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2nd Session 1971-72



Business Undertakings (Acquisition) Act, No. 35 of 1971

Date of Assent: October 1, 1971

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Business Undertakings (Acquisition)
Act, No. 35 of 1971

L. D.—O. 35/70.

AN ACT TO PROVIDE FOR THE ACQUISITION FOR THE GOVERNMENT, WHETHER BY AGREEMENT OR COMPULSORILY, OF ANY BUSINESS UNDERTAKING, FOR THE REQUISITIONING OR COMPULSORY ACQUISITION OF ANY PROPERTY NECESSARY FOR THE PURPOSES OF THAT UNDERTAKING AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[Date of Assent: October 1, 1971]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Representatives of Ceylon in this present Parliament assembled, in accordance with the provisions of Section 34 of the Ceylon (Constitution) Order in Council, 1946, and by the authority of the same, as follows:—

1. This Act may be cited as the Business Undertakings (Acquisition) Act, No. 35 of 1971.

Short title.

2. (1) The Minister of Finance of his own motion or at the request of any other Minister—

Acquisition by Government of any business undertaking.

(a) may direct in writing the Secretary to the Treasury to acquire on behalf of the Government by agreement any such business undertaking as shall be specified in such direction; or

(b) may, by Order (hereafter in this Act referred to as a "primary vesting Order") published in the *Gazette*, vest in the Government with effect from such date (hereafter in this Act referred to as the "primary vesting date") as shall be specified in the vesting Order any such business undertaking as shall be so specified.

(2) Where any business undertaking is acquired by the Government by agreement or is vested in the Government by a primary vesting Order, the Government shall, with effect from the date of transfer or the primary vesting date, as the case may be, have absolute title to such business undertaking free from all encumbrances.

(3) A primary vesting Order shall be laid before the House of Representatives within sixty days of the publication of the vesting Order in the *Gazette*, and if Parliament is not in session, within fifty days of the commencement of the session next ensuing, by a motion that such Order be approved.

(4) Subject to the provisions of sub-section (5), a primary vesting Order shall be final and conclusive and shall not be called in question in any court whether by way of writ or otherwise.

(5) Where the House of Representatives refuses to approve a primary vesting Order made in respect of any business undertaking, that undertaking shall be deemed never to have vested in the Government by virtue of that vesting Order and any question which may arise as to any right, title or interest in or over such undertaking shall be determined accordingly.

Appointment of competent authority to manage and administer the affairs of any business undertaking acquired by or vested in the Government.

3. Where any business undertaking is acquired by or vested in the Government, there shall be appointed a competent authority or more than one such authority to manage and administer the affairs of that undertaking.

Special provisions relating to the rights and liabilities of any business undertaking acquired by or vested in the Government.

4. (1) Subject to the provisions of sub-section (2), where any business undertaking is acquired by or vested in the Government, all the rights and liabilities under any contract or agreement which relates to the purposes of that undertaking and which subsists on the date of transfer or on the primary vesting date of that undertaking shall vest in the Government.

(2) The Minister of Finance may at any time repudiate the liabilities under any contract or agreement referred to in sub-section (1) if he is of opinion that such liabilities were incurred *mala fide*, dishonestly or fraudulently. Notice of the repudiation shall be given by the competent authority to the parties to the contract or agreement.

(3) Where the Minister of Finance under sub-section (2) repudiates the liabilities under any contract or agreement such liabilities shall be deemed never to have vested in the Government.

(4) For the purposes of this section, "liabilities" shall not include any loan repayable to a director of any business undertaking which is acquired by or vested in the Government or to any member of the family of such director.

5. Where a business undertaking is acquired by or vested in the Government under this Act, the competent authority appointed under section 3 to manage and administer the affairs of that undertaking shall take possession of the property of that business undertaking.

Taking possession of property acquired by or vested in the Government.

6. A competent authority in the discharge of his functions and in the exercise of his powers shall be subject to such general or special directions as the Minister of Finance in consultation with the relevant Minister may issue from time to time.

Minister's directions to a competent authority.

7. (1) The proprietor of any business undertaking who is aggrieved by a primary vesting Order made in respect of that undertaking may, within fifteen days after the date of that vesting Order, appeal to the Minister of Finance against such vesting Order.

Appeals.

(2) The Minister of Finance may refer an appeal made to him under sub-section (1) to an Advisory Board consisting of such number of persons being not less than three as the Prime Minister may appoint and such Advisory Board shall advise the Minister on the question whether the primary vesting Order to which the appeal relates should be revoked.

(3) The Minister may, after considering the advice tendered to him by the Advisory Board, revoke the primary vesting Order in respect of which the appeal was made.

8. (1) For the purposes of any business undertaking acquired by or vested in the Government, the Minister of Finance of his own motion or at the request of the relevant Minister may, by Order (hereafter in this Act referred to as a "subsidiary vesting Order") published in the *Gazette*, vest in the Government with effect from such date as shall be specified in the Order, any movable or immovable property specified in the Order.

Compulsory transfer to the Government of certain property.

(2) Before a subsidiary vesting Order takes effect, the Minister of Finance in consultation with the relevant Minister from time to time may alter, by Order published in the *Gazette*, the date on which such subsidiary vesting Order takes effect.

(3) A subsidiary vesting Order shall have the effect of giving the Government absolute title to any property specified in the Order with effect from the date specified therein and free from all encumbrances.

(4) A subsidiary vesting Order vesting any property in the Government for the purposes of any business undertaking of the Government shall have the effect of authorizing the competent authority managing and administering the affairs of that business undertaking to take possession of that property.

(5) A subsidiary vesting Order made in respect of any property shall be final and conclusive and shall not be called in question in any court whether by way of writ or otherwise.

Amendment of
vesting Order
in so far as it
relates to any
property vested
in the
Government.

9. (1) Notwithstanding that any movable or immovable property has vested in the Government by virtue of a vesting Order, the Minister of Finance of his own motion or at the request of the relevant Minister may, at any time by subsequent Order (hereafter in this Act referred to as a "divesting Order") published in the *Gazette*, amend that vesting Order by the exclusion therefrom of that property.

(2) The following provisions shall apply where any property is excluded from a vesting Order by a divesting Order made under sub-section (1)—

(a) that property shall be deemed never to have vested in the Government by virtue of that vesting Order and any question which may arise as to any right, title or interest in or over that property shall be determined accordingly;

(b) that property shall be deemed to have been and to be property which was requisitioned by a requisitioning Order with effect from the date on which that vesting Order took effect and was derequisitioned by a derequisitioning Order with effect from the date of the amendment of the vesting Order under sub-section (1).

10. (1) For the purposes of any business undertaking acquired by or vested in the Government under this Act, the Minister of Finance at the request of the relevant Minister may by Order (in this Act referred to as a "requisitioning Order") published in the *Gazette* requisition, with effect from such date as shall be specified in the Order, any movable or immovable property specified in the Order.

(2) A requisitioning Order made under sub-section (1) in respect of any property required for the purposes of any business undertaking shall have the effect of authorizing the competent authority managing and administering the affairs of that business undertaking to take possession of the property specified in the Order and to use such property for the purposes of that business undertaking.

(3) Where any property is requisitioned by a requisitioning Order, the Minister of Finance of his own motion or at the request of the relevant Minister may, by Order (in this Act referred to as a "derequisitioning Order") published in the *Gazette*, derequisition such property with effect from such date as shall be specified in the derequisitioning Order.

(4) Before a derequisitioning Order takes effect, the Minister of Finance may from time to time alter, by Order published in the *Gazette*, the date on which such derequisitioning Order takes effect.

(5) Where, immediately before the date on which any property is requisitioned under this Act, a person, other than the owner of such property, was entitled to possession of or to any other right, title or interest in such property under the terms of any arrangement, agreement (formal or informal), lease or notarially executed instrument, that arrangement, agreement, lease or notarially executed instrument shall be deemed for all purposes to have expired on that date.

(6) Where any property is derequisitioned by a derequisitioning Order, such Order shall be deemed to have the effect of reviving any arrangement, agreement, lease or notarially executed instrument subsisting on the date on which the property was requisitioned, and any question which may arise as to any right, title or interest in or over that property shall be determined accordingly.

(7) Where any property requisitioned for the purposes of any business undertaking is permanently required for the purposes of that undertaking, the Minister of Finance of his own motion or at the request of the relevant Minister may, by a subsidiary vesting Order made under section 8, vest such property in the Government.

Power of
Minister of
Finance to
direct a bank
in which the
proprietor of
any business
undertaking
has an account
not to permit
him to operate
such account.

11. (1) Where a business undertaking is transferred to or vested in the Government under this Act, the Minister of Finance may by order in writing direct any bank in which the person, who immediately prior to the date of transfer or the primary vesting date was the proprietor of that undertaking, has a bank account not to permit him to operate that account or to permit him to operate such account in accordance with the terms and conditions specified in the order.

(2) Where a written order under sub-section (1) is issued to a bank in respect of a bank account, it shall be the duty of the manager of that bank to take all necessary steps to ensure that such bank account is not operated by anyone, or is operated in accordance with the provisions of that order, as the case may be.

(3) Where a written order under sub-section (1) has been issued in respect of the person who was the proprietor of a business undertaking prior to the date of transfer or the primary vesting date of that undertaking and the Minister of Finance is satisfied—

(a) that no moneys are due from that person to any other person who prior to the transfer or vesting was employed in that business undertaking; or

(b) that that person has paid, or has made adequate arrangements to pay within such period as the Minister of Finance may determine—

(i) all moneys due from that person to persons who were employed by him in that business undertaking,

(ii) all moneys due from that person to the Government or to any public corporation, and

(iii) all moneys due from that person on account of income tax imposed under any written law providing for the imposition of such tax,

the Minister of Finance may vary or cancel the written order issued under sub-section (1).

For the purposes of this sub-section, "public corporation" means any corporation which was, or is, established with capital provided wholly or partly by the Government.

12. (1) The Minister of Finance may, of his own motion or at the request of the relevant Minister, make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act in relation to any business undertaking acquired by or vested in the Government. Such regulations may contain such incidental, consequential and supplementary provisions as may be necessary or proper for giving full effect to the principles and provisions of this Act.

Regulations.

(2) In particular and without prejudice to the generality of the powers conferred by sub-section (1), the Minister of Finance of his own motion or at request of the relevant Minister may, in relation to any business undertaking acquired by or vested in the Government, make regulations in respect of the following matters:—

- (a) the management and administration of the affairs of that undertaking;
- (b) the term of office and the powers and duties of a competent authority;
- (c) the payments to be made in respect of any business undertaking or property acquired or requisitioned by or vested in the Government and any matter regarding the assessment of the amount of the payments and mode of making such payments; and
- (d) the prevention of the theft of, or damage to, or the commission of any nuisance on, any property acquired by or vested in the Government.

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

(4) Every regulation made by the Minister of Finance shall, as soon as convenient after its publication in the *Gazette*, be brought before the Senate and

the House of Representatives for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously done thereunder.

(5) Notification of the date on which any regulation is deemed under sub-section (4) to be rescinded shall be published in the *Gazette*.

Powers of entry and inspection and power to demarcate premises used for or required by any business undertaking, to call for information and to make copies of any documents.

13. For the purposes of this Act any person authorized in writing by any Minister may—

- (a) enter at any reasonable hour any premises or place where a business undertaking is carried on and take an inventory of the property used or required for that undertaking, and inspect any books, registers or other documents maintained in relation to such undertaking and make copies of any entries in such books, registers or documents;
- (b) enter at any reasonable hour any land, building or structure used for the purposes of a business undertaking and demarcate and set out the boundaries thereof;
- (c) enter any premises in which any movable property required for the purpose of the undertaking is kept or is suspected to be kept in order to inspect such property; and
- (d) require any other person to furnish such return or information as such person may deem necessary.

Notice of claim or disclaimer in respect of any property.

14. (1) The Minister of Finance or any officer authorized by him in writing may by notice served on the proprietor of any business undertaking declare that such business undertaking is required for the purposes of the Government. Such notice is hereafter in this Act referred to as a "notice of claim".

(2) Where a notice of claim under sub-section (1) has been served on the proprietor of a business undertaking in respect of that undertaking, the Minister of Finance or any officer authorized by him may, by notice (in this Act referred to as a "notice of disclaimer") served on such proprietor, disclaim the need for the purposes of the Government of that business undertaking.

(3) No person shall alienate to any person other than the Government—

(a) the property of any business undertaking specified in a notice of claim and not disclaimed by a notice of disclaimer, or

(b) any rights in respect of that business undertaking,

and any alienation of that business undertaking or of those rights to any person other than the Government shall be null and void.

(4) Any person shall, if requested by any officer authorized by the Minister of Finance for the purpose, furnish to such person as shall be specified in the request information with regard to any matter within his knowledge relating to such business undertaking as shall be so specified.

(5) Any notice under this section may be served—

(a) by delivering it to the person on whom it is to be served; or

(b) by leaving it at the usual or last known place of abode of that person; or

(c) in the case of a company, by delivering it to a director or the secretary of the company; or

(d) in the case of a firm, by delivering it to any partner of the firm.

15. Any person—

Offences.

(a) who refuses or fails to deliver possession to the competent authority of any property which is vested in the Government by a vesting Order under this Act or which is requisitioned by a requisitioning Order under this Act; or

(b) who wilfully or negligently destroys, damages or disables or causes to be destroyed or damaged or disabled or wilfully conceals or puts away or causes to be concealed or put away any property of a business undertaking acquired by or vested in the Government or any property in respect of which a subsidiary vesting Order or a requisitioning Order under this Act is made; or

- (c) who prevents or obstructs or directly or indirectly causes any other person to prevent or obstruct the competent authority in taking possession of such property; or
- (d) who obstructs any other person in the exercise by such other person of the powers conferred on him by section 13; or
- (e) who fails to furnish to any other person any return or information required by such other person under section 13 or withholds in furnishing such return or information any material particular or furnishes any information knowing or having reason to believe such information to be false; or
- (f) who fails to furnish the information referred to in sub-section (4) of section 14 or who wilfully withholds all or any part of such information or who furnishes information knowing such information to be false or who wilfully or negligently destroys or damages or causes to be destroyed or damaged any property belonging to any business undertaking specified in a notice of claim and in respect of which a notice of disclaimer has not been made,

shall be guilty of an offence under this Act and shall on conviction after summary trial before a Magistrate be liable to imprisonment of either description for a period not less than one year and not exceeding three years and to a fine not exceeding five thousand rupees.

16. All payments made in respect of any property acquired or requisitioned by or vested in the Government under this Act shall be charged on the Consolidated Fund of Ceylon.

Payments
made in
respect of
property
acquired or
requisitioned by
or vested in the
Government
to be charged
on the
Consolidated
Fund.

17. In this Act, unless the context otherwise requires— Interpretation.

“ business undertaking ” means any undertaking of a commercial, industrial, agricultural or professional nature and includes—

- (i) all property, movable or immovable, which was used for the purposes of the undertaking on the day immediately preceding the date of transfer or the primary vesting date and which may be specified by the Minister of Finance in the primary vesting Order;
- (ii) subject to the provisions of this Act, all rights, powers, privileges and interests arising in or out of such property or business and all the liabilities of that undertaking;
- (iii) all books, accounts and documents relating or appertaining to the business undertaking or any property of that undertaking;

“ date of transfer ”, when used in relation to a business undertaking acquired for the Government by agreement, means the date of acquisition of that undertaking;

“ proprietor ”, when used in relation to a business undertaking, means the owner of that undertaking or any other person authorized by the owner to enter into contracts for the purposes of that undertaking;

“ relevant Minister ”, when used in relation to a business undertaking, means the Minister at whose request that business undertaking was acquired for, or vested in, the Government by the Minister of Finance under this Act;

“ vesting Order ” means a primary vesting Order or a subsidiary vesting Order.