

Intellectual Property Fund - 2019

1.1 Qualified Opinion

The audit of the financial statements of the Intellectual Property Fund for the year ended 31 December 2019 comprising the statement of financial position as at 31 December 2019 and the statement of financial performance, statement of changes in net assets and cash flow statement for the year then ended, and notes to the financial statements, including a summary of significant accounting policies, was carried out under my direction in pursuance of provisions in Article 154(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka read in conjunction with provisions of the National Audit Act No. 19 of 2018 . My comments and observations which I consider should be report to Parliament appear in this report.

In my opinion, except for the effects of the matters described in Paragraph 1.5 of this report, the accompanying financial statements give a true and fair view of the financial position of the Fund as at 31 December 2019, and of its financial performance and its cash flows for the year then ended in accordance with Sri Lanka Public Sector Accounting Standards.

1.2 Basis for Qualified Opinion

My opinion is qualified based on the matters described in Paragraph 1.5 of this report.

I conducted my audit in accordance with Sri Lanka Auditing Standards (SLAuSs). My responsibilities, under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of my report. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified opinion.

1.3 Responsibilities of Management and Those Charged with Governance for the Financial Statements

Management is responsible for the preparation of financial statements that give a true and fair view in accordance with Sri Lanka Public Sector Accounting Standards, and for such internal control as management determine is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is responsible for assessing the Fund's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless management either intend to liquidate the Fund or to cease operations, or has no realistic alternative but to do so.

Those charged with governance are responsible for overseeing the Fund's financial reporting process.

As per Section 16 (1) of the National Audit Act No. 19 of 2018, the Fund is required to maintain proper books and records of all its income, expenditure, assets and liabilities, to enable annual and periodic financial statements to be prepared.

1.4 Audit Scope (Auditor's Responsibility in Auditing Financial Statements)

My objective is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes my opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with Sri Lanka Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with Sri Lanka Auditing Standards, I exercise professional judgment and maintain professional skepticism throughout the audit. I also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Fund's internal control.
- Evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by the Management.
- Conclude on the appropriateness of the management's use of the going concern basis of accounting and based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Fund's ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my auditor's report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my auditor's report. However, future events or conditions may cause the Fund to cease to continue as a going concern.
- Evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.

The scope of the audit also extended to examine as far as possible, and as far as necessary the following.

- Whether the organization, systems, procedures, books, records and other documents have been properly and adequately designed from the point of view of the presentation of information to enable a continuous evaluation of the activities of the Fund, and whether such systems, procedures, books, records and other documents are in effective operation;
- Whether the Fund has complied with applicable written law, or other general or special directions issued by the governing body of the Fund ;
- Whether performed according to its powers, functions and duties; and
- Whether the resources had been procured and utilized economically, efficiently and effectively within the time frames and in compliance with the applicable laws.

1.5 Financial Statements

1.5.1 Internal Control over the Preparation of Financial Statements.

The Fund is required to “devise and maintain” a system of internal accounting controls sufficient to provide reasonable assurance that , transactions are executed in accordance with management’s general or specific authorization, transactions are recorded as necessary to permit preparation of financial statements in conformity with the applicable reporting standards , and to maintain accountability for assets, access to assets is permitted only in accordance with management’s general or specific authorization, and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

1.5.2 Accounting Deficiencies

The following observations are made.

Audit Observation	Comments of the Management	Recommendation
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(a) A sum of Rs.1,408,088 payable with regard to the publishing of Gazette Notifications in December had not been adjusted as accrued expenses to the accounts of the year under review.	Accept. Instructions have been given to correct the accounting error in preparation of accounts of the next year.	Actions should be taken to account for all the expenses incur with regard to the year, during the relevant year.

- (b) The depreciation of the year amounting to Rs. 214,023 had been overstated in the accounts. Accept. The instructions have been given to the accountant to correct this accounting error in preparing the accounts for the year 2020 . The accurate value of depreciation should be taken into account.

2. Financial Review

2.1 Financial Results

The operating result of the year under review was a surplus of Rs. 87,006,250 and the corresponding surplus as compared to the preceding year was Rs. 91,523,739 . Accordingly, a deterioration of Rs. 4,517,489 was observed in the financial result. The decrease in the trademark revenue by Rs. 2,835,907 and the increase of expenditure on supplies and consumable items by Rs. 3,113,387 had mainly attributed to this deterioration.

3. Operating Review

3.1 Operational Inefficiencies

The following observations are made.

Audit Observation	Comments of the Management	Recommendation
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(a) Registration of Trademarks		
(i) The number of trademarks registered during the year under review was 14,993 and there were 2091 applications received from 1976 to 2008 within that. Accordingly, a period from 11 to 43 years had elapsed to register the trademark. The validity date of registration is the date of submission of recognized applications and a	Accept. Affecting of the mandatory periods to be given in considering the application, delays occurred on the party of the applicant, investigations on protests submitted, the proceedings in court and handing over of	Arrangements should be made to expedite the trade mark registrations

trademark is valid for a period of 10 years. Accordingly, the validity period of 10 years had also elapsed by the time of issuance of registration certificates for applications received before 2009.

(ii) A number of 10,385 trademark applications had been received during the year under review and investigations on 4612 applications had been commenced out of them and no application whatsoever had been directed for registration. It was observed that the giving priority this year to the applications received in those years due to delays occurred in the preceding years had caused to this.

(iii) The total number of applications that had not been commenced the investigations at the beginning of the year under review was observed as 6746 as per the reports submitted and it had been 6713 by 31 December 2019 . It was observed that the continuous occurrence of delays in previous years had caused to this .

(iv) Even though the fees had been paid for publishing in the Gazette in different years since 1994 by the year under review, the number not published in the Gazette was 4344 and although registration fees had been paid in various years since 1987, the number of non-issuance of registration certificates was 3193.

ownership of the trademark to another party had caused.

Accept.
Directing of all preliminary and secondary test reports for approval by two Assistant Directors only and giving priority to applications filed in previous years have caused to this.

Accept.
The number of applications that have not commenced investigations at the end of the year had been 6713 .

Accept.
The delays have occurred in the payment of the relevant fees from the applicant's party. The missed duties have been minimized by projects implemented during the year 2019 .

The provision of services to applicants should be expedited by accelerating trademark registrations.

The activities on trademark registration should be updated.

The activities on registration of Trademarks should be updated.

(v) Even though the fees had been paid for publications in the Gazette, the delay period after making payments of fees had ranged from 01 year to 10 years in examining a sample of marks (10) that had not been published so far. Even though the payments had been made, the delays in preparation of journals with regard to the publishing in Gazette and delays in preparation of Gazettes Notifications had caused to this.

Accept.

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The legal proceedings of the court were in progress making the Director General of Intellectual Property as the respondent in accordance with the provisions of the Intellectual Property Act.

(b) Registration of Patents for Innovations

(i) The number of Patents registered during the year under review was 175 and those were the applications received from the year 2006 to 2018. Accordingly, a period from 01 to 13 years had elapsed for the registration of these Patents. There were 10 approved patent examiner posts for the institution and 09 out of them were in vacant. Stacking of files due to the fact that the non-completion of the recruitment process for these vacancies yet and delays in the registration of Patents in previous years had mainly caused to this.

Accurate.

Before granting a patent, various steps are examined. Therefore, it takes a considerable time. Likewise, actions are being taken to recruit new science assistants as Patent Examiners. Further, they have been made aware to provide the assistance of the Innovation Commission of Sri Lanka for the filing in accurately. Accordingly, the trainings have also been provided. However, it has been impossible to achieve these activities successfully so far.

The activities on issuance of Patents should be updated.

<p>(ii) The licensee should pay the prescribed annual fee 12 months before the expiration date of the second year and each succession year within the patent validity period to retain the patent in active in expiring a period of two years from the date of its issuing in terms of Section 83(2) of the Act. However, although the total number of Patents registered by 01 January 2019 was 4831, only 439 renewals on Patents had been carried out in the year 2019 . The difficulty that Patent Holders face in commercializing new inventions had caused to this.</p>	<p>Accurate. Although there have been several years of delays in paying renewal fees considering the difficulties of commercializing new inventions, the licensees are given the opportunity to renew the license by paying the prescribed surcharge. The opinion of the Hon. Attorney General has also been given to act in this manner.</p>	<p>It is suitable to implement licensee awareness programs on registration and renewal activities.</p>
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(c) **Industrial Plans**

<p>(i) The number of Industrial Plans registered during the year under review was 258 . Those were the applications received in between 2012 and 2019. Accordingly, a period from 6 months to 7 years had elapsed to register these applications. Delay in notifying the applicants regarding deficiencies and delays in following up on them had caused to this.</p>	<p>Accurate. The applicant has been informed to correct the error which occurred due to a shortcoming appear in the Industrial Plan application received in 2012 . Accordingly, those Industrial Plans were registered on 30/07/2019 .</p>	<p>Activities on registration of Industrial Plans should be made efficient.</p>
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<p>(ii) Although the Industrial Plan Registration should be published in the Gazette in terms of the 46(3) of the Act, it was observed that the 157 Industrial Plans renewed during the year had not been published in the Gazette.</p>	<p>Arrangements are being made to publish the renewal of registration of Industrial Plan in the Gazette.</p>	<p>-do-</p>
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