

## **Intellectual Property Fund - 2023**

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### **1. Financial Statements**

#### **1.1 Qualified Opinion**

The audit of the financial statements of the Intellectual Property Fund for the year ended 31 December 2023 comprising the statement of financial position as at 31 December 2023 and the statement of financial performance, statement of changes in equity and cash flow statement for the year then ended, and notes to the financial statements, including material accounting policy 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 provisions of the National Audit Act, No. 19 of 2018. My comments and observations which I consider should be reported 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 financial statements give a true and fair view of the financial position of the Fund as at 31 December 2023, 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 on the basis of 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 determines, 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 Sub-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 of the Fund.

## 1.4 Auditor's Responsibility for the Audit of the 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 scepticism 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 the Fund has performed according to its powers, functions and duties; and whether the resources of the Fund had been procured and utilized economically, efficiently and effectively within the time frames and in compliance with the applicable laws.

## **1.5 Audit observations related to the preparation of financial statements**

### **1.5.1 Non-compliance with Sri Lanka Public Sector Accounting Standards**

<b>Non-Compliance with Reference to Relevant Standard</b>	<b>Comments of the Management</b>	<b>Recommendation</b>
Even though assets had been fully depreciated as per paragraph 65 of Sri Lanka Public Sector Accounting Standard No. 7, the cost value of office fixtures and books valued at Rs.6,359,198 and still in use had not been disclosed in the financial statements and the useful lives of those assets had not been reviewed and adjustments had not been made in the financial statements as per Public Sector Accounting Standard No. 03.	Arrangements have been made to revalue the assets and this information will be disclosed in the presentation of future financial statements.	Action should be taken according to the Standards.

### **1.5.2 Accounting Deficiencies**

<b>Non-Compliance with Reference to Relevant Standard</b>	<b>Comments of the Management</b>	<b>Recommendation</b>
A sum of Rs 1,628,423 as printing and translation costs had been received from the United Nations Development Fund to translate a book related to the subject of intellectual property into Sinhala language and print 3000 copies of that book. Those receipts had not been indicated in the financial statements as an income or expense of the fund.	It had been provided to cover the cost of printing a book for a public awareness programme on the occasion of the World Intellectual Property Day, and the task had been carried out by using the general deposit account.	All receipts and expenses must be accurately indicated in the financial statements.

## 1.6 Non-compliance with Laws, Rules, Regulations and Management Decisions etc

<b>With reference to Laws, Rules, Regulations etc.</b>	<b>Non-compliance</b>	<b>Comments of the Management</b>	<b>Recommendation</b>
Public Finance Circulars, No. 01/2020 dated 28 August 2020 and No. 01/2020 (ii) dated 20 December 2022	Even though action should be taken to revise the fees of all the public institutions, which had not increased fees charged for the provision of services, the office had not revised and gazetted the fees.	Even though the Cabinet Memorandum and gazette notification related to the revision of fees have been forwarded to the Ministry of Trade, Commerce and Food Security on 12 April 2023, the approval for the revision of fees has not been received	Circular instructions should be followed.

## 2. Financial Review

### 2.1 Financial Result

The operating result of the year under review was a surplus of Rs.308,424,933 and the corresponding surplus of the previous year was Rs.174,567,112. Accordingly, an improvement of Rs.133,857,821 was observed in the financial result. The increase in investment interest income by Rs. 137,902,566 was the major reason for this improvement.

## 3. Operational Review

### 3.1 Management Inefficiencies

<b>Audit Observation</b>	<b>Comments of the Management</b>	<b>Recommendation</b>
Although the cost of Rs. 22.29 million incurred for the construction of an intellectual property sales promotion centre without acquiring the ownership of the land had been indicated as non-current assets, the land, on which the building was located, had been acquired by the Urban Development Authority. The amount spent for the construction of the building could not be settled even during the year under review.	Even though a letter has been referred by the Director General of the Urban Development Authority by calling for documents from the General Manager of the Cooperative Wholesale Corporation in relation to the reimbursement of the money spent for the construction of the Intellectual Property Marketing Promotion Centre, there was no progress and therefore, a letter has been referred to the Director General of the Urban Development Authority by inquiring the current position in relation to the reimbursement of those amounts.	Buildings should not be constructed without transferring ownership of a land, and arrangements should be made to get the amount from the Urban Development Authority.

### 3.2 Operational Inefficiencies

Audit Observation	Comments of the Management	Recommendation
(a) applications, out of 3762 trademark applications registered as at 31 December of the year under review, had been the applications submitted during the period from 1995 to 2013. The following matters were also observed during the examination carried out in this regard.		
(i) During the audit test check carried out in relation to 27 trade mark applications registered in the year under review, the period taken for registration ranged from 2 years to 28 years. According to the Registered Citizens / Clients Charter, the recommended time for each step of registration had been stipulated and a period of 8 months to 221 months had been spent for a work that should be completed in a week, and a period of 8 months to 94 months had been spent for a work that should be completed in a month, and a period of 24 months to 192 months had been spent for a work that should be completed in two months, and a period of 10 months to 96 months had been spent for a work that should be completed in three months.	In an instance, where the duties due to the reasons beyond the control of the Department, are discharged with a minimum staff, carrying out the secondary inspections and notifying the decision of the inspection to the applicant within the period stipulated in the Citizens / Clients Charter are not possible.	Reasons for delay in each step of trademark registration should be looked in to and solutions for those reasons should be provided.
(ii) Out of 1,923 rejected trade mark applications as at 31 December of the year under review, only 62 applications had been rejected during a period less than one year and 5 years had exceeded by the time of rejecting 37 applications and 3 to 4 years had exceeded by the time of rejecting 104 applications and 01 to 02 years had exceeded by the time of rejecting 1,720 applications.	The covid pandemic situation and the economic crisis prevailed in the country were the reasons for the delay and it was difficult to minimize the aggregated duties due to the filing of nearly 1000 applications every month.	The time taken to issue rejection or acceptance letters should be minimized by conducting primary and secondary investigations for trademarks.

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| <p>(iii) If the fees for publication of the application in the Gazette are paid within the prescribed period, it should be completed within a period of 04 weeks in terms of Section 111 (9) (a) of the Intellectual Property Act, No. 36 of 2003 and the Citizens / Clients Charter. Even though fees had been paid by 31 December 2023, the number of applications that had not been gazetted had been 690. When examining this sample of 83 applications through the IPAS system, 35 of them had not been published in the gazette by 11 January 2024, and the delay had been from 01 year to 13 years.</p> | <p>Performing each of the functions up to the stage of registration of trademarks within the period stipulated in the Citizens / Clients Charter is not practical as a large number of aggregated duties are being performed by a limited staff.</p>  | <p>If the relevant fees are paid within the prescribed period, arrangements should be made to publish them in the Gazette within a period of 04 weeks according to the statute.</p> |
| <p>(iv) Activities of registering trade marks of 12,898 applications, out of the applications received in the years of 2021, 2022 and 2023, had not been initiated even by 31 December 2023.</p>   | <p>It has been informed in writing and verbally at the management meetings of the Ministry that there is no solution other than increasing the number of officers in the Trade Marks Branch.</p>  | <p>After receiving the applications, the registration activities should be started as per the Act.</p>  |
| <p>(v) According to the 2016 budget proposal, the Madrid project for the international registration of trade and service marks had been implemented and by the year 2018, an expenditure of Rs. 78 million had been incurred by the Appropriation Act. However, it was not possible to complete the tasks of accession to the Madrid Convention even by the end of the year 2023. Therefore, the international registration of trademarks could not be carried out.</p>  | <p>The Madrid Protocol is an international agreement incorporating complex legal and technical issues. That it is to be referred to the Attorney General to amend the Intellectual Property Act in a manner that it represents and fulfills the views and aspirations of various parties.</p> | <p>The Madrid project should be implemented and international registration of trademarks should be carried out.</p>   |
| <p>(b) In the year 2023, 416 patent applications had been filed, and it was observed that there had been a trend in decreasing the submission of applications for a period 5 years. Moreover, 59 patents, out of 200 patents issued in the year under review, had been the patents issued in relation to local applications from 2010 to 2022.</p>   | <p>The economic recession in the country may affect the decrease in the number of patent applications and many of the applications that are filed are erroneous, the relevant corrections are delayed even though the errors are notified, the</p>  | <p>Solutions should be provided for the reasons for the delay.</p>  |

returned reports are also erroneous and the files were with complex subject matters have been the reasons for that.

- (c) The total income of the fund for the year ended 31 December 2023 had been Rs. 375,117,275, and 79.84 percent of it had been the investment interest and 20.16 percent of it had been charges levied under the Intellectual Property Act. Accordingly, it was observed that the income generated from fees under the Intellectual Property Act had been a low percentage of the total income.

The investment income has no relationship with the income collected by providing services under the Intellectual Property Act.

Action should be taken to increase the operating income of the fund.