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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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PART IV (A) — PROVINCIAL COUNCILS

Provincial Council Notifications

WESTERN PROVINCE PROVINCIAL COUNCIL

Private Member Statute presented under Rule 42 of the Rules of Procedure of the Western Province Provincial Council

I, hereby declare in terms of the functions assigned to me under Rule 42 (4) of the Rules of Procedure of the Western Province Provincial Council, that the motion and the Statute appended have been forwarded by Hon. Renuka Dushyantha Perera, Member of the Provincial Council, for being presented the Private Member statute known as the Western Co-operative Marketing Company Establishment Statute, under Rule 42 of the Rules of Procedure of the Western Province Provincial Council.

LALITH KANNANGARA,
Secretary,
Western Province Provincial Council.

Council Secretariat,
Western Province Provincial Council,
Independence Square,
Colombo 07,
08th March, 2007.

MOTION PRESENTED BY HON. RENUKA DUSHYANTHA PERERA, MEMBER OF PROVINCIAL COUNCIL :

“I hereby move that the Western Province Co-operative Marketing Company Establishment Statute No..... of 2007 which is a Private Member Statute presented by me with the objectives of establishment of a Company coming under the Provincial Council for marketing of products of the Western Province among the consumer community at a competitive price, for importation and exportation of consumer items and for distribution of all varieties of consumer goods among the community on wholsale and retail basis and maintaining of stocks, shall be approved by the Western Province Provincial Council”.

The Private Member Statute relevant to the said Motion :

WESTERN CO-OPERATIVE MARKETING COMPANY ESTABLISHMENT STATUTE No.....2007

A statute to provide for establishment of a company for marketing of products of the Western Province at a competitive price to the consumer community and for importation and exportation of stocks of consumer items subject to the import and export rules and regulations of the Government and for storing stocks and for dealing with distribution among the people all varieties of consumer goods on wholesale and retail basis.

Be it enacted by the Western Province Provincial Council of the Democratic Socialist Republic of Sri Lanka as follows :-

This Statute may be cited as the Western Co-operative Marketing Company Establishment Statute No.....of 2007 of the Western Province Provincial Council and shall come into operation from the date of receiving approval of the Hon. Governor.

PART I

ESTABLISHMENT OF THE WESTERN CO-OPERATIVE MARKETING COMPANY

Establishment of the "WCMCo"

01. (1) A company known by the name Western Co-operative Marketing Company and hereinafter referred to as "WCMCo" is hereby established.
- (2) The "WCMCo" shall be a body corporate by the name assigned to it by Sub-Section I and shall have perpetual succession and common seal. The "WCMCo" may sue and may be sued in such name and shall have the authority to acquire, hold or transfer movable or immovable property.

Members of the "WCMCo"

02. (1) "WCMCo" Company shall have a Board of Directors consisting of the following members.
- (a) Three Members appointed ex-office, viz.
- (i) Secretary to the Minister in-charge of the subject or a senior officer of the Ministry nominated by him.
- (ii) A senior officer of the Provincial Ministry of Finance nominated by the Minister of Finance of the Province ; and
- (iii) The Commissioner of co-operative Development of the Western Province.
- (b) (i) Three persons from among the persons who appear to have an experience in the trading, commercial, financial and administrative affairs nominated by the Minister ; and
- (ii) 15 Directors shall be appointed consisting a representative each nominated by a Co-operative Society registered in the Western Province which would invest in more than 10% of shares for the "WCMCo".

- (c) Whatever be the number of members of the Board of Directors according to the number of societies which invest in 10% of shares according to b(ii) above, the final number shall be an odd number.
- (2) (a) One Member from among the members of the Board of Directors shall be appointed as the Chairman and a Member of the Board of Directors competent in Commercial Accounting and Marketing shall be appointed as the Managing Director by the Minister in-charge of the subject in the Province.

(b) In every instance where the Chairman of the Board of Directors is present, he shall preside over the meeting of the Board of Directors and in his absence any member of the Board of Directors shall be elected by the Board of Directors to preside over the meeting of the Board of Directors.
- (3) Non-participation in the meetings continuously for a period of three months by a person appointed for the Board of Directors without any reasonable ground will result in cessation of his membership and in an instance where the Provincial Minister in-charge of the subject feels that removal of any member is expedient, the Provincial Minister in-charge of the subject shall have the power to remove such officer and a representative nominated by the relevant cooperative society holding shares shall be appointed in that place for the remaining term of office.
- (4) Every member of the Company shall hold office for a period of three years from the date of his appointment unless he earlier vacates his office due to death, resignation or removal by the Minister in-charge of the subject by a notice published in the Gazette. Further, he shall be eligible to be reappointed unless he has been removed from office.
- (5) (a) Any member appointed under the provisions of paragraph (b) of Sub-Section 1 of this Section, may resign from his membership by a written notification addressed to the Minister and another person who may be considered to be coming under the provision referred to shall be appointed by the Minister to hold the office for the unexpired part of the term of office of the member who he succeeds.

(b) In an instance where any member or Chairman of the Board of Directors fails to perform the duties of his office by reason of illness or other infirmity or being away from Sri Lanka or due to any reasonable ground, another person of the society represented by him shall be appointed in place of the said member by the Provincial Minister to perform duties of the said office during his term of office.
- (6) A remuneration as determined by the Minister from time to time may be paid to each and every member participated in each of the meetings in respect of each and every date on which the Board of Directors of the WCMCo would meet.
- (7) Holding of office of a representative or an office of membership in any institution represented by the public shall constitute an ineligibility to hold office of the member of the Board of Directors.
- (8) Existence of any relationship agreed into or existence of business relationships or carrying on transactions by any member of the Board of Directors directly or indirectly with the "WCMCo" shall be a reason for cessation of membership of the Board of Directors.

Seal of the
“WCMCo”

03. (1) Seal of the “WCMCo” shall be in the custody of the Chairman.
- (2) Seal of the “WCMCo” may be altered in such manner as may be determined by its Board of Directors.
- (3) Seal of the “WCMCo” shall not be affixed to any instrument or document except in the presence of any two members of the Board of Directors both of whom shall sign such instrument or document in proof of their presence.

Quorum of the
“WCMCo”

04. (1) The quorum for a meeting of the Board of Directors shall be 1/3 of the total membership of the Board of Directors.
- (2) All matters and issues authorized by this Statute as should be determined by the Board of Directors, shall be determined by the majority vote of the members present at a meeting of the Board of Directors held in accordance with the provisions of this Statute.
- (3) In case of an equality of votes on any issue cast by the members present at a meeting, the member presiding over such meeting shall have a casting vote in addition to the vote entitled to him.
- (4) The casting vote in terms of Section (3) above can be used at a meeting of the Board of Directors that would ensue after enlightenment on such issue of all the members of the Board of Directors who were not present on the relevant day.
- (5) The Board of Directors may function irrespective of any vacancy among the members of the Board of Directors. No act or proceeding of the Company shall be invalid or deemed to be invalid by reason only of the existence of any such vacancy or any defect in the appointment or nomination of any member.

PART II

OBJECTS OF THE WESTERN CO-OPERATIVE MARKETING COMPANY

Objects of the
“WCMCo”

05. The objects of the Western Cooperative Marketing Company shall be as follows.
- (1) Purchasing of products and marketing of such products among the people at a competitive price.
- (2) Collection of stocks and importation and exportation of stocks of consumer items subject to the import and export rules and regulations of the Government.
- (3) Setting up and up keeping of wholesale and retail marketing stalls and agencies of the said Company with the prior approval of the Minister in-charge of the subject of Cooperatives.
- (4) Taking action for promotion of the Western Cooperative Marketing Company in the manner as authority may be delegated by the Minister in-charge of the subject.
- (5) Raising of nutritional condition of the people of Western Province and supply of necessary food items to the market place without any shortage for the purpose and provision of facilities for the consumer to purchase such items at competitive rates of prices.

PART III

POWERS AND FUNCTIONS OF THE WESTERN CO-OPERATIVE MARKETING COMPANY

06. The Western Cooperative Marketing Company shall have the powers to perform all activities necessary for achievement of objects of the said Company specified at Section 5 above. Powers of the “WCMCo”

07. The functions of the “WCMCo” shall be as follows. Functions of the “WCMCo”

- (1) Production of stocks of nutritional food items importation and purchasing of products of the producers for strengthening them, provision of service facilities required for importation and exportation of such products and distribution of stocks of consumer items on wholesale and retail basis.
- (2) Supply of qualitative goods on wholesale and retail basis to the cooperative societies, private traders and consumers at competitive rates of prices.
- (3) Entering into necessary contracts and agreements in the exercise of powers and functions and achievement of objects indicated in this Statute.
- (4) Acquisition, holding, giving on lease or rent, mortgaging, pledging, selling or otherwise disposal of any movable or immovable property.
- (5) Acceptance of gifts, grants, aids in relief or loans received in financial form or any other form and their application for achievement of objects of the “WCMCo”.
- (6) Engaging in activities necessary for enforcing and performing powers and functions of this Statute and incidental thereto.

PART IV

STAFF OF THE WESTERN CO-OPERATIVE MARKETING COMPANY

08. (1) (a) There shall be a staff necessary for carrying out functions and exercising powers of the “WCMCo” and the matters connected with their appointments, transfers and disciplinary control shall be dealt with by the Board of Directors. Staff of the “WCMCo”
- (2) A General Manager shall be a full-time officer and he shall also be the Chief Executive Officer of the Staff.
 - (3) Direction of affairs, amendment and exercising powers, functions and duties and administration of employees of the “WCMCo” shall be subject to general direction and administration of the General Manager.
 - (4) Determination of wage or salaries of the staff, determination of other remuneration payments to the staff and determination of service suffixes and service conditions shall be done by the Board of Directors.

Production for
action taken under
the Statute.

09. (1) Action shall not be filed in a court of law against any officer or employee or agent of the Board of Directors or staff for any act done in good faith or deemed to have been done in good faith by such officer or employee or agent under this Statute or on the direction of the "WCMCo", and

(2) Against "WCMCo" for any act done or deemed to have been done in good faith by the "WCMCo" under this Statute.

(3) In the event of a civil or criminal case filed before any court of law against any person referred to in Sub-Section (2) for any act done by such person under this Statute or on the direction of the "WCMCo", if the court decides that such act had been done in good faith, the costs incurred by him shall be repaid out of the funds of the "WCMCo".

Members and
employees of the
"WCMCo" deemed
to be public
servants.

10. (1) Any member of the Board of Directors or any employee of the "WCMCo" shall be deemed to be a public servant within the meaning of the Penal Code.

(2) "WCMCo" shall be deemed to be a scheduled institution within the meaning of the Bribery Act.

PART V

FINANCE

Fund of the
"WCMCo"

11. (1) The "WCMCo" shall have a Fund in that name.

(2) There shall be credited to the Fund of the Company.

(a) All such sums of money as may be voted from time to time by the Provincial Council for the use of the Company.

(b) All such sums of money as may be employed by the Cooperative Societies registered in the Western Province to the Fund of the "WCMCo".

(c) All such sums of money as may be received by the "WCMCo" in the exercise, performance and discharge of its powers, functions and duties.

(d) All such sums of money as may be received as loans, donations, gifts or grants from whatever source provided by the Parliament.

(e) All such sums of money as may accrue to the "WCMCo" shall be credited to the Fund of the Company.

(3) All such sums of money received by the "WCMCo" and to be credited to the Fund shall be deposited in a Bank of the State Sector approved by the Governor.

Expenditure of the
"WCMCo"

12. (1) There shall be paid out of the Fund of the Company all such sums of money payable in defraying any expenditure incurred by the "WCMCo" in the management of the affairs of the "WCMCo" and in the payment of remunerations to its Members and employees and in the exercise of powers and performance of functions and duties of the "WCMCo" under this Statute and for any other purposes authorized by the "WCMCo" from time to time.

- (2) The cheques and orders drawn on the fund of the “WCMCo” shall be signed by two persons authorized for the purpose by the “WCMCo”.
13. (1) The financial year of the “WCMCo” shall be the calendar year.
 - (2) The “WCMCo” shall maintain accounts showing its revenue, expenditure, assets and liabilities in the manner as may be specified in the rules from time to time. Maintenance of Accounts “WCMCo”
 - (3) Documents containing all statements of accounts of the “WCMCo” shall be retained at the Head Office.
14. (1) The “WCMCo” shall finalize its accounts on or before the 31st December every year and the Profit and Loss Account and the Balance Sheet showing the assets in its possession and the liabilities shall be prepared as at that date. Preparation of Statements of Accounts of the “WCMCo”
 - (2) The Profit and Loss Account and the Balance Sheet shall be signed by two persons who hold responsibility for their preparation.
 - (3) The Income and Expenditure Account and the Balance Sheet in respect of every financial year shall be presented to the Board of Directors of the Company before the end of the second month of the succeeding year.
15. (1) The Income and Expenditure Account and the Balance Sheet in respect of every Financial year shall be submitted to the Auditor General before the 15th of March, of the succeeding year. Audit of Accounts of the “WCMCo”
 - (2) The provisions of Article 154 of the Constitution shall be applicable in respect of the audit of Accounts of the “WCMCo”.
 - (3) The provisions of the Finance Act, No. 38 of 1971 shall, mutatis mutandis, apply to the auditing of relevant Accounts.
 - (4) On receipt of the Auditor General’s report in respect of any year as stated in 15(1) above, the Company shall cause the following documents to be submitted to the Minister in-charge of the subject along with a report of the General Manager regarding administration with clarifications relating to relevant matters.
 - (a) Auditor General’s Report,
 - (b) Balance Sheet and
 - (c) Profit and Loss Account.
 - (5) The Minister shall present to the Provincial Council, the copies of the report and documents submitted to him under paragraph (4).

PART VI

POWER OF ACQUISITION OF PROPERTY

16. (1) Whenever then “WCMCo” is of the view that acquisition of any immovable property located within the province is required for the purposes of this Statute. on a request make upon the recommendations of the Board of Ministers made on the request of the Minister with regard to the property expected to be acquired may— Power of Acquisition of Immovable Property of the “WCMCo”

- (a) Where such property is a State property, pass a resolution to make such property available to the "WCMCo" for such purposes under items 21 and 16 of List 01 of the Ninth Schedule to the Constitution, and
 - (b) Where such property is a private property, pass a resolution requesting the Minister in-charge of the subject of Lands in the Central Government to acquire such property on behalf of the "WCMCo" for the purposes under the Land Acquisition Act.
- (2) Where the Provincial Board of Ministers has passed a resolution under Sub-section (1), the Secretary to the Ministry in-charge of the subject shall, through the Chief Secretary, refer such resolution in a prescribed form—
 - (a) In the case of a State property, to the State Institution which owns the said property, or
 - (b) In the case of a private property, to the Minister in-charge of the subject of Lands in the Central Government.
- (3) Any sum of money to be transmitted with regard to acquisition of such property for the "WCMCo", shall on an application made under Sub-section (2), be paid out of the Fund of the "WCMCo".

PART VII

POWERS OF THE MINISTER

Powers of
Examination of
the Minister

17. (1) The Minister may examine the exercise of powers of the Company with regard to the functions under this Statute and after such examination may issue special or general directions to the Company which shall be implemented by the Company.
- (2) The Minister may direct the Company from time to time to furnish in writing to him with information which he may require in relation to the affairs of the Company.
- (3) Whenever the Minister is of the opinion that an inspection with regard to financial position and performance of the Company should be made, such a formal inspection may be made by him or a person authorized in writing by him.
- (4) Where a formal inspection in terms of Sub-section (3) is made, the Members and officers of the Company are bound to forward books, documents and statements of accounts called for as required by the Minister or the officer authorized by him with regard to the incident in which connection the inspection is made.

Powers of the
Minister to makes
Rules.

18. (1) The Minister may, for the purpose of implementation and enforcement of the provisions of this Statute, make rules, not inconsistent with the provisions of this Statute and without prejudice to the generality of powers conferred under this Statute, in respect of all or any of the following matters :-
 - (a) The conduct of meetings of the "WCMCo".
 - (b) The powers and functions of the General Manager as the Chief Executive of the "WCMCo".

- (c) Preparation of estimates and budgets
 - (d) Accounting
 - (e) Payment of remunerations to the Members of the “WCMCo”
 - (f) Production of stocks of food and consumer items and purchase of such products, provision of service facilities required for importation and exportation of such products, supply of stocks of food and consumer items for marketing and selling on retail basis
 - (g) Functions, relations to contracts and agreements entered into by and movable and immovable property of the “WCMCo”.
- (2) Every rule made by the Minister under this Section shall be published in the *Gazette* and shall be presented to the Provincial Council within 03 months of such publication.
- (3) Every rule made under Sub-Section (2), shall, as soon as may be convenient after publication, be presented to the Provincial Council by a resolution requesting for grant of permission to such rule which may be passed, repealed or amended by the Provincial Council. A notification of repeal or amendment shall be published in the *Gazette* by the Provincial Council without delay. Further, such repeal or amendment shall not prejudice, as from the date of such publication, the validity of any thing that may have been previously done or any legal proceedings that may have been commenced under such rules.

PART VIII

SETTLEMENT OF DISPUTES

19. The disputes arising between a person who is in the service of or a person who had earlier been in the service of the “WCMCo” and between the “WCMCo” and the persons or institutions carrying on business transactions with the “WCMCo” shall be referred for arbitration. Settlement of Disputes
20. One arbitrator each shall be named by the two parties.
21. (1) The arbitrators shall get an arbiter appointed before getting directed to arbitration.
- (2) In case the arbitrators fail to arrive at an agreement for getting an arbiter appointed, the Secretary to the Ministry shall have an arbiter appointed.
- (3) The quantum of remuneration payable by a party to the arbiter shall be determined by the Secretary to the Ministry and the remunerations payable to the arbiter by the parties shall be paid and finalized before proceeding to the arbitration process.
22. In the event of failure to get any dispute settled through arbitration, it shall be referred to the commercial High Court or the District Court.

PART IX

DISSOLUTION OF "WCMCO"

Dissolution of
"WCMCo"

23. In case the Minister is not satisfied with the economic stability and the procedures of the "WCMCo" action may be taken by a notification published in the *Gazette* of the Government or the *Gazette* of the Province—

- (1) To dissolve the "WCMCo" effective from the date stated in the said notification, or
 - (2) To appoint a person or several persons as a liquidator or liquidators.
24. (1) In the liquidation, action shall be taken in the first instance to have the costs of liquidation settled and thereafter to settle its liabilities.
- (2) On completion of the process of liquidation of the Company, a liquidation notice shall be published in the *Gazette* of the Province and no claim may be made against the Company by any person after the expiry of two years from the date of such notice.
- (3) Any sum of money remaining after accomplishment of matters stated in the 1st Schedule and the 2nd Schedule, if any shall be credited to the Fund of the Western Province Provincial Council.

PART X

INAPPLICABILITY OF WRITTEN LAWS AND INTERPRETATION

Inapplicability of
Written Laws

25. The company ordinance or any other written law applicable for establishment and regulation of a company, shall not be made applicable for the "WCMCo".

26. Affairs of the "WCMCo" shall be exempted from stamp charges as follows :

- (1) If any instrument is prepared by the Company or on behalf of the Company for the use of the Company, stamp charges prescribed as leviable under any written law for such instrument.
- (2) Registration fees leviable for the time being for registration of documents.

Interpretation

27. In this Statute, unless the context otherwise requires—

"Minister" means the Minister in-charge of the subject of Trade and Commerce in the Western Province Provincial Council.

"Ministry" means the Ministry to which the subject of Trade and Commerce is relevant in the Western Province Provincial Council.

"Provincial Council" means the Western Provincial Council established under the 13th Amendment to the Constitution.

"Secretary to the Ministry" means the Secretary to the Ministry under which the subject of Trade and Commerce falls in the Western Province Provincial Council.

“Person” means any public corporation, company or institution affiliated to the Government.

“WCMCo” means the Western Cooperative Marketing Company.

“Cooperative Societies” means all the cooperative societies operative within the Western Province.

28. The Sinhala version of this Statute shall prevail in the event of any inconsistency among the Sinhala, Tamil and English versions of the Statute.

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