of subsection (1) shall be three years.

(6) Where any vacancy arises in the Commission, by reason of death, resignation or removal of any member of the Commission appointed under paragraph (k) of subsection (1) the President shall fill such vacancy, having regard to the provisions of that paragraph.

(7) Any person appointed to fill a vacancy arising from the death, resignation or removal of any such member shall hold office for the unexpired period of the term of office of his Predecessor.

(8) The Secretary to the Ministry of the Minister in charge of the subject of Finance shall be the Chairman of the Commission and shall preside at all meetings of the Commission. In the absence of the Chairman from any meeting of the Commission, the Secretary to the Ministry of the Minister shall preside at such meeting. In the absence of both the Chairman and such Secretary from any meeting of the Commission, the Members of the Commission present, at such meeting shall, subject to subsection (15), elect from among themselves a member to preside at such meeting.

(9) The quorum for any meeting of the Commission shall be six.

(10) The chairman or the person presiding at any meeting of the Commission shall in addition to his own vote have a casting vote.

(11) The Commission shall meet at least once every month and it may regulate the procedure in regard to its meetings and the transaction of business at such meetings.

(12) The commission may act notwithstanding any vacancy among its members and no act or proceeding of the Commission shall be invalid by reason only of the existence of any vacancy in the Commission or any defect in the appointment of the member of the Commission.

(13) The members of the Commission may be paid such remuneration as may be determined by the Minister in charge of the subject of Finance.

(14) A member referred to in subsection (1) (b) or subsection (1) (c) or subsection (1) (g) or subsection (1) (h) may designate a senior official of his Ministry to attend meetings of the Commission in his place and as his alternate, and shall inform the Chairman of the Commission in writing of such designation.

(15) An alternate member designated under subsection (14) shall have the right to attend meetings of the Commission and vote thereat but shall not be eligible to be elected under subsection (8) to preside at meetings of the Commission.

(16) Where the member of the Commission holds more than one office by virtue of which he is entitled to be represented on the Commission, such member may in writing addressed to the Chairman of the Commission indicate the office which he will represent on the Commission and shall nominate another officer to represent the other office which he holds.

(17) The Secretary to the Ministry of the Minister shall be responsible for implementing the decision of the Commission . The Commission may delegate to such Secretary any power or function conferred on, or assigned to, it by this act.

9. There shall be appointed a Secretary to Commission and such Other staff as may be necessary for the proper discharge the functions of the Commission

10. (1) The functions of the Commission shall be

- a. to advise the Government on policy measures, plans and programmes for the encouragement and promotion of the industry, including appropriate macro- economic policies for industrialization
- b. to advise- the Government on policy measures, plans alization and the promotion of industry
- c. to ensure the provision of institutional mechanism

- d. to prepare plans for the provision of industrial infrastructure and services
- e. to provide a comprehensive products and markets information infrastructure for industries and
- f. to hold inquiries and make reports to the Minister , in respect of such matters relating to industry as are referred to it by the Minister.

(2) The Commission shall have the power to do all such acts as may be necessary for the proper discharge of its functions

(3) In the discharge of the functions assigned to it by this Act, the Commission shall have regard to the need :

- a. to encourage the development and growth of industries. tries that are efficient and internationally competitive
- b. to facilitate adjustment to structural changes in the economy
- c. to reduce to a minimum, in so far as national policy permits the regulation of industry.

(4) In referring any matter for inquiry to the Commission under section 10 (1) (f) the Minister may specify the, respective periods within which, the Commission shall submit its interim and final reports to the Minister.

(5) The Minister may require the Commission, under paragraph. (f) of subsection (1), to inquire and report on :

- a. the provision of financial or other assistance by the i Government to any industry
- b. the need for the Government to provide financial assistance to any industry or the need to withdraw, increase or reduce any financial assistance granted ; by the Government to any industry
- c. the need to prohibit or restrict the importation into Sri Lanka.
- d. the need to impose, remove, increase or reduce the duties on any goods imported into Sri Lanka

11. The Commission may with the approval of the Minister appoint such Committees, as may be necessary for the proper discharge of the functions of the Commission and consisting of members with the prescribed qualifications, and may delegate to much Committees, any powers conferred on, or any functions assigned to, it by this Act.

12. The Commission shall at the end of each calender year submit a report of the work done by the Commission report during that year to the Minister, who shall cause such report to be laid before parliament.

THE ADVISORY COUNCIL FOR INDUSTRY

13.

(1) There shall be a Council to be called "The Advisory Council for Industry" (hereinafter referred to as to the "Council ")

(2) The council shall consist of

- a. the members of the Industrialization Commission ;
- b. two members nominated by such Chambers federations ;
- c. a prescribed number of persons to represent industry, appointed by the Minister ;
- d. not more than fifteen persons appointed by the Minister to have wide experience and have shown capacity in the field of industry.

14. The functions of the Council shall be

(a) to provide a forum for the representatives of industry in Sri Lanka to discuss, issues relating to industry and joint industry programmes with the Government for the development of industry ; and

(b) to advise the Minister on the effectiveness of the measures taken for the promotion of industry.

15.

(1) The Council shall have such powers as are necessary or incidental to the proper discharge of its

functions.

(2) The quorum for the meetings of the Council, the procedure for the transaction of business at such meetings, the term of office of the members referred to in paragraphs (b), (c) and (d) of section 13(2), the election of the Chairman of the Council, the guidelines for the recognition of the Chambers, Federations and Associations referred to in section 13 (2) (b), and the manner of selecting person to represent industry, shall be as prescribed.

(3) The Council shall cause a report to be prepared at the end of each year, of its activities during that year and shall submit a copy of such report to the minister.

REGIONAL INDUSTRY SERVICE COMMITTEES

13.

(1) The Minister shall in consultation with the Chief Minister of each Province determine regents within such Province for the purpose of facilitating industrial development in that Province.

(2) There shall be appointed for each region determined under subsection (1) a Committee which shall be called the Regional Industry Service Committee. Such Committee shall be appointed by the Minister in consultation with the Chief Minister of the Province in which such region is situated.

17. The functions of a Regional industry Service Committee shall be -

- a. To advise the Minister, the Chief Minister for which such Committee is appointed falls and commission, on the development of industry in such region;
- b. To prepare plans and programmes for the development of industry in such region;
- c. To promote and facilitate industrial development in such region in accordance with national policy;
- d. To co-ordinate the provision of services and facilities necessary for the development of industries in the region, in accordance with plans approved by the Commission;
- e. To assist any investor to implement any investment decision in regard to any industry in that region; and
- f. To establish a Regional Industrial Service Center for that region.

18. The composition of a Regional Industry Service Committee and the transaction of business by such Committee, shall be as prescribed.

19. The establishment and administration of industrial estates, industrial parks and science parks and others specified industrial infrastructure including

- a. The manner in which applications for the establishment of industrial estates, industrial infrastructure shall be made to the regional Industrial Committee appointed for the region within which such estate, park or infrastructure is established or where there is no such Committee, to the Register;
- b. The manner in which applications for registration of existing industrial parks, science parks and specified industrial infrastructure shall be made to the regional Industrial Committee appointed for the region within which such estate, park or infrastructure is established or where there is no such Committee to the Register;
- c. The manner in which applications for the grant of approval for the erection, alteration, and demolition of buildings and other structures within such estates or parks shall be made to the Regional Industrial Committee appointed for the region within which such estate or park is established, or where there is no such Committee to the Register; and
- d. The management of such estates, parks or specified industrial infrastructure shall be as prescribed.

20.

(1) Where any industrial estate, industrial park, or science park or specified industrial infrastructure is established without the approval, or is managed contrary to, the manner, required by regulations made under section 19, or any building is erected in any such estate, or park without the approval required under section 19, the Registrar may apply to the Court of Appeal for an Order directing the demolition of such estate or park or prescribed industrial Infrastructure or building or for an Order requiring the management of such estate or park or prescribed Industrial infrastructure in compliance with such regulations.

(2) A certificate issued under the hand of the Register to the effect that a structure specified in such certificate is an Industrial estate, industrial park, Science Park or specified industrial infrastructure, as the case may be, and has been established without the approval required by regulations made under section 19, or that such estate or park is being managed contrary to such regulations, or that an building specified in such certificate has been erected in an industrial estate, industrial park or science park and that such erection has been without the approval required under section 19, shall be admissible in evidence in any proceedings instituted under this section and shall be prima facie evidence of the facts stated therein.

(3) The provisions of this section shall not apply to and in relation to an area enterprise or a licensed enterprise within the meaning of the Greater Colombo Economic Commission Law, No.4 of 1978.

21. (1) The Minister may, in consultation with the Chief Minister of a Province declare, by Order published in the Gazette, any area with-in the province as an "Industrial Area"

Provided however that where such area falls within an Urban Development Area declared under the Urban Development Authority Law, No. 41 of 1978, no declaration shall be made under this subsection by the Minister except with the concurrence of the Minister to whom the subject of Urban Development is assigned.

(2) The Regional Industry Service Committee appointed under section 16 for the region, within which such Industrial Area falls, shall submit to the Commission plans and schemes. For the provision of infrastructure for industries within such Industrial Area and the co-ordination of services and facilities within such industrial area.

(3), The Minister may on the advice of the Commission, by Order published in the Gazette, approve any such plans and schemes as are submitted to the Commission under. Subsection (2).

(4) Where a plan or scheme is approved under subsection (3) respect of an industrial Area, the Regional Industry Service Committee appointed for the region within which such Industrial Area falls shall be responsible for the implementation of such scheme or plan.

(5) The commission shall in consultation with the Urban Development Authority established under the Urban Development Authority Law, No.41 of 1978, specify the standards in accordance with which any buildings or structures necessary for any such plan or scheme shall be erected or altered.

(6) The authority empowered by any written law to grant approval for the erection or alteration of buildings in the area within such plan or scheme is to be implemented shall grant approval for such erection or alteration if it is in Accordance with the standards prescribed under subsection (5) notwithstanding anything to the contrary in any Written law and such approval shall be granted within eight weeks from the date, on which the application for approval is made,

(7) Where an application is made for the erection or alteration of any building for the purposes of any such plan or scheme, in an Industrial Area to the authority empowered by written law to grant for such. approval and such authority fail to

grant such approval within eight weeks of such application, it shall be lawful for the Regional Industry Service Committee appointed for the region within which such Industrial Area fails to grant such approval in like manner as though references in such written. Law to the authority, officer or person empowered to grant such approval, were a reference to such committee.

22.

(1) During the period commencing on the appointed date and ending on the 31st of December, 1994 no building shall be erected or used for the purpose of an industrial undertaking unless it conforms to the standards in consultation with the Urban Development Authority,

(2) The authority improvised by written law to approve such erection or use shall notwithstanding anything in any other law approve such erection or use if it conforms to the prescribed standards.

(3) Nothing in this section shall apply to buildings created or used -

- a. By any area enterprise or licensed enterprise within the meaning of the Greater Colombo Economic Commission Law, No, 4 of 1978;
- b. In any other area specified by the President by Notification published in the Gazette to be an area to which the provisions of subsection (I) shall not apply.
- c. In any industrial estate, industrial park, science park or any industrial infrastructure established under section 19; and
- d. In any Industrial Area declared under section 21

23. The Fair Trading Commission established by the Commission Fair Trading Commission Act, No.1 of 1987(hereinafter referred to as the Fair Trading Commission) may review the price of any article and hold an inquiry for such purpose. if the Fair Trading Commission determines after any such inquiry the price of such article is unreasonable and it is necessary to encourage competition by allowing imports of such article, The Fair Trading Commission shall submit a Report to the minister in charge of the subject of Trade The report shall also recommended the rate of custom tariff if any that shall be levied on the importation of such article.

24. All Products other than such projects as are specified by the Minister in charge of subject of Trade and Commerce by order published in the gazette shall be deemed to be exempt from the provisions of section 4 (1) of the Imports and Exports (control) Act, No.1 of 1969, with effect from July 1, 1991.

GENEERL

25.

(1) the control of the industries specified in the first schedule to this Act by the Government of Sri Lanka is hereby declared to be expedient in the public interest.

(2) Parliament may by resolution amend the first schedule to this Act.

26.

(1) No person shall carry on an industry specified in the second schedule being an industry specified in the First schedule except under the authority of and otherwise than in accordance with the conditions of a license issued in that behalf by the secretary to the ministry of the Minister.

(2) The Manner of application for a license under subsection (1) and appeals against refusal to issue such license shall be as prescribed

(3) Every licence issued under this section shall be subject to the terms and conditions set out in the Third schedule to this Act,

(4) Where a person carries on an industry referred to in subsection (1) without a license issued in that behalf under that subsection the Register shall make an application to the court of appeal for an order prohibiting such person from carrying on such industry

(5) A Certificate under the hand of the Register to the effect that the Industry specified in such certificate is an industry for the carrying on for which a license is required under subsection (1) and that no license has been admissible in evidence in any proceeding instituted under subsection (4) and shall be prima facie evidence of the facts stated therein

27.

(1) There may be appointed by name or by office for the purpose of this Act a Register of Industries and such number of Deputy Register of Industries and Assistant Registrars of Industries as may be necessary for the implementation of the provisions of this Act.

(2) The act of appointment of every Deputy Registrar of Industries and Assistant Register of Industries shall specify the area for which he is appointed. The area so specified shall hereinafter be referred. As the area of his appointed.

(3) Every Deputy Register of industries and Every Assistant Register of Industries may, subject to the general direction and control of the Register, exercise, perform or discharge within the area of his appointment all or any of the powers, duties or functions conferred, or assigned to, the Register by or under this Act.

28. The registrar, Deputy Registrar Assistant Registrar and any other officer discharging any functions under this Act shall before upon his duties sign a declaration pledging himself to observe strict secrecy regarding all matters relating to an industrial undertaking which may come to his knowledge in the discharge of his functions and by such declaration pledge himself not to reveal any such matters except when required to do so by a court of law.

29. Every Person who-

- a. Fails to furnish the annual return which he is required to furnish under section 4.
- b. Knowingly makes any false or incorrect statement in any annual return furnished by him under section 4 or
- c. Contravenes the provisions of section 28 Shall be guilty of an offence under this Act and conviction after trial before Magistrate be liable to a fine not exceeding ten thousand rupees or to imprisonment of either description for a period not exceeding one year or to both such and imprisonment

30. The Minister may give the commission such general directions in writing as to the discharge of the functions of the commission shall give effect to such directions.

31.

(1) The President may in consultation with the Minister and any relevant Minister issue directions to the Commission for the purpose of, eliminating administrative and other barriers which impede the execution of industrial policy, or for ensuring the effective implementation of schemes and programmes approved by the commission for the promotion of a competitive industrial environment and generally, for the improvement of industrial and other capabilities for the promotion of industry.

(2) Where the commission issues any directives to any government institution in order to implement any direction required to it under subsection (1) it shall be the duty of the person in charge of that institution to comply with such directives.

(3) The commission shall report to the president on the measures taken by the commission to implement any direction issued to it by the president under subsection (1) and shall transmit a copy of such report to the Minister

32. Sections 18 to 26 of the Fair Trading Commission Act, No.1 of 1987, are hereby

repealed and the following section substituted therefore:-

18.

(1) in this section 'specified article' means any article of food any pharmaceutical product.

(2) if it appears to the controller of prices that there is, or there is likely to arise, any unreasonable article or that the price at which it is being sold is excessive ,he may request the commission either:-

- a. To fix maximum retail price above which such article shall not be sold or set out the price structure according to which such maximum price structure shall be fixed, or
- b. In case of a specified article in respect of which there is an order under the provisions of this section for the time being in force fixing the maximum price above which such article shall not be

sold or setting out the price structure according to which such maximum price fixed or the price structure set out by such order

(3) A relevant agency may in respect of a specified article in respect of which there is an order under subsection (4) for the time being in force request the commission to vary the price fixed or the price structure set out by such order.

(4) If after examination of a request made under subsection (2) or subsection (3) the commission is satisfied that such request is reasonable it shall

- a. In the case of a request made under paragraph (a) of subsection (2) by order published in the gazette fix the maximum retail prices above which the specified articles referred to in such request, shall not be sold or set out the price structure according to which such maximum prices shall be fixed or.
- b. In the case of a request made under paragraph (b) of subsection (2) or subsection (3) vary the Order fixing the maximum retail prices above which the specified articles referred to in such request, shall not be sold or setting out the price structure according to which such maximum prices shall be fixed.

Every Order made under this subsection shall come into operation on the date on which such Order is published in the Gazette.

(5) The Minister may rescind or vary any Order made by the commission under subsection (4).

(6) Where an Order is rescinded or varied by the Minister under subsection (5), notification of such rescission or variation shall be published in the Gazette and the Order made under subsection (4) shall be deemed to be rescinded or varied, as the case may be, with effect from the date of such publication but without prejudice to anything done or suffered hereunder or any right obligation; or liability acquired: accrued or incurred hereunder

33.

(1) No suit or Prosecution shall lie against any member of the Commission, or a member of the council or a member of Regional Industry Service Committee or the Registrar, Deputy registrar or Assistant Registrar or any other officer discharging any function under this Act, which in good faith is done or purported to be done by such member, Registrar, Deputy Registrar, Assistant Registrar or other officer under this Act.

(2) No suit or prosecution or other proceeding, civil or criminal, shall be instituted, in any court or tribunal against any person referred to in subsection (1) in respect of any report made by him under this Act.

34.

(1) The Minister may make regulations in respect of, all matters required by his Act to be prescribed or in respect of which regulations are required or authorized to be made under this Act,

(2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of publication or on such later date as may be specified therein.

(3) Every regulation made by the Minister, shall as soon as convenient after its publication in the Gazette, be brought Before Parliament for approval. Every regulation which is not so approved shall be deemed to be rescinded as from The date of disapproval but without rejoyce to anything previously done thereunder

(4) The notification of the date on which any regulation is deemed to be so rescinded shall be published in the Gazette.

35. In the Event of any inconsistency between the Sinhala and Tamil texts of this Act, the Srnhala text shall pre- Vail

FIRST SCHEDULE

1. Any industry with foreign investment.
2. Any industry employing high technology.
3. Any industry producing goods for export from Sri Lanka.
4. Any industry exploring, extracting or processing minerals or non-renewable natural resources.
5. Any industry manufacturing arms and ammunition explosives, military vehicles and equipment, aircraft and any other military hardware.
6. Any industry manufacturing poisons narcotics, alcohol, dangerous drugs, and toxic, hazardous and carcinogenic materials.
7. Any industry producing currency, coins and security documents.
8. Any industry where:-
 - a. The value of capital investment in plant and equipment Exceeds four million rupees and.
 - b. The number of permanent employees employed in such industry exceeds fifty.
9. Any industry which is owned by the Government or by a company in which the Government holds a majority of the shares.

SECOND SCHEDULE

1. Any industry manufacturing Arms and Ammunition, explosives, military vehicles and equipment. Aircraft and any other military hardware.
2. Any industry manufacturing poisons, narcotics, alcohol dangerous drugs and toxic, hazardous and Carcinogenic materials.
3. Any industry' producing currency, coins and security documents

THIRD SCHEDULE

1. The standards of safety to be maintained in any such industry.
2. The security measures to be taken by any such industry including the storing of inputs, use of the inputs and the disposals of unused inputs, waste materials and rejects.
3. The manner in which the products of the industry are to be delivered to customers.
4. The standards of hygiene to be maintained.
5. The inputs to be used by any such industry