

**A LEGAL FRAMEWORK FOR THE PROTECTION OF TRADITIONAL  
KNOWLEDGE IN SRI LANKA**

**SHORT TITLE**

1. A law to provide for the protection and management of traditional knowledge in Sri Lanka and matters related and ancillary thereto.

**STATEMENT OF POLICY**

2.

Whereas the Govt. of Sri Lanka recognizes:

The importance and value of traditional knowledge in all the fields of human endeavour including scientific, technological, industrial, economic, cultural, educational, social and spiritual; and the necessity to promote the protection, development, conservation and preservation of traditional knowledge;

meet the legitimate needs and expectations of the holders of traditional knowledge;

secure the respect and recognition for the traditional knowledge and the holders thereof for their contribution to the knowledge and development;

ensure fair and reasonable benefits to the holders of traditional knowledge for the use of traditional knowledge outside the traditional context;

regulate use, disclosure, acquisition, preservation and conservation, management, development and application of traditional knowledge;

discourage, control, counter and stop misuse of, misappropriation of and unauthorized access to, traditional knowledge; and

enable the human race to duly benefit from the traditional knowledge of Sri Lanka;

enacts this legislation

**DEFINITIONS**

3. In this Act unless the context otherwise requires-

"access" means collection, acquisition, disclosure, possession or use of traditional knowledge for scientific, commercial or industrial purposes;

"Biological Resources" mean genetic resources, organisms or parts thereof, populations or any other kinds of biotic component of ecosystems that are of real or potential value or use to mankind.

"Commissioner for Ayurveda" means the Commissioner for Ayurveda appointed under the Ayurveda Act No. 31 of 1961.

"Court" referred to in this Act means the High Court established under Article 154P of the Constitution for a Province empowered with civil jurisdiction by Order published in the Gazette

under section 2 of the High Court of Provinces (Special Provisions) Act No: 10 of 1996 when the party or parties defendant to such action resides or reside or the cause of action has arisen or the contract sought to be enforced was made within the Province for which such High Court is established, or where no such High Court is established for any Province or vested with such civil jurisdiction the High Court established for the Western Province ;

“Director General of Intellectual Property” means the Director General of Intellectual Property appointed under the Intellectual Property Act No 36 of 2003;

"Derivative" means a raw or modified extract including a molecule or combination or mixture of natural molecules of living or dead plants;

“Genetic resources” means any genetic material of plant, animal, microbial or other origin which is of actual or potential value.

"holder of traditional knowledge" means an individual, or group of individuals, or community, of Sri Lanka that is in possession of traditional knowledge distinctively linked to such individual, group of individuals or community and not in public domain and the Government of Sri Lanka in respect of traditional knowledge distinctively linked to Sri Lanka and in public domain in Sri Lanka but does not include a person or a group of persons corporate or unincorporated who have acquired such traditional knowledge in violation of the provisions of this Act;

"Licence Contract" means a contract between the holder of traditional knowledge and a third party, involving and relating to access to such traditional knowledge;

“Minister” means the Minister in charge of the subject of Intellectual Property.

“misappropriation” includes (i) acquisition, appropriation or use of traditional knowledge in violation of the provisions of this Act, (ii) deriving benefits from acquisition, appropriation or use of traditional knowledge where the person who acquires, appropriates or uses traditional knowledge is aware of or could not have been unaware of or is negligent to become aware of the fact that the traditional knowledge was acquired, appropriated or used by any unfair means and (iii) any commercial activity contrary to honest practices that results in unfair or inequitable benefits from traditional knowledge.

“person’ includes a natural person and anybody of persons, corporate or unincorporated

"Plant" includes a part of a plant and a derivative thereof;

"prior informed consent" means the written authorization given for access to traditional knowledge after having received complete and total disclosure of the reasons for such access including the eventual use of such traditional knowledge, the specific steps such access would entail, the risks involved and any implications of such access as may be reasonably foreseen.

"public domain" means anything disclosed to the public by a holder of traditional knowledge by publication, written or otherwise, or by use in such a manner that manifests an intention to make the said knowledge public and also traditional knowledge distinctively linked to, and commonly available in, Sri Lanka by the date which this Act becomes effective.

"Register" means the Register of Traditional Knowledge established in terms of section 9 of this Act.

"traditional knowledge" means the content or substance of knowledge that is result of intellectual activity and insight in a traditional context and includes the know-how, skills, innovations, practices and learning that form part of traditional knowledge systems and knowledge that is embodied in the traditional lifestyle of a community or people, or is contained in written or codified knowledge systems passed between generations and "traditional knowledge" is not limited to any specific technical field, and may include agricultural , environmental, health care and medicinal knowledge, associated with genetic resources or other components of biological diversity, and know-how of traditional architecture and construction technologies.

## **ADMINISTRATION**

- (4) (1) The Director General of Intellectual Property shall be responsible for and charged with the administration of the provisions of this Act. He shall receive the cooperation from the government agencies dealing with the concerned and related subjects such as indigenous medicine, agriculture, bio-diversity, environment, fauna and flora, wild life and forest whenever he needs such cooperation and in the manner and circumstances that he needs such cooperation.
- (2) The Minister shall, in consultation with the Ministers in charge of the subjects of indigenous medicine, agriculture, bio-diversity, environment, fauna and flora, wild life and forest appoint a committee to advise and assist the Director General of Intellectual Property on the administration of this Act where such advice and assistance is necessary and appropriate. The committee shall consist of not more than 10 persons with distinguished and demonstrated knowledge and experience in traditional knowledge and the related subjects from the government agencies referred to above and other individuals with distinguished and demonstrated knowledge and experience in traditional knowledge and the related subjects. The Director General of Intellectual Property shall be the Secretary and a member of the committee ex-officio. One of the members shall be appointed as the Chairman.
- (3) There shall be necessary staff and facilities for the efficient implementation and administration of this Act as decided by the Minister.

## **RIGHT TO TRADITIONAL KNOWLEDGE**

5.

- (1) The people of Sri Lanka shall have the sole and exclusive right to collect, possess, hold, use, develop, manage and enjoy traditional knowledge which is in public domain. This right is

inalienable, inextinguishable and not limited to any period of time. The Government of Sri Lanka shall represent the people of Sri Lanka through the Director General of Intellectual Property who shall be deemed to be the holder of traditional knowledge in public domain for the purposes of the Act.

- (2) The holders of traditional knowledge which is not in public domain in Sri Lanka shall have the sole and exclusive right to collect, possess, hold, use, develop, manage and enjoy such traditional knowledge until such traditional knowledge falls in the public domain. This right is inalienable and inextinguishable.
- (3) It shall be the duty of the Government of Sri Lanka representing the people of Sri Lanka to preserve, develop and manage traditional knowledge in public domain for the benefit of the people of Sri Lanka and future generations and to encourage and promote scientific research and innovations involving and relating to such traditional knowledge. The Director General of Intellectual Property shall be responsible for discharging this duty on behalf of the Government of Sri Lanka with the cooperation of the government agencies dealing with the concerned and related subjects such as indigenous medicine, agriculture, bio-diversity, environment, fauna and flora, wild life and forest whenever he needs such cooperation and in the manner and circumstances that he needs such cooperation.
- (4)
  - (a). It shall be the duty of the holders of the traditional knowledge not in public domain to preserve, develop and manage such traditional knowledge for their benefit, for the benefit of future generations and of the people of Sri Lanka and to promote scientific research and innovations involving and relating to such traditional knowledge.
  - (b). The Government of Sri Lanka shall encourage and assist the holders of the traditional knowledge not in public domain to preserve, develop and manage such traditional knowledge for their benefit, for the benefit of future generations and of the people of Sri Lanka and promote scientific research and innovations involving and relating to such traditional knowledge.

The Director General of Intellectual Property shall be responsible for discharging this duty on behalf of the Government of Sri Lanka with the cooperation of the government agencies dealing with the concerned and related subjects such as indigenous medicine, agriculture, bio-diversity, environment, fauna and flora, wild life and forest whenever he needs such cooperation and in the manner and circumstances that he needs such cooperation.

6. Subject to the provisions of this Act, traditional knowledge shall be protected under this Act against the following acts.

- (1) Access to traditional knowledge;
- (2). Misappropriation of traditional knowledge;

(3). unauthorized disclosure or use of traditional knowledge by any person or group of persons corporate or unincorporated who legitimately had access to traditional knowledge;

(4). Acquisition of traditional knowledge by theft, bribery, coercion, fraud, trespass, breach of contract or inducement of breach of contract, breach of confidence or confidentiality or inducement of breach of confidence or confidentiality, breach of fiduciary obligations or other relations of trust, deception, misrepresentation, the provision of misleading information when obtaining prior informed consent for access to traditional knowledge, or other unfair or dishonest means;

(5). Use of traditional knowledge that violates the terms that was mutually agreed as a condition of prior informed consent concerning access to that knowledge;

(6). False claims or assertions of ownership or control over traditional knowledge, including acquiring, claiming or asserting intellectual property rights over traditional knowledge-related subject matter when those intellectual property rights are not validly held in the light of that traditional knowledge and any conditions relating to its access ;

(7). Willful offensive use of traditional knowledge of particular moral or spiritual value to its holders by third parties outside the customary context, when such use clearly constitutes a mutilation, distortion or derogatory modification of that knowledge or is contrary to public order or morality.

7. Those who use traditional knowledge beyond its traditional context shall expressly mention the source of the traditional knowledge and its holders

8. Those who use traditional knowledge beyond its traditional context shall use it in a manner that respects the cultural values and traditions of its holders.

## **REGISTRATION OF TRADITIONAL KNOWLEDGE**

### **REGISTER OF TRADITIONAL KNOWLEDGE AND RELATED MATTERS**

9. (1) (a) There shall be a Register for the registration of traditional knowledge maintained and kept by the Director General of Intellectual Property.

(b) The Register shall contain all information referred to in Section 11(1) and other information as may be prescribed.

(2) The objectives of the Register shall be to:

(a) collect and preserve the traditional knowledge;

(b) encourage and promote the use of traditional knowledge;

(c) prevent unlawful access to and patenting of traditional knowledge;

- (d) ensure the equitable sharing of benefits arising from access to such traditional knowledge.
  - (3) Any holder of traditional knowledge may register such traditional knowledge in the Register.
  - (4) Registration of traditional knowledge in the Register shall not be mandatory and Shall be voluntary.
  - (5) The non-registration of traditional knowledge shall not affect the rights of a holder of traditional knowledge under this Act or any other written law or common law or in equity or customs.
  - (6) The holder of traditional knowledge shall continue to hold and enjoy rights over such traditional knowledge registered by him.
  - (7). The Minister may in consultation with the Ministers in charge the subjects of indigenous medicine, agriculture, bio-diversity, environment, fauna and flora, wild life and forest make regulations for the purpose of promoting and facilitating the registration of such traditional knowledge including sending duly accredited representatives to meet with any holder of traditional knowledge and for the role of the agencies handling subjects of indigenous medicine, agriculture, bio-diversity, environment, fauna and flora, wild life and forest in that connection.
10. Notwithstanding the provisions relating to the registration of traditional knowledge, the protection to traditional knowledge under this Act shall be accorded without any formal requirements.

#### PROCEDURE FOR REGISTRATION

11. (1) An application for the registration of traditional knowledge not in public domain shall be made in the prescribed form and shall contain the following:
- (i) Identification of the person claiming to be the holder of the traditional Knowledge,
  - (ii) Identification of the subject including the plant or part or extraction (derivative) to which the said traditional knowledge relates,
  - (iii) Disclosure of the traditional knowledge and associated subjects such as the use of the plant, part or extraction (derivative) of a plant
  - (iv) Geographical location of relevant subject matters such as plants.

- (v) Information supporting the applicant's assertion of status as lawful holder of the traditional knowledge
- (vi) Information on customary practices and limitations or conditions on the use or access to traditional knowledge
- (vii) Any other information as prescribed by the Minister

(2) The applicant can be an individual or a group of individuals or a community. If the holder of traditional knowledge is a group of individuals or a community, an authorized person from that group or community shall make the application for registration for and on behalf of that group or community.

(3) It shall be presumed, until proven otherwise, the individual or group or community in whose name traditional knowledge is registered (the registered holder of traditional knowledge) is the lawful holder of traditional knowledge.

(4) Where there is more than one application for registration of the same traditional knowledge all applicants shall receive equal treatment to the traditional knowledge concerned. The registration of traditional knowledge may be subject to the recognition that traditional knowledge claimed by different holders may be legitimately held by those holders in view of cultural, customary or other historical linkages.

12. Where the application is not in conformity with the requirements above mentioned, the Director General of Intellectual Property shall return the application to the applicant with the reasons for the return.

13. (1) The Director General of Intellectual Property may, on his motion or on an application by an interested party, cancel the name of the registered holder of traditional knowledge and insert in the register, the name of the true holder, after hearing the parties, where

- (a). the registration has been effected in contravention of any of the provisions of this Act or
- (b). the registration has been effected on false or incorrect information or fraudulently;

(2) The Director-General of Intellectual Property may, on his motion or on an application by an interested party, cancel the registration of traditional Knowledge, after hearing the parties, where he finds that the registration has been effected due to the false or incorrect information provided by the applicant or the applicant has acted fraudulently.

(3) The Director-General of Intellectual Property may , on his own motion or on an application by any interested party , amend the registration of traditional knowledge, after hearing the parties, to include an additional registered holder or to amend the

identification of the group of individuals or a community on whose behalf the traditional knowledge is registered.

14. The Minister in charge of the subject of intellectual property may make regulations relating to the procedural matters in connection with the cancellation and amendment referred to above;

#### **DATA BASE FOR TRADITIONAL KNOWLEDGE IN PUBLIC DOMAIN**

- 15 (1) The Director General of Intellectual Property shall establish and maintain a database containing Traditional Knowledge in public domain. The Director General of Intellectual Property shall have direct access to it in discharge of his duties. Any other state office shall have access to the data base in discharge of his duties under any law with the concurrence of the Director General of Intellectual Property
- (2) The Commissioner for Ayurveda and other concerned government agencies shall identify, collect and transmit such knowledge to the Director General of Intellectual Property to be included in the database.
- (3). The Minister may make regulations with regard to the content, maintenance, management and all other matters relating to the data base.
- (4) The Director-General of Intellectual Property may also create digital libraries and other records of traditional knowledge as may be prescribed by the Minister.

#### **ACCESS TO TRADITIONAL KNOWLEDGE**

16. No person shall have access to traditional knowledge, registered or not, and in public domain or not, without the prior informed written consent of the holder of such traditional knowledge.
17. (1) However, the Director General of Intellectual Property may, subject to a prescribed fee, give third parties information relating to identity of the holder and claimed benefits of such traditional knowledge.
- (2) The Director General of Intellectual Property shall have direct access to the Register of traditional knowledge in the discharge of his duties under the Intellectual Property Act or any other law. Any other state officer shall also have access to the register of traditional knowledge in the discharge of his duties under any law with the concurrence of the Director General of Intellectual Property.
18. (1) The registered holder of traditional knowledge not in public domain shall hold the rights to such traditional knowledge for 50 years from the date of registration or death of the holder, whichever occurs later. Where there are more than one registered holder of such

traditional knowledge the rights shall continue until the death of the last surviving registered holder of such traditional knowledge.

- (2). After such date, the holder of the said registered traditional knowledge shall be the Director-General of Intellectual Property representing the Government of Sri Lanka on behalf of the people of Sri Lanka.
- (4) For the purpose of sub-section (1), the holder shall also include, in the event of his death prior to the said period, his successors in title.

19. The Director General of Intellectual Property shall, upon request made by any holder of traditional knowledge or any third party requiring access to any traditional knowledge facilitate the entering into a license contract for access to such traditional knowledge.

#### **REQUEST FOR ACCESS IN CERTAIN CASES**

20. (1) Any request for access to traditional knowledge by any person who is not a citizen of Sri Lanka or by any body of persons, corporate or unincorporated, that is not registered in Sri Lanka or that has the participation of non citizens of Sri Lanka in equity or management thereof shall be made in collaboration with a citizen of Sri Lanka or a body of persons, corporate or unincorporated, registered in Sri Lanka that does not have the participation of non-citizens of Sri Lanka in equity or Management.
- (2) Such citizen of Sri Lanka or any body of persons, corporate or unincorporated, shall submit the application for access to traditional knowledge in writing and as may be prescribed to the Director General of Intellectual Property.
- (3) The Director General of Intellectual Property shall be a party to all the negotiations conducted with a view to entering into a license contract in respect of the access to traditional knowledge under this section.

Provided that the Director General of Intellectual Property shall appoint a panel headed by him or his representative for the purpose of such negotiations, and the panel shall include the representatives of Attorney-General and any other government agency including the Commissioner of Ayurveda whom the Director General of Intellectual Property shall consider necessary.

- (5) The holder or his agent shall be a party to the negotiations and to the licence Agreement.
- (6) The Director General of Intellectual Property shall negotiate and enter into license agreement on behalf of the government of Sri Lanka in respect of traditional knowledge in public domain and the proviso to sub section (3)

shall be applicable to this subsection.

- (7) In any license contract involving traditional knowledge made under this section, subject to sub section 7 of this section, an amount not less than 0.5% of the sales resulting from the commercialization of any products developed from the said traditional knowledge or as a result of such traditional knowledge shall be paid to the Fund established under Section 26.
- (8) In any license contract involving traditional knowledge in public domain the agreed amount of payment to be made by the person receiving the access to traditional knowledge shall be paid to the Fund established under Section 26.

### **PRIOR INFORMED CONSENT**

21. (1). Any holder of traditional knowledge may grant prior informed consent to and conclude license contracts for access to such traditional knowledge in accordance with the provisions of this Act.  
  
(2). Nothing in this Act shall, subject to Section 20 of this Act, prevent any holder of traditional knowledge not in public domain whether a registered holder of traditional knowledge or not, from entering into licence contract for access to such traditional knowledge with third parties.  
  
(3). The holders of traditional knowledge are entitled, inter alia, to fair and equitable sharing of benefits arising from the use of traditional knowledge for commercial or industrial purposes.  
  
(4). The holders of traditional knowledge are entitled, inter alia, to non –monetary benefits, such as access to research outcomes and involvement of such holders in research and educational activities, arising from the use of traditional knowledge for non-commercial or industrial purposes. The provisions of this paragraph do not deny the right of the holders of traditional knowledge to receive any financial or similar benefits under any contract entered into with a third party in respect of access to traditional knowledge for non commercial or industrial purposes.

### **LICENCE CONTRACTS**

22. A license contract shall contain, *inter alia*, the following:
  - (1) Name, address and other details of the parties to the license contract as may be prescribed,
  - (2) A description of the traditional knowledge to which the license contract relates,
  - (3) The benefits that accrue to the holder of traditional knowledge,

- (4) The amount to be paid to the Fund, where applicable,
  - (5) Restrictions relating to the use of the traditional knowledge, where applicable,
  - (6) The obligation of the parties receiving access to traditional knowledge to keep the holder of traditional knowledge informed of the status of the advances made in the activity for which access is requested.
23. (1) Every licence contract shall be in writing and signed by or on behalf of the contracting parties. Every such license contract shall be registered with the Director General of Intellectual Property in the manner as may be prescribed
- (2) Unregistered license contracts shall not have any legal effect.
  - (3). (a) The Director General of Intellectual Property shall have direct access to such register in discharge of his duties under the law.
    - (b) The Commissioner for Ayurveda and any other state officer can have the access to the register in the discharge of his duties under any law with the concurrence of the Director General of Intellectual Property.
  - (4) The Director General of Intellectual Property may cancel on his own motion or by an application by any interested party the registration of any licence contract, after hearing the parties, if he considers such hearing necessary, where;
    - a) The registration has been effected in contravention of any of the provisions of this Act or
    - b) The registration has been effected on false or incorrect information or fraudulently
    - c) The Minister may make regulations relating to the procedural matters in connection with the cancellation referred to above.
24. Third parties who are not party to such license contract shall not have access to such register other than with the written authorization of the parties to the license contract. Such authorized third parties can obtain the information contained therein from the Director General of intellectual Property as may be prescribed and subject to the prescribed fee.
25. (1) A license contract entered into with one or more holders of traditional knowledge shall not prevent other holders of the same traditional knowledge from entering into license contracts regarding the same traditional knowledge.
- (2). No such license contract shall affect the right of present and future generations of holders of traditional knowledge to use and to develop such traditional knowledge.

## **TRADITIONAL KNOWLEDGE FUND**

26. There shall be a fund called Traditional Knowledge Fund established and maintained under this Act. The following shall be credited to the Fund.
- (1) All such sums of money as may be voted from time to time by Parliament for the Fund;
  - (2) All such sums of money that may be received as a result of a license contract entered into in pursuant to this Act,
  - (3) All such sums of money as may be received as royalties under this Act;
  - (4) All such sums of money as may be received as fees under this Act;
  - (5) All such sums of money as may be received as fines or damages awarded by Court under this Act;
  - (6) all such sums of money as may be received for the Fund by way of loans, donations, gifts, or grants from any source whatsoever, whether in or outside Sri Lanka.
27. The Fund shall be utilized for the promotion, protection and preservation of traditional knowledge and for the implementation and administration of this Act.
28. The Director General of Intellectual Property shall cause proper books of account to be kept of the income and expenditure, assets and liabilities and all other transactions in relation to the Fund.
29. The Auditor General shall audit the accounts of the Fund every year in accordance with Article 154 of the Constitution.
30. The books of account in relation to the Fund shall be a public document and available for public inspection.
31. The Minister may make regulations relating to the administration of the fund.

## **APPEALS FROM THE DECISIONS OF THE DIRECTOR GENERAL**

- 32.
- (1) Any person aggrieved by any of the decisions of the Director General of Intellectual Property under this Act may appeal therefrom to the Court within a period of six months from the date of such decision.
  - (2) Such person may prefer an appeal to the Court by way of a petition of appeal with the certified copy of the decision appealed from, accompanied by copies of all the relevant documents kept at the Intellectual Property Office. The copies of the petition of appeal and the accompanying documents shall be served on the Director General of Intellectual Property and other respondents named in the petition of appeal. The proof of such service shall be furnished to the Court with petition of appeal. The respondents are entitled to file a statement of objections.
  - (3) The Court may call for the original file from the Director General of Intellectual Property and may receive and admit new evidence by way of affidavits and documents, in addition to, or supplementary of,

the evidence already given before the Director General of Intellectual Property in respect of the matter in dispute.

(4) On any such appeal, the Court may affirm, reverse or vary the decision of the Director General of Intellectual Property or may issue such directions to the Director General of Intellectual Property, or order a further hearing, as the Court may require.

## **ENFORCEMENT**

### **CIVIL REMEDIES**

33. Where a holder of traditional knowledge proves to the satisfaction of the Court that any person is likely to commit, or threatening to commit, or has committed any of the acts referred to under the provisions of section 6 of this Act the Court may grant an injunction restraining any such person from commencing or continuing such act and may order damages and such other relief as the Court may deem just and equitable. The injunction may be granted along with an award of damages and shall not be denied only for the reason that the applicant is entitled to damages.
34. The court shall have the power to order;
- (i). Such person to pay the right holder such damages as are adequate to compensate him for the loss suffered by him, by reason of such infringement, in addition to the recovery of any profits
  - (ii) subject to the protection of confidential information, the tendering of any evidence
  - (iii) by such person which evidence is relevant to the substantiation of the claim and is in the control of such person, in cases where the holder of traditional knowledge has presented reasonably available evidence in support of the claim and has specified that evidence relevant to the substantiation of such claim lies in the control of such person
35. The Court may, other than in an instance where it would not be in proportion to the seriousness of the infringement, order such person to inform the holder of traditional knowledge the identity of the persons involved in the production and distribution of the goods and services involving such traditional knowledge and of channels of distribution used by them.
36. The Court shall have the power to order interim measures relating to protection, *ex parte*, where appropriate, in particular where any delay is likely to cause irreparable harm to the holder of traditional knowledge or where there is a demonstrable risk of evidence being destroyed.
37. Where interim measures have been ordered *ex-parte* the parties affected shall be given notice and shall on receipt of such notice be entitled to be heard as to whether the interim measures ordered should be modified or revoked.

38. Any holder of traditional knowledge may, notwithstanding any provision in the Act relating to the award of damages, elect at any time before final judgment to recover, instead of proved actual damages, an award of statutory damages a sum not less than rupees fifty thousand and not more than rupees one million as the Court may consider appropriate and just.
39. The Courts shall be competent upon application made by any interested party to restrain any person from committing or continuing any act of unfair competition recognized under Section 160 of the Intellectual Property Act involving traditional knowledge and to order Damages for loses caused by such act of unfair competition.
40. Any person who is dissatisfied with any order or judgment made by the Court under this Act to which such person is a party may prefer an appeal to the Supreme Court against such order or judgment for the correction of any error in fact or in law in terms of the Provisions of Sections 5 and 6 of the High Court of Provinces (special provisions) Act No: 10 of 1996.
41. In any proceedings before a Court under this Act, the Director-General shall not be ordered to pay costs. The Court may however in its discretion order the payment of costs to the Director-General.

#### CRIMINAL LIABILITY

42.

(i) Any person who willfully commits or attempts to commit any of the acts referred to under the provisions of Section 6 of this Act shall be guilty of an offence and on conviction by a Magistrate shall be liable to a fine not exceeding Rs. 5000000/=

(ii) Any person who willfully abet the commission of any of the offences referred to in paragraph (i) shall be guilty of an offence and on conviction by a Magistrate shall be liable to a fine not exceeding Rs. 5000000/=.

43.(1)

(a) Upon receipt of information of an offence being committed under this Act, Magistrate may issue either a summons requiring the person alleged to have committed such offence to appear in court and show cause or where such person fails to appear issue a Warrant for the arrest of such person;

(b) The Magistrate may upon being satisfied by information on oath that there are reasonable grounds to believe that any good or things by means of, or in relation to, which such alleged offence has been committed are in any house or premises of the person charged on the basis of such information, or in his possession or under his control, in any place, such Magistrate may issue a warrant under his hand;

© It shall be lawful for any police officer, or other person named or referred to in the warrant, to enter such house, premises, or place at any reasonable time of the day, and to search therefore and seize such goods or things, and any good or things seized under any such warrant shall be brought before the Magistrate's Court for the purpose of determining whether such goods are liable to forfeiture under this Act.

(2)

(a) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Act, is unknown or cannot be found, any information or complaint may be led for the purpose only of enforcing such forfeiture, and a Magistrate may cause notice to be published requiring reasons to be shown to the contrary at the time and place named in the notice, as to why such goods or things should not be forfeited.

(b) If the owner or any person on his behalf, or other person interested in the goods or things, fails to show sufficient cause to the contrary at the time and place named in the notice Magistrate may order such goods or things or any of them to be forfeited. Every such order shall be subject to an appeal.

(3) Any goods or things forfeited under this Act may be destroyed or otherwise disposed of, in such manner as the Magistrate who ordered the forfeiture may direct, and the Magistrate out of any proceeds which may be realized by the disposition of such goods, may make an award to an innocent party for any loss he may have sustained in dealing with such goods.

44. All offences under this Act shall be cognizable and bailable within the meaning of the Code of Criminal Procedure Act, No: 15 of 1979. The provisions of the Code of Criminal Procedure Act shall apply to any offence committed under this Act.

45. No prosecution for an offence under this Act shall be commenced after the expiration of three years after the commission of the offence charged or two years after the discovery thereof by the prosecutor, whichever expiration first occurs.

#### OFFENCES BY BODIES CORPORATE

46. Where an offence under this Act has been committed by a body corporate, every person who at the time of the commission of the offence was a director, manager or other similar officer of that body or was obliged to act in any such capacity, shall be deemed to be guilty of such offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all due diligence to prevent the commission of the offence having regard to the nature of his functions in that capacity and to all the circumstances.

#### PUNISHMENT OF ACCESSORIES

47. Any person who, being within Sri Lanka, abets the commission, outside Sri Lanka, of any act which, if committed within Sri Lanka, would under this Act be an offence, shall be deemed guilty of that offence, and be liable to be indicted, proceeded against, tried and convicted in any district or place in Sri Lanka in which he may be as if the offence had been there committed.

## **SAVINGS**

48. (1) The Provisions of this Act shall not exempt any person from any action, suit, or other proceeding which might, but for the provisions of this Act, be brought against him.

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery, or to answer any question or interrogatory in any action, but such discovery or answer shall not be admissible in evidence against such person in any prosecution for an offence under this Act.

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in Sri Lanka who bona fide acts in obedience to the instructions of such master, and on demand made by or on behalf of the prosecutor, has given full information as to his master.

49. No suit or prosecution shall lie against any official for any act which is done in good faith and in pursuance of any provisions of this Act.

50. The provisions of this Act do not

(i). deny or restrict any other rights in equity and in common law and customs that the holder of traditional knowledge may have or enjoy.

(ii). affect access to, transfer of, and exchange of, traditional knowledge among the holders of traditional knowledge in traditional and customary context.

(iii) the use of traditional medicine for household purposes, use in government hospitals and for other non-commercial public health purposes.

51. The provisions of this Act relating to the protection of traditional knowledge shall not be construed to permit access to or use of associated biological resources.

## **DEFENSIVE PROTECTION**

52. With a view to opposing pending patent applications, disputing granted patents or otherwise intervening in the grant of patents for products or processes invented or developed on the basis of traditional knowledge, the Director-General of Intellectual Property may, where he deems appropriate, send the information entered in the Traditional Knowledge databases, digital libraries or other records of Traditional Knowledge to other Patent Offices in order that it may be treated as prior art in the examination of the novelty and inventive step of the inventions of the patent applications.

## **REGULATIONS**

53. The Minister may make regulations for the purpose of carrying out or giving effect to the provisions of this Act.