

CHAPTER 623

EMPLOYEES' PROVIDENT FUND

Acts
Nos. 15 of 1958,
18 of 1965,
16 of 1970,
8 of 1971,
24 of 1971.

AN ACT TO ESTABLISH A PROVIDENT FUND FOR THE BENEFIT OF CERTAIN CLASSES OF EMPLOYEES AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[1st June, 1958]

Short title. 1. This Act may be cited as the Employees' Provident Fund Act. duty or function of the Commissioner under this Act or under any regulation.

PART I

ESTABLISHMENT AND MEMBERSHIP OF THE EMPLOYEES' PROVIDENT FUND AND ADMINISTRATION OF THIS ACT AND OF SUCH FUND

Establishment of Employees' Provident Fund. 2. For the purposes of this Act there shall be established a fund called the Employees' Provident Fund (hereafter in this Act referred to as the Fund).

Membership of the Fund. 3. (1) Where an employee first becomes liable under section 10 to pay contributions to the Fund, he shall then become a member of the Fund and continue to be a member of the Fund so long as there is any sum to the credit of his individual account in the Fund.

(2) Neither a member of the Fund nor any person claiming under him shall have any interest in, or claim to, the moneys of the Fund otherwise than by virtue of any provision of this Act or of any regulation.

Administration of this Act. 4. (1) Except as otherwise provided in this Act, the Commissioner of Labour shall be in charge of the general administration of this Act.

(2) Subject to any general or special directions of the Commissioner of Labour, any Deputy Commissioner of Labour or any Assistant Commissioner of Labour may exercise, perform or discharge any power,

(3) There may be appointed such number of officers as may be required for the purpose of carrying out or giving effect to the provisions of this Act.

(4) The Commissioner of Labour may either generally or specially authorize any officer appointed under subsection (3) of this section. to exercise, perform or discharge any power, duty or function of the Commissioner under this Act or under any regulation.

5. (1) The Monetary Board-

(a) may appoint such officers and servants as may be required by the Board for exercising its powers, performing its duties and discharging its functions under this Act, fix the salaries and wages of such officers and servants and determine their conditions of service ;

(b) shall receive all sums paid under this Act as contributions, surcharges and fees, and the income from the investment of moneys of the Fund and shall credit such sums and income to the Fund ;

(c) shall have custody of the moneys of the Fund ;

(d) shall pay to the persons certified by the Commissioner the benefits to which those persons are entitled under this Act ;

Powers and duties of the Monetary Board in relation to the Fund.

[§ 2, 8 of 1971.1

- (e) may invest such of the moneys of the Fund as are not immediately required for the purposes of this Act in such securities as the Board may consider fit and may sell such securities ;
 - (f) shall maintain a general account in respect of the Fund, and a separate account (in this Act referred to as an individual account) in respect of each member of the Fund ;
 - (g) shall cause the books of accounts relating to the Fund to be balanced as on the thirty-first day of December in each year ;
 - (h) shall cause to be prepared in respect of the Fund for each year a statement of receipts and payments, a statement of income and expenditure, a statement of assets and liabilities, and a statement of investments showing the face value, purchase price, and market value of each of the investments ;
 - (i) shall transmit to the Minister a copy of each of the statements prepared under the preceding paragraph (h) for each year within three months after the thirty-first day of December of that year ;
 - (k) shall, subject to the provisions of [§ 2, 16 of 1970.1 section 7A, deduct from the income from the investment of moneys of the Fund the expenses incurred by the Board and the Commissioner in carrying out their respective functions under this Act ; [§ 2, 16 of 1970.1
 - (kk) may establish such reserves out of the income of the Fund as the Monetary Board may determine, to meet any contingencies or any depreciation in the market value of the assets of the Fund ; and [§ 2, 8 of 1971.]
 - (l) shall have such other powers and duties in connection with the Fund as may be conferred or imposed on such Board, by Order published in the Gazette, by the Minister with the concurrence of the Minister in charge of the subject of Finance.
- (2) Every officer or servant appointed under paragraph (a) of subsection (1) shall be deemed to be employed for the performance of duties under the Monetary Law Act, for the purpose of the application of the provisions of the said Act relating to officers and servants. [§ 2, 8 of 1971.]
- (3) For the purposes of paragraph (k) of subsection (l), " expenses " shall include-

- (j) shall notify-
 - (i) the employer of each member of the Fund who is employed in a covered employment, and
 - (ii) each member of the Fund who has ceased to be employed in a covered employment, .
- (i) any loss of moneys on account of theft, misappropriation or over-payment ;
- (ii) any loss of articles of furniture, office equipment or stationery used in or purchased for the administration of the Fund the cost of which cannot be recovered from the persons responsible for such loss ; and

within nine months after the thirty-first day of December in each year, of the amount lying to the credit of the individual account of such member on that day ;

- (iii) the value of any article of furniture, office equipment or stationery written off on grounds of unserviceability.

§ 2 8 of 1971]

Employer to communicate to member the information notified by the Monetary Board. [§ 3986 1971.1

5A. Where an employer is notified by the Monetary Board under section 5 (1) (j), of the amount lying to the credit of the individual account of a member of the Fund, such employer shall forthwith communicate to such member the information so notified.

Auditor-General to audit the accounts of the Funds, &

6. (1) The accounts of the Fund in respect of each year shall be audited by the Auditor-General and the cost of the audit shall be paid to him out of the Fund. All payments made to him under this subsection shall be credited to the Consolidated Fund.

(2) The Auditor-General or any officer of his department authorized by him to audit the accounts of the Fund shall have access to all such books and documents as the Auditor-General or such officer may consider necessary for the purposes of the audit of such accounts, and shall be furnished by the Monetary Board and the Commissioner with such information within their knowledge or ascertainable by them as may be required for such purposes.

(3) The Auditor-General shall examine the accounts of the Fund and submit to the Minister annually a report-

- (a) stating whether he has or has not obtained all the information required by him,
- (b) stating whether the accounts referred to in the report are properly drawn up so as to exhibit a true and fair view of the affairs of the Fund, and
- (c) drawing attention to any item in such accounts which in his opinion may be of interest to Parliament in any examination of such accounts.

Such report shall not disclose the name of any member of the Fund.

(4) The Minister shall lay before Parliament a copy of the Auditor-General's report submitted to the Minister under subsection (3) of this section and copies of the statements transmitted to the Minister by the Monetary Board under paragraph (i) of subsection (1) of section 5.

7. Every sum paid out of the Consolidated Fund—

- (1) to the Commissioner prior to the date of enactment of this Act, for defraying the expenditure incurred in making preliminary arrangements for the establishment of the Fund.
- (2) to the Monetary Board, for defraying all expenditure, including capital expenditure incurred by such Board and the Commissioner in carrying out the provisions of this Act during the period commencing on the date of enactment of this Act and ending on the thirtieth day of September, 1966,

shall constitute a loan from the Government to the Monetary Board and shall be repaid in accordance with such terms and conditions as may be determined by the Minister with the concurrence of the Minister in charge of the subject of Finance.

7A. The expenses incurred by the Commissioner in carrying out the provisions of this Act shall be charged on the Consolidated Fund :

Repayments to Government. r § 4, 8 of 1971]

Expenses of administration of Act. 16 of 1970.1

Provided, however, that the expenses incurred by the Commissioner in carrying out the provisions of Part V of this Act shall be paid out of the income from the investment of moneys of the Fund.

PART II

COVERED EMPLOYMENTS, EMPLOYEES TO WHOM THIS ACT APPLIES, AND CONTRIBUTIONS

8. (1) Any employment, including any Covered employment in the service-of a corporation whose capital or a part of whose capital is provided by the Government, may by Act regulation be declared to be a covered employment. employments and employees to whom this Act applies.

- (2) Regulations may be made-
 - (a) to treat as a covered employment any employment outside Sri Lanka which is for the purposes of a trade

or business carried on in Sri Lanka and which would be a covered employment if it were in Sri Lanka ; and

(6) to treat as not being a covered employment or to disregard-

(i) employment under a person who employs less than a prescribed minimum number of employees ;

(ii) employment of a person in the service or for the purposes of the trade or business, or as a partner, of that person's spouse.

(3) Subject to the other provisions of this Act, every person over a prescribed age who is employed by any other person in any covered employment shall be an employee to whom this Act applies. For the purposes of this subsection different ages may be prescribed for different covered employments.

(4) Any regulation declaring any employment to be a covered employment may provide that such persons only as earn less than a prescribed amount in that employment or as are of a prescribed class or description, and not other persons in that employment, shall be employees to whom this Act applies.

9. Where the immediate employer of any person is himself in the employment of some other person and the first-mentioned person is employed to do any work in the course of and for the purposes of the business of that other person, that other person shall, for the purposes of this Act, be deemed to be the employer of the first mentioned person jointly with the immediate employer.

10. (1) Subject to the provisions of subsection (3) of this section and of section 27, an employee to whom this Act applies shall, in respect of each month during which he works in a covered employment, be liable

Immediate employer being himself in the employment of another person.

Normal contributions.

to pay to the Fund a contribution of an amount equal to six *per centum* of his total § 6.8 of earnings from that employment during that 1971.1 month :

Provided that no employee who has attained the age of fifty-five years in the case of a male or fifty years in the case of a female at the time when he or she first becomes an employee to whom this Act applies shall be liable to pay such contribution to the Fund.

(2) Subject to the provisions of subsection (3) of this section and of section 27, the employer of every employee to whom this Act applies and who is liable to pay contributions to the Fund shall, in respect of each month during which such employee is in a covered employment under such employer, be liable to pay to the Fund before the last day of the succeeding month, a contribution of an amount equal to nine § 6.8 of *per centum* of such employee's total 1971.1 earnings from that employment during that month.

(3) The liability of an employee in a covered employment and his employer to pay contributions under this section shall commence on the day immediately after the date fixed in relation to such employment by the Minister by Order published in the Gazette. Different dates may be fixed under this subsection for different classes of employees in the same covered employment.

11. (1) An employee to whom this Act applies and his employer may elect, by notice sent to the Commissioner in the prescribed form and manner, to pay, after the date specified in the notice as the date on which the election shall take effect, contributions calculated at such percentages higher than those specified in section IO as are specified in the notice. Right of employees and employers to elect to pay contributions calculated at higher percentages, and liability of employees and employers who make such election.

(2) Where an employee and his employer make an election by notice under subsection (1) of this section, such election shall be irrevocable after the date on which the election takes effect, and they shall, after that date, be liable to pay as their contributions under this Act amounts calculated at the percentages specified in that notice.

Commissioner's direction to employer who has reduced the earnings of any employee for the purpose of reducing the amount of the employer's contributions under this Act in respect of the employee.

12. (1) Where the Commissioner is satisfied that the employer of any employee has, during the period of one year immediately before the appointed date or at any time on or after that date, reduced the earnings of such employee for the purpose of reducing the amount of such contributions, the Commissioner shall, by written notice, direct such employer to pay to the Fund in such instalments and before such dates as may be specified in that notice, in respect of the entire period during which such employee receives such reduced earnings, the difference between the sum he should have paid during that period as contributions had such contributions been calculated on the basis of the earnings of such employee before the reduction and the sum actually paid by him as contributions during that period.

(2) Where the Commissioner gives any employer a direction under subsection (1) of this section, such employer shall comply with that direction.

When fraction of a cent is to be ignored, or is to be reckoned as one cent, in computing the amount of a contribution.

13. Where the amount of a contribution payable under this Act involves the fraction of a cent, then-

- (a) if such fraction is less than one-half of a cent, such fraction shall not be taken into account ; and
- (6) if such fraction amounts to or exceeds one-half of a cent, such fraction shall be reckoned as one cent.

Interest on contributions, & c.

14. (1) Interest at such rate, not less than two and a half *per centum* per annum, as may, from time to time, be fixed by the Monetary Board with the concurrence of the Minister and the Minister in charge of the subject of Finance shall be paid for each year, out of the income from the investment of the moneys of the Fund, on the amount standing to the credit of the individual account of each member of the Fund as at the thirty-first day of December in that year :

Provided that-

- (a) for the period commencing on January 1 of the calendar year in which any sum is paid as a benefit

under this Act to or in respect of a member of the Fund and ending on the date of payment of that sum, interest at such rate not less than two and a half *per centum* per annum shall be paid on the amount to the credit of the individual account of that member at the end of the month immediately preceding the date of termination of that period ; and

[§ 4, 16 of 1970.]

[§ 4, 16 of 1970.]

- (b) where any sum is credited under section 27 by the Monetary Board to the individual account of a member of the Fund on any date after the thirtieth day of June in any year, no such interest shall be paid on that sum for the period commencing on that date and ending on the thirty-first day of December of that year.

(2) Where the income from the investment of the moneys of the Fund is inadequate to pay any part of the interest payable on contributions paid to the Fund under this Act, the amount of the deficit shall be met out of moneys provided by Parliament for the purpose.

(3) Any sum provided by Parliament under subsection (2) of this section shall constitute a loan from the Government to the Monetary Board and shall be repaid in accordance with such terms and conditions as may be determined by the Minister with the concurrence of the Minister in charge of the subject of Finance.

15. The employer of an employee to whom this Act applies shall deduct and pay to the Fund the contribution for each month of such employee under this Act before the last day of the succeeding month from the earnings of such employee ; and a contribution paid under this section to the Fund by such employer on behalf of such employee shall be deemed to have been paid to the Fund by such employee.

Payment of contributions due from employees.

16. Where contributions payable under this Act in respect of any month have not been made to the Fund before the last day of the succeeding month and the employer is unable to explain to the satisfaction of the Commissioner that the failure to pay such contributions was due to circumstances beyond his control, he shall be liable to pay

Imposition of surcharge on employers on failure to pay contributions on due date.
§ 7 8 of 1971.1

to the Fund, in addition to the amount of the contributions due, a surcharge on such amount calculated in the following manner :-

- (4) where the contributions are in arrears for a period not exceeding one month, a surcharge of ten per centum of the amount of the contributions due ;
- (b) where the contributions are in arrears for a period exceeding one month but not exceeding three months, a surcharge of fifteen *per centum* of the amount of the contributions due ;
- (c) where the contributions are in arrears for a period exceeding three months but not exceeding six months, a surcharge of twenty *per centum* of the amount of the contributions due ;
- (d) where the contributions are in arrears for a period exceeding six months, a surcharge of twenty-five *per centum* of the amount of the contributions due.

17. (I) Any moneys due to the Fund shall be recoverable, as a debt due to the State, by an action in which proceedings may be taken by way of summary procedure. The provisions of the Civil Procedure Code relating to actions of which the procedure is summary shall apply to an action under this section, and, for the purposes only of the application of such provisions to such action, section 8 of that Code shall have effect as if, for the words " by this Ordinance " occurring in that section, there were substituted the words " by this Ordinance or by any other written law "

(2) Proceedings for the recovery of any moneys due to the Fund may be instituted by the Commissioner or any officer authorized in that behalf by him, and the Commissioner or such officer may, notwithstanding anything to the contrary in any other written law, conduct such proceedings.

(3) The provisions of the Prescription Ordinance shall not apply to the recovery of any sums payable as contributions or surcharges under this Act.

18. The contributions of a member of the Fund and of his employer in respect of him and the interest on such contributions shall be credited by the Monetary Board to the individual account of such member.

The sums to be credited to the individual accounts of members.

19. No employer shall, by reason of his liability to pay in respect of any employee any contribution or surcharge under this Act, reduce the earnings of that employee or alter to his detriment any benefits which he is entitled to under the provisions of any other written law or under his contract of employment with that employer.

Employer prohibited from reducing earnings of his employees, &

20. The employer of any employee shall not deduct from the earnings of that employee any sum which that employer is liable to pay as a contribution or surcharge under this Act, and any contract entered into by that employer with that employee whereby any part of the liability of that employer under this Act is transferred to that employee shall be null and void.

Employer prohibited from deducting from earnings of employee payments due from employer under this Act in respect of employee.

21. Any sum due under this Act from an employer on the day immediately following the end of the period within which that sum is required by this Act to be paid by him shall be the first charge on his assets notwithstanding anything to the contrary in any other written law.

Amount due under this Act from an employer to be the first charge on his assets.

22. Every assignment of, or charge on, any sum to the credit of the individual account of a member of the Fund and every agreement to assign or charge any such sum shall be void, and, where that member is adjudged insolvent by a competent court, any such sum shall not pass to any assignee acting on behalf of that member's creditors notwithstanding the provisions of the Insolvency Ordinance.

Money to the credit of individual accounts to be inalienable.

PART III

BENEFIT

23. Save as hereinafter provided in this section, a member of the Fund shall be paid the total amount lying to the credit of such

Time at which benefits will be paid. § 8, 8 of 1971.1

Recovery of contributions.

member's individual account as soon as may be practicable-

- (a) after such member, being a male, attains the age of fifty-five years, or, being a female, attains the age of fifty years, or
- (b) after such member, being a female, ceases to be employed in consequence of marriage, or
- (c) after such member ceases to be employed by reason of a permanent and total incapacity for work and is certified by a registered medical practitioner to be unfit for work any longer for that reason, or
- (d) before the date of such member's departure from Sri Lanka if such member declares in writing that such departure is with the intention of not returning to Sri Lanka, or

[§ 8, 8 of 1971.1

- (e) after such member ceases to be employed in a covered employment and takes up pensionable employment in the public service or in the Local Government Service :

Provided that, where a member of the Fund, being a male, continues to work in a covered employment after he has attained the age of fifty-five years, or, being a female, continues to work in a covered employment after she has attained the age of fifty years, such member shall not be entitled to the payment under the preceding provisions of this section until such member ceases to be in such employment ;

§ 8, 8 of 1971.1

Provided, further, that a member of the Fund shall not be entitled to withdraw any sum standing to his credit in his individual account more than once in a period of five years.

In this section, " registered medical practitioner " means a medical practitioner registered under the Medical Ordinance.

Persons to whom benefits shall be paid in certain circumstances.
§ 9, 8 of 1971.1

24. (1) Where a member of the Fund dies before becoming entitled to the amount standing to his credit in his individual account or where he dies after becoming

entitled thereto but before receiving such amount and where no nominee has been appointed under regulations made under this Act to whom such amount should be paid in the event of the death of such member or where the nominee or nominees appointed under regulations made under this Act is or are dead, then such amount shall-

§ 9,8 of 1971.1

- (a) if it is not less than twenty thousand rupees, be paid to the executor of the last will or the administrator of the estate of such deceased member to be included in that estate ; and
- (b) if it is less than twenty thousand rupees, be paid to the person who is, or be apportioned by the Monetary Board among the persons who are certified by the Commissioner to be in his opinion, entitled by law to such amount.

(2) Where a member of the Fund has appointed under regulations made under this Act two or more nominees to whom the amount lying to the credit of such member's individual account shall be paid in the event of his death and where one or more than one nominee dies before such member, then, upon the death of such member without such member having made a fresh appointment under the aforesaid regulations, such amount shall-

§ 9,8 of 1971]

- (a) be paid to the sole surviving nominee, if there is one ; or
- (b) if there is more than one nominee, be divided among such nominees in equal shares.

25. Any sum to which a person is entitled under section 23 or section 24 or to which a nominee appointed by a member of the Fund under regulations made under this Act is entitled upon the death of such member is referred to in this Act as a benefit.

Definition of " benefit "

26. It shall be a condition of any person's right to a benefit under this Act that he or any person on his behalf makes a claim thereto in the prescribed manner.

Claim to benefit.

PART IV

APPROVED PROVIDENT FUNDS AND APPROVED CONTRIBUTORY PENSION SCHEMES

Approved provident funds and approved contributory pension schemes.

27. (1) Where a provident fund or a contributory pension scheme has been established before the appointed date for the benefit of any employees in a covered employment, the administrators of such fund or scheme shall, within three months after the declaration of that employment as a covered employment by regulation made under this Act, furnish the Commissioner with the prescribed particulars relating to such fund or scheme, and, if the Commissioner, after examining such particulars and making such investigations as he may deem necessary, is of the opinion that such fund or scheme satisfies the prescribed requirements and that it is expedient that such fund or scheme should be declared to be an approved provident fund or an approved contributory pension scheme, he shall declare such fund or scheme to be an approved provident fund or an approved contributory pension scheme; and, if he so declares, no contributions shall, with effect from the date fixed in relation to such fund or scheme, be payable to the Fund by such employees and the employer of such employees.

(2) The employer in a covered employment who proposes to establish, after the appointed date, a provident fund for the employees in such employment shall furnish the Commissioner with the prescribed particulars relating to the proposed provident fund, and, if after examining such particulars and making such investigations as he may deem necessary, the Commissioner is of opinion that the proposed provident fund satisfies the prescribed requirements and that it is expedient that such fund should be declared to be an approved provident fund, the Commissioner shall declare the proposed provident fund to be an approved provident fund ; and, if he so declares and the provident fund is established, contributions to the Employees' Provident Fund shall, with effect from the date fixed in relation to such approved provident fund by the Commissioner, cease to be payable by such employees and such employer.

(3) No rules or regulations governing an approved provident fund or an approved contributory pension scheme shall be altered except with the written sanction of the Commissioner, and, where there is a contravention of the provisions of this subsection, the administrators of such fund or scheme shall be deemed to have committed such contravention.

(4) Every employer and employee who are liable to contribute to an approved provident fund or an approved contributory pension scheme under the rules or regulations in force for that fund or scheme shall comply with such of those rules or regulations as are applicable to them.

(5) Where, either by reason of the fact that an employee liable to pay contributions under this Act to the Employees' Provident Fund takes up an employment in respect of which an approved provident fund or an approved contributory pension scheme exists or in the circumstances specified in subsection (2) of this section, contributions in respect of an employee cease to be payable to the Employees' Provident Fund, the amount standing to the credit of his individual account in the Employees' Provident Fund shall be retained in that account to be disposed of in accordance with the provisions of Part III of this Act.

(6) Where an approved provident fund is wound up, the administrators or liquidators of that approved provident fund shall transfer to the Employees' Provident Fund all such contributions and interest thereon as have been paid to that approved provident fund.

(7) Where an employee who is a contributor to an approved provident fund leaves the employment by virtue of which he has been such contributor, takes up a covered employment thereafter in respect of which he is not liable to contribute to any other approved provident fund and notifies to the Commissioner in writing the assumption of duties in such covered employment, the Commissioner shall in writing direct the administrators of the first-mentioned approved provident fund to transfer to the Employees' Provident Fund all such contributions and interest thereon as have been paid in respect of that employee to the first-mentioned approved provident fund.

(8) Where the administrators of a provident fund or contributory pension scheme referred to in subsection (1) of this section fail to comply with the provisions of that subsection or where such fund or scheme is not declared by the Commissioner to be an approved provident fund or an approved contributory pension scheme, such administrators shall transfer to the Fund all such contributions and interest thereon as have been paid in respect of employees to the first-mentioned provident fund or pension scheme.

(9) The Monetary Board-

(u) shall, where a sum from an approved provident fund is transferred under subsection (6) of this section to the Employees' Provident Fund, open an individual account in the Employees' Provident Fund for each of the employees who were contributors to that approved provident fund at the time of such transfer, and shall credit to the individual account of each such employee in the Employees' Provident Fund such part of the sum transferred to the Employees' Provident Fund as was to the credit of his account in that approved provident fund, and

(b) shall open an individual account in the Employees' Provident Fund for every employee in respect of whom any sum is transferred under subsection (7) or subsection (8) of this section to the Employees' Provident Fund and shall credit that sum to that individual account.

(10) Where the Commissioner is dissatisfied with the management of any approved provident fund or approved contributory pension scheme, he may revoke the declaration made under subsection (1) or subsection (2) of this section in respect of that fund or scheme, and, if such declaration is revoked, he shall in writing-

(u) communicate the revocation to the administrators of that fund or scheme, and

(b) direct those administrators to transfer to the Employees' Provident Fund all such contributions and interest thereon as have been paid to that fund or scheme,

and those administrators shall comply with the Commissioner's direction.

(11) The Monetary Board shall, where the administrators of an approved provident fund or approved contributory pension scheme have complied with a direction issued by the Commissioner under subsection (10) of this section, open an individual account in the Employees' Provident Fund for each employee who was a contributor to that approved provident fund or approved contributory pension scheme when such administrators complied with such direction, and shall credit to that individual account such part of the sum transferred from that approved provident fund or approved contributory pension scheme to the Employees' Provident Fund in compliance with the Commissioner's direction as was to the credit of that employee's account in that approved provident fund or approved contributory pension scheme.

PART V

DETERMINATION OF CLAIMS

28. All claims to benefits shall be determined by the Commissioner or by any officer authorized in that behalf by him and the determination of the Commissioner or such officer shall, subject to any decision on an appeal made against such determination in accordance with the provisions of this Act, be final :

Commissioner
or an officer
authorized
by the
commissioner
to determine
claims

Provided that any determination made by any officer under this section may within the prescribed period be reviewed by the Commissioner on his own motion ; and in such case the determination of the Commissioner shall be deemed, for the purposes of section 29, to be the determination in that case.

Appeals.

29. (1) Any person aggrieved by any determination made under section 28 may appeal from such determination to a Tribunal of Appeal (hereafter in this Act referred to as the Tribunal) constituted in the prescribed manner, and the decision of the Tribunal on such appeal shall, subject to any Order which the Court of Appeal may make on appeal made from such decision in accordance with the provisions of subsection (2) of this section, be final.

(2) Where the Commissioner or any party to an appeal made to the Tribunal is dissatisfied with the decision of the Tribunal on such appeal, the Commissioner or that party may, by written petition in which every other party to the appeal is mentioned as a respondent, appeal to the Court of Appeal from that decision on a question of law. The petition of appeal shall state the question of law to be argued, shall bear a certificate by an attorney-at-law that such question is fit for adjudication by the Court of Appeal, shall be presented to the Tribunal by the appellant within twenty-one days after the date of the Tribunal's decision from which the appeal is preferred, and shall be accompanied by a sufficient number of copies for service on each of the persons mentioned as respondents. Every such petition of appeal shall be accompanied by the prescribed fee.

(3) Where a petition of appeal is presented to the Tribunal in the manner and within the time specified in subsection (2) of this section, it shall be the duty of the Tribunal-

(u) to cause the petition to be transmitted to the Court of Appeal together with the record of the proceedings in which the decision of the Tribunal against which the petition is preferred was made, and

(b) to cause notice of the appeal and a copy of the petition of appeal to be served on each of the respondents named in the petition of appeal.

(4) Every appeal to the Court of Appeal under this section may be heard and determined by any two Judges of that court.

(5) Upon a decision being given by the Court of Appeal in any appeal under this section, the Registrar of that Court shall remit the case to the Tribunal together with the decision of that Court, and it shall be the duty of the Tribunal, if the decision of that Court so requires, to rescind or vary, in such manner as is required by the decision of that Court, the decision of the Tribunal from which the appeal was preferred and, where necessary for the purpose of giving effect to the decision of that Court, to make a fresh decision.

(6) In any appeal made to the Court of Appeal under this section that Court may make such order in regard to costs as to that Court may seem fit.

(7) Any costs ordered by the Court of Appeal under subsection (6) of this section to be paid by any person may, notwithstanding anything contained in any other written law, be recovered, on application made in that behalf to the Magistrate's Court having jurisdiction in the place where that person is resident, in like manner as a fine imposed by that Magistrate's Court, notwithstanding that such costs may exceed the amount of the maximum fine which that Magistrate's Court may in the exercise of its ordinary jurisdiction impose.

(8) Subject to any regulations made under this Act, the Tribunal may regulate its own procedure.

30. The members of the Tribunal may be paid such remuneration as the Minister may determine with the concurrence of the Minister in charge of the subject of Finance.

**Remuneration
of members of
the Tribunal.**

PART VI

GENERAL

31. (I) The Commissioner may, for the purposes of this Act, direct in writing any person to furnish to him before a date specified in the direction-

**Power of
Commissioner
to call for
returns, &c**

(a) a return containing such particulars as he may require ; and

- (b) such explanation in writing as he may require in respect of any particulars specified in any return so furnished,

and such person shall comply with such direction. A direction under the preceding provisions of this subsection may be given by notice published in the Gazette and in two or more newspapers circulating in Sri Lanka.

(2) Any person furnishing any document under subsection (1) of this section may transmit with such document a request in writing that the contents of such document should be treated as confidential and, where such request is made, the contents of such document shall not be disclosed without the consent previously obtained of such person.

(3) Nothing in the preceding provisions of this section shall be deemed to require or permit any person to disclose any explanation or to produce any document in any case where such disclosure or production by that person is prohibited by or under the provisions of any written law other than this Act.

32. Subject to such conditions and restrictions as may be prescribed, the Commissioner or any officer authorized in that behalf by him in writing, for the purpose of carrying out the provisions of this Act, may-

- (u) enter and inspect at all reasonable hours by day or night any premises or place for examining any register or record relating to the earnings of any employee,
- (6) take copies of any such register or record or part thereof,
- (c) examine any person whom he has reasonable cause to believe is an employer or an employee, and
- (d) examine any records or other documents relating to any provident fund or pension scheme.

33. Every employer of employees in a covered employment shall maintain such records as may be determined by the Commissioner and notified in the Gazette.

Employers to keep records. [§ 10, 8 of 1971.1

34. Any person who-

Offences.

- (a) contravenes any provision of this Act or of any regulation made thereunder ;
- (b) furnishes, for the purposes of this Act, any information which is, or any document the contents of which are, or any part of the contents of which is, to his knowledge untrue or incorrect ; or
- (c) wilfully delays or obstructs the Commissioner or any other officer in the exercise of his powers under section 32,

shall be guilty of an offence under this Act.

35. Where an act or omission which constitutes an offence for which an employer is liable under this Act has in fact been committed or made by some manager, agent, servant or other person, the manager, agent, servant or other person shall be liable to be proceeded against for the offence in the same manner as if he were the employer, and either together with the employer, or before or after the conviction of the employer, and shall be liable to the like punishment as if he were the employer.

Liability of manager, agent, &c., of employer for offences.

36. (1) Where any employer is charged with an offence under this Act, he shall, upon complaint duly made by him in accordance with the provisions of section 136 of the Code of Criminal Procedure Act, and on giving to the prosecution not less than three days' notice of his intention, be entitled, subject to the provisions of Chapter XIV of that Act, to have any other person whom he charges as the actual offender brought before the court, and if, after commission of the offence by such other person has been proved, the employer proves to the satisfaction of the court that he has used due diligence to enforce the provisions of this Act and such other person has committed the offence without his knowledge, consent or connivance, then

Where the employer proves that some other person is guilty of an offence.

Powers of Commissioner and other officers to inspect premises, &

such other person shall be convicted of the offence and the employer shall be exempt from any punishment in respect of the offence.

(2) Where in any case referred to in subsection (1) of this section a complaint is made by an employer against any other person,-

- (a) the prosecution against such other person shall be conducted by or on behalf of the employer,
- (b) any witness called by the prosecution in the proceedings against such other person may be cross-examined by any officer authorized in that behalf by the Commissioner, and
- (c) pending the determination of the proceedings against such other person, the proceedings in the prosecution of the employer shall be adjourned.

37. Every person who is guilty of an offence under this Act shall be liable, on conviction after summary trial before a Magistrate, to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment, and shall in addition be liable to a fine not exceeding fifty rupees for each day on which the offence is continued after conviction.

*38 (1) Where an employer makes default in the payment of any sum which he is liable to pay under this Act and the Commissioner is of opinion that recovery under section 17 of the Act is impracticable or inexpedient, he may issue a certificate to the District Court having jurisdiction in any district where the defaulting employer resides or in which any property, movable or immovable, owned by such employer is situate, containing particulars of the sum due and the name and place of residence of such employer, and the court shall thereupon direct a writ of execution to issue to the Fiscal authorizing and requiring him

to seize and sell all the property, movable and immovable, of the defaulting employer, or such part thereof as he may deem necessary for the recovery of the amount so due, and the provisions of sections 226 to 297 of the Civil Procedure Code shall, *mutatis mutandis*, apply to such seizure and sale.

(2) Where an employer makes default in the payment of any sum which he is liable to pay under this Act and the Commissioner is of opinion that it is impracticable or inexpedient to recover that sum under section 17 or under subsection (1) of this section or where the full amount due has not been recovered by seizure and sale, then, he may issue a certificate containing particulars of the sum so due and the name and place of residence of the defaulting employer, to the Magistrate having jurisdiction in the division in which such place is situate. The Magistrate shall, thereupon, summon such employer before him to show cause why further proceedings for the recovery of the sum due under this Act should not be taken against him and in default of sufficient cause being shown, such sum shall be deemed to be a fine imposed by a sentence of the Magistrate on such employer for an offence punishable with imprisonment and the provisions of section 291 (except paragraphs (a), (d) and (i) of subsection (1) thereof) of the Code of Criminal Procedure Act, relating to the default of payment of a fine imposed for such an offence shall thereupon apply and the Magistrate may make any direction which, by the provisions of that subsection, he could have made at the time of imposing such sentence.

(3) The correctness of any statement in a certificate issued by the Commissioner for the purposes of this section shall not be called in question or examined by the court in any proceedings under this section, and accordingly nothing in this section shall authorize the court to consider or decide the correctness of any statement in such certificate, and the Commissioner's certificate shall be sufficient evidence that the amount due under this Act from the defaulting employer has been duly calculated and that such amount is in default.

Punishment for offences. § 11, 8 of 1971.1

Recovery of arrears of payments due in certain cases. Q 12, 8 of 1971.1

* With retrospective effect to 1st June, 1958—see section 2 of Act No. 24 of 1971.

(4) The provisions of this section shall have effect notwithstanding anything in section 17 of this Act.

39. In any proceedings against any employer under section 17 of this Act for failure to pay any sum due from him under this Act, the burden of proving that the sum was paid shall lie on the employer.

40. Where an offence under this Act is committed by a body of persons, then-

- (a) if that body of persons is a body corporate, every director and officer of that body corporate,
- (b) if that body of persons is a firm, every partner of that firm, and
- (c) if that body of persons is a trade union, every officer of that trade union,

shall be deemed to be guilty of that offence :

Provided that a director or an officer of such body corporate, or a partner of such firm or an officer of such trade union, shall not be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

41. No prosecution for an offence under this Act shall be instituted except by or with the written sanction of the Commissioner.

42. (1) An extract from the Gazette containing any regulation or order made under this Act, or a copy of such regulation or order purporting to have been certified by the Commissioner to be a true copy, may be produced in court in proof of such regulation or order.

(2) In any legal proceedings-

- (u) a copy of an entry in any book of accounts maintained by the Monetary Board for the purposes of this Act, purporting to have been certified by an accountant of the Central Bank of Ceylon to be a true

copy on

(b) a copy of an entry in any book or record maintained by the Commissioner for the purposes of this Act, purporting to have been certified by him to be a true copy,

shall be prima facie evidence of the fact that such entry had been made and of the contents thereof.

43. (1) The income from the investment of any moneys of the Fund shall be exempt from income tax chargeable under any written law relating to the imposition of income tax. Exemption from income tax. Q 56 (I), 18 of 1965.1

(2) The sum paid as a benefit in respect of a member of the Fund under this Act shall be exempt from income tax chargeable under any written law relating to the imposition of income tax, if such member during the five years immediately preceding his retirement, departure from Sri Lanka or death, as the case may be, was not liable to pay income tax. [§ 56 (1), 18 of 1965.]

(3) The Fund shall be deemed to be a provident fund approved by the Commissioner or the Commissioner-General, as the case may be, for the purposes of the Income Tax Ordinance or the Inland Revenue Act, No. 4 of 1963, or the Inland Revenue Act (No. 28 of 1979). [§ 56 (1), 18 of 1965.]

In this subsection "Commissioner" and "Commissioner-General" shall have the same meaning as in the Income Tax Ordinance or the Inland Revenue Act, No. 4 of 1963, or the Inland Revenue Act. (No. 28 of 1979) respectively. Q 56 Q 18 of 1965.1

44. Stamp duty shall not be chargeable upon such documents used in connection with the purposes of this Act as may be prescribed. Exemption from stamp duty.

45. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any regulations made thereunder. Protection for action taken under this Act.

46. (1) The Minister may make Regulations. Regulations.

- (a) in respect of all matters which are stated or required by this Act to be prescribed ;

Burden of proof. Q 13, 8 of 1971.1

Offences by bodies of persons.

No prosecution without the sanction of the Commissioner.

Proof of regulations and orders, & c

- (b) in respect of all matters for which regulations are required or authorized to be made by this Act ;
 - (c) in respect of all matters connected with or incidental to the collection of contributions and other payments under this Act ;
 - (d) in respect of the refund of any sums paid in error to the Fund ;
 - (e) in respect of the evidence required in support of a declaration by a member of the Fund that he is leaving Sri Lanka and does not intend to return thereto ;
 - (f) for enabling a person to be appointed to exercise, on behalf of a claimant to a benefit who is a child or who may be unable for the time being to act, any right which the claimant may be entitled to exercise under this Act, and for authorizing a person so appointed to receive and deal with a benefit to which a claimant is entitled ;
 - (g) in respect of the nomination by a member of the Fund of a person or persons to whom the amount standing to the credit of that member's individual account in the Fund may be paid in the event of that member's death and the manner of revocation of such nomination ;
 - (h) in respect of the manner in which and the time within which appeals to the Tribunal constituted under this Act shall be made ;
 - (i) in respect of the fees to be paid for appeals to such Tribunal ;
 - (j) in respect of the procedure to be followed and the powers exercisable by such Tribunal ;
 - (k) in respect of the circumstances in which costs may be awarded by such Tribunal against any party to an appeal made to the Tribunal and the manner of recovery of such costs ;
 - (l) to provide for matters arising-
 - (i) pending the determination under this Act (whether in the first instance or on appeal) of any claim to a benefit or of any question affecting any person's right to a benefit or any person's liability for contributions to the Fund, or
 - (ii) out of the revision on appeal of any decision of any such claim or question ;
 - (m) for the suspension of the grant of a benefit pending the review by the Commissioner of the determination upon the claim to that benefit ;
 - (n) as to the date from which any decision on a review or an appeal under this Act is to have effect or to be deemed to have effect ;
 - (o) for treating any sum paid to any person under a determination made under this Act or by virtue of any provision of any regulation, which it is subsequently decided was not payable, as properly paid, or for the repayment by him and for the recovery from him of that sum ;
 - (p) the payment of allowances to officers and servants employed in carrying out the provisions of this Act and the method of computing such allowances ;
 - (pp) for the recovery of fees to be [§ 14, 8 of charged from employers and the 1971.] writing off of losses which may be incurred, in connection with the administration of this Act ; and
 - (q) in respect of all matters necessary for carrying out the provisions of this Act or giving effect to the principles thereof.
- (2) No regulation made by the Minister shall have effect until it is approved by Parliament and notification of such approval is published in the Gazette.

Every regulation so approved shall be as valid and effectual as though it were herein enacted.

(e) such other forms of remuneration as may be prescribed ;

Interpretation.

47. In this Act, unless the context otherwise requires-

“ employee ” includes any apprentice or learner who is paid a remuneration ;

“ appointed date ” means the 1st day of June, 1958 ;

“ employer ” means any person who on his own behalf employs, or any person on whose behalf any other person employs, or any person who on behalf of any other person employs, any person in a covered employment ;

“ Commissioner * means the Commissioner of Labour ;

“ covered employment ” means an employment declared by regulation to be a covered employment ;

“ Monetary Board ” means the Monetary Board established under the Monetary Law Act ;

“ earnings ” mean

(a) basic wages or salary ;

“ prescribed ” means prescribed by regulation ; and

(b) cost of living allowance, special living allowance and other similar allowances ;

“ regulation † ” means a regulation made under this Act.

(c) payment in respect of holidays ;

(d) the cash value of any cooked or uncooked food provided by the employer to employees in prescribed employments and any such commodity used in the preparation or composition of any food as is so provided, such value being assessed by the employer subject to an appeal to the Commissioner whose decision on such appeal shall be final ; and

48. The rate of the contributions of an employer or an employee to a provident fund or contributory pension scheme shall not be reduced by reason only of the fact that such rate is higher than the rate of contribution of an employer or employee to the Fund. Prohibition of reduction on certain ground, of rate of contribution to a provident fund or contributory pension scheme.

49. The provisions of this Act shall have effect notwithstanding anything contained in any other written law, and in any case of conflict or inconsistency between the provisions of this Act and such other law, the provisions of this Act shall prevail. Act to prevail in case of conflict with other written law