

## **National Intellectual Property Fund - 2017**

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The audit of financial statements of the National Intellectual Property Fund for the year ended 31 December 2017 comprising the statement of financial position as at 31 December 2017 and the statement of financial performance, statement of changes in equity and cash flow statement for the year then ended and a summary of significant accounting policies and other explanatory information 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 and Section 176(6) of the Intellectual Property Act, No. 36 of 2003. My comments and observations which I consider, appear in this report. The Management Audit Report of the year under review was issued to the Director General of the Fund on 05 September 2018.

### **1.2 Management's Responsibility for Financial Statements**

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The management is responsible for the preparation and fair presentation of these financial statements in accordance with Sri Lanka Public Sector Accounting Standards and for such internal control as the management determines is necessary to enable the preparation of financial statements that are free from material misstatements whether due to fraud or error.

### **1.3 Auditor's Responsibility**

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My responsibility is to express an opinion on these financial statements based on my audit. I conducted my audit in accordance with Sri Lanka Auditing Standards consistent with International Auditing Standards of Supreme Audit Institutions (ISSAI 1000-1810). Those Standards require that I comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatements.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgements, including the assessment of the risks of material misstatements of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Fund's preparation and fair presentation of the financial statements 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. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my qualified audit opinion.

### **1.4 Basis for Qualified Opinion**

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My opinion is qualified based on the matters described in paragraph 2.2 of this report.

## **2. Financial Statements**

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### **2.1 Qualified Opinion**

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In my opinion, except for the effects of the matters described in paragraph 2.2 of this report, the financial statements give a true and fair view of the financial position of the National Intellectual Property Fund as at 31 December 2017 and its financial performance and cash flows for the year then ended in accordance with Sri Lanka Public Sector Accounting Standards.

### **2.2 Comments on Financial Statements**

#### **2.2.1 Sri Lanka Public Sector Accounting Standards**

The Following observations are made.

- (a) In terms of Paragraph 109 of the Sri Lanka Public sector Accounting Standard 01 , all expenses had been included in the statement of financial performance without an analysis of expenses using a classification and the items had not been lined up in the statement of financial position in terms of the above standard.
- (b) In terms of the Paragraph 47 of the Sri Lanka Public Sector Accounting Standard 07, the assets of the Fund had not been revalued and the fair value had not been included in the financial statements.
- (c) In terms of Paragraph 69 of the Sri Lanka Public Sector Accounting Standard 07, depreciation of an asset begins when it is available for use . However, a sum of Rs.22,298,751 spent up to then for the Intellectual Property Promotional Centre which is a useful life or existence are not available, constructions had to be stopped when the constructions carrying out had capitalized and depreciations amounting to Rs.4,459,750 had been allocated at the end of the year under review Rs.1,114,937 each annually from the year 2013.

#### **2.2.2 Accounting Deficiencies**

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The following observations are made.

- (a) The interest income relating to the year under review and the interest income receivable relevant to two treasury bills and a treasury bond had been under stated by Rs.806,738 and overstated by Rs.10,639 respectively in accounts.
- (b) The electricity and water charges totalled Rs.320,804 relating to the month of December in the year under review had not been accounted.

## **2.3 Non-compliance with Laws, Rules, Regulations and Management Decisions**

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Even though the Director General could have been conducted an examination for the recruitment and registration of Agents by himself or in the Sri Lanka Law College or with the assistance of the Sri Lanka Institute of Development Administrative in terms of Section 58(2) of the Intellectual Property Regulations No.01 of 2006 , under Section 175 of the Intellectual Property Act, No.36 of 2003, action had not been taken to appoint Agents by conducting such examination. Only the persons who is a lawyer of the Supreme Court had been appointed as Agents up to date.

## **3. Financial Review**

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### **3.1 Financial Results**

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According to the financial statements presented, the operating result of the Fund for the year under review was a surplus of Rs. 75,794,322 as compared with the corresponding surplus of Rs.60,154,755 for the preceding year. The surplus for the year under review as compared with the preceding year had been improved by a sum of Rs.15,639,567 .The above improvement had been mainly due to the increase of the interest income of investments in the year under review by Rs.15,232,565 as compared with the preceding year.

An analysis of the financial results of the year under review and the 04 preceding years ,the surplus amounted to Rs.49,692,263 in the year 2013 had been improved up to Rs.75,794,322 by the year under review. However, after the adjustment of employees' remuneration and depreciation of non-current assets, the contribution amounted to Rs.53,998,456 in the year 2013 had been improved up to Rs.83,923,137 by the year under review.

## **4. Operating Review**

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### **4.1 Performance**

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#### **4.1.1 Functionality and Review**

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A main duty of the institution is the administration of intellectual properties including trademarks, Patents, industrial designs and according to the information furnished to audit , the performance of the institution was as follows.

##### **(a) Registration of Trade Marks**

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- (i) The number of trade marks registered during the year under review was 10,622 and those were the applications received from 1979 to 2016. According to the sample subjected to audit, considerable delays had been taken place during the registration of trade mark from 7 months to 10 years period upon received the application for examining, 01 year to 03 years period for publishing in the gazette after made the payments for gazette publishing , period from 06 months to 05 years from the date

of the payment of registration fees for the issuing of registered certificate relating to 20 files. Reasons for the said delays were such as the insufficient officials, delay responding of the applicants, appeal hearing and time taken for the discussion sessions. Among the trademarks which registered in the year, there were 2899 applications received up to 2007 and the 10 year validity period had been elapsed at the time of registration.

- (ii) At the end of the year under review , 32,716 files were being under examining for registration, 1,968 files which the works had not been commenced and in addition to that 35,971 files were pending for further action on registration due to the facts such as responses made by applicants , receiving objections, holding discussion sessions, Court Orders and pending for gazette.
- (iii) No any applications from 11,281 applications received during the year 2017 could have been registered even by April 2018, the date of audit. Out of the 10,825 applications received from the last year., only 51 files had been registered by April 2018 ,the date of audit . Reason for this was handling of files in different registration stages which are bring brought forward from previous years.
- (iv) In accordance with the 119(3) of the Intellectual Property Act, though the renewal of the trade mark is allowed by paying an overcharge within 6 months after the validity period of registered certificate , one year period has been granted for the renewal of trade marks certificates which were expired. Delays occurred in the different stages in the registration procedure had been the reason for this matter.
- (v) Even though the Facility Providing Project for the Entering in to the International Trade Mark Protocol should have been completed by the end of the year 2017, it had not been completed even by June 2018, the date of audit. A sum of Rs.32.50 million had been paid with entering into a Memorandum of Understanding with the Information and Technological Institute on 30 December 2016 for the purchase and installation of a sever machine from the provisions made by the Ministry. The agreed period had been expired by 31 December 2017 and the server machine had not been received by July 2018,.the date of audit.

**(b) Registration of Patent for Inventions**  
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- (1) The number of patents registered during the year under review was 181 and those were from the applications received from the year 2005 to the year 2017. Accordingly a period from 5 months to 12 years had been taken for the registration of patents. A period of 08 months to 10 years had been elapsed from the date of applications received for inspection of application which were submitted for obtaining patent relating to 10 files subjected to sample auditing .Only 04 applications could have been registered out of the 542 applications received during the year 2017.
- (ii) If the patent bearer intend to keep the patent license in force even after two years of granting license in accordance with the 83(2) of the Act, the patent license should be renewed annually by paying relevant fees. Even though , 3795 license had been issued from the year 1997 to the end of the year 2015, only 525 license had been renewed during the year 2017 .

- (iii) It was observed that 2582 files at the different stages of the registration process by the end of the year under review. Out of that, 1106 files had been sent by informing errors. However, action in terms of 78(2) of the Act, had not been taken regarding the files that the period of make responses expired. The number of files which the works not commenced by that date, was 51 and among those files 08,03,17,08 and 09 applications received in the years 2017,2016, 2014, 2013 and 2012 respectively and 06 applications received in the year 2009, 2010 & 2011 were existed.

#### **(C) Registration of Industrial Designs**

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- (i) The number of industrial designs registered during the year under review was 330 and those were the applications received during the years 2008 and 2013 and the period from 2015 to 2017. Among those applications, there were 8 applications received in 2008 and the said delay had been occurred due to delay made by applicants for the payment of publishing of gazette fees. Only 83 applications had been registered out of the 336 received in the year 2017.
- (ii) It was observed that there were 379 files in the different stages of the registration procedure at the end of the year under review.

#### **4.1.2 Commencement of Technical and Invention Centers**

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Even though plans had been made to commence 12 invention centres from the year 2014 as covered all 09 Provinces of the Island to make opportunity to utilize the technical information fruitfully and to encourage the inventions by approaching public for the technical information and enhance the public knowledge on intellectual properties. Centres had been commenced only covering of 02 Provinces as 09 in the Western Province and 01 in the Eastern Province at the end of the year under review.

#### **4.1.3 Conducting Training and Awareness Programs**

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The following observation are made relating to the performance on conducting of training and awareness programs.

- (i) Even though plans had been made to conduct 14 awareness programmes by spending Rs.900,000 according to the Action Plan, only 5 programs had been conducted and it was observed that a sum of Rs.801,989 had been spent for that purpose.
- (ii) Even though 24 local training programs and 12 foreign training programs for the officers of the staff, had been planned according to the action plan, officers had been participated only for 17 local programs and 9 foreign programs. In addition to that, the Director General and 5 ministerial officers had been participated for 3 and 5 foreign conference respectively. A sum of Rs. 2,000,000 had been allocated for that purpose and only a sum of Rs. 1,840,128 had been spent.

## 4.2 Management Activities

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The following observations are made

- (a) As the fees payable for the renewal of a personal agency had been got higher value than the fees for the registration of an agency according to the approved fees of the Intellectual Property Office, a trend of new registration was observed instead of renewal of registration after 03 years.
- (b) Amendment had not been made even by the end of the year under review for the charging incurred for the services provided by the intellectual property office operated with effect from 17 May 2006 in accordance with the Intellectual Property Regulations No. 01 of 2006.
- (c) Even though the renewal of the registration could be done on the payment of a surcharge imposed within 06 months after the validity period in terms of Section 175(5) relating to registration of agents of the Intellectual Property Act No. 36 of 2003, it is mentioned that, if the renewal fees had not been paid within 02 weeks from the expiry of the registration period in terms of Section 58 10(ii) of the Intellectual Property Regulations No.01 of 2006, should be removed from the register. Those contradictions could not have been resolved even by the end of the year under review.
- (d) Procurement procedure had been followed for the renting of a building on lease basis in the last year and the bids had been recalled by suspending the procurement due to the procurement committee has failed to complete the procurement procedure within the bid validity period according to the Guideline 7.4.1 of the Government Procurement Guidelines.
- (e) It was observed that, non- completion of amendment to the currently enforced laws made under the Intellectual Property Act and related provisional amendment to the Act in order to entering in to the International Trademark Registration Protocol and being vacancy of 50 per cent of the senior level posts in the cadre had been adversely affected to take action according to the Action Plan of the institute.
- (f) Approval had been received on 23 April 2015 for the Cabinet Paper No. අමප /15/0272/625/007 dated 13 March 2015 for the recovery of the sum of Rs. 22,298,751 from the Urban Development Authority which had been spent by the institute as the related lands acquired for the development activities for the Tourism Industry during the construction of the intellectual property marketing promotional center on a land belongs to Corporative Wholesale Establishment. However, the said money could not have been recovered at the end of the year under review.

## **5. Sustainable Development**

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### **5.1 Achieving the Sustainable Development Goals and Targets**

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Each Public Institution shall act in accordance with the National Policy on Sustainable Development No.NP/SP/SDG 17 dated 14 August 2017 and the letter issued by the Secretary to the Ministry of National Policy and Economic Affairs on Sustainable Development and the “Agenda 2030” of United Nations . However, the institution had been made aware how could be act in respect of the duties under the scope of the Institution, the sustainable development goals to be achieved according to the scope had not been identified by the property office.

## **6 Accountability and Good Governance**

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### **6.1 Internal audit**

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Even though the internal audit had been conducted by the internal audit unit of the Ministry, an internal audit reports had not been issued by conducting adequate internal audit on activities of the Fund in terms of the Circular No.වී. එම්. ඒ /2009(1) dated 9 June 2009 of the Department of Management Audit .

### **6.2 Budgetary Control**

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Variances were observed ranging from 04 per cent to 08 per cent between the budgeted and the actual income and a significant variances were observed ranging from 10 per cent to 100 per cent between the budgeted and the actual expenditure ,thus indicating that the budget had not been made use of as an effective instrument of management control.

### **6.3 Report of the Auditor General and the Annual Accounts**

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Actions had not been taken in terms of the Paragraph 4.4 of the Public Finance Circular No.PF /423 and dated 22 December 2006 in accordance with the Report of the Auditor General and the Annual Accounts and the said report of the year 2014 had been presented to the parliament in August 2018. The reports relating to the years 2015 and 2016 had not been presented to the parliament even by 18 July 2018, the date of audit.

## **7. Systems and Controls**

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Weaknesses in systems and controls observed during the course of audit were brought to the notice of the Director General of Intellectual Property. Special attention is needed in respect of the following areas of control.

<b>Areas of Systems and Controls</b>	<b>Observations</b>
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(a) Registration of trade marks, patents and industrial designs	<p>(i) A considerable delay was existed in the activities such as examination of the applications received to the office, publish in the gazette, registration and renewal . Non-availability of a methodology for obtaining the number of files to be registered .</p> <p>(ii) Discussion sessions had been conducted on the rejection after receiving the applications for the registration of trade mark, a considerable time has been spent for the cease of the said discussion sessions.</p> <p>(iii) After submitting applications for the obtaining of patents, there were some occasions the relevant applicants had to be made reminders relating to that matter.</p>
(b) Cadre Administration	Six posts out of 12 posts of the Senior Level, 22 posts out of the 66 Secondary Level posts were vacant in the office and those vacancies had been adversely affected to the performance of the office.
(c) Control of Inventories	Inventory registers had not been maintained for the assets in each divisions and all assets had been included only in the register in the stores.
(d) Registration of Agents	The activities relating to the trade marks, patents and industrial designs are carried out by the Agents registered in the office while a time delay from 03 months to 18 months had been occurred from the date of request when action taken regarding the requests made for the renewal of the registration by an Agent who registered for the period of 03 years .
(e) Maintaining Records in the Data System	<p>(i) Failure to obtain the number of files to be registered by the beginning of the year and the end of the year.</p> <p>(ii) Failure to obtain a record on the performance existed at a specific date , at a following date.</p> <p>(iii) Data filed according to each activity carried out , instead of as files.</p> <p>(iv) Differences are existed between the information presented with the financial reports and the information presented for the calling for audit in respect of performance.</p>
(f) Conducting Awareness and Training Programmes	Awareness and Training Programmes were not conducted as planned.
(g) Procurement	A delay of carrying out procurement activities existed.