

Intellectual Property Fund - 2018

1.1 Qualified Opinion

The audit of the financial statements of the Intellectual Property Fund for the year ended 31 December 2018 comprising the statement of financial position as at 31 December 2018 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 2018, 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;

- The Fund has complied with applicable written law, or other general or special directions issued by the governing body of the Fund ,
- It has performed according to its powers, functions and duties,
- 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.

Entities are 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. The audit observations with regard to maintenance of key accounting records such as General Ledger, Journal and Journal vouchers, payment vouchers etc. may include under these headings.

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. 360,241 and Rs. 1,087,949 which had to be paid in connection with the publishing of gazette notifications in November and December of the year under review had not been taken in to accounts as accrued expenses.	The accountant has been instructed to adjust these expenses to the previous year's profit and correct the accounting error in preparation of next year's accounts.	All expenses incurred for the year should be accounted for during the year.
(b) The advance paid on 31 December 2018 amounted to Rs. 110,262 for the Computer Accessories Maintenance Agreements of the year 2019 had been taken in to accounts as expenditure in the year under review.	The Accountant has been advised to rectify this accounting error adjusting the previous year's profit whilst preparation of accounts of the year 2019 .	The payments made in advance should not be taken in to accounts as expenses of the year under review.

1.6 Non-compliance with Laws, Rules and Regulations

The following observation is made.

Reference to Laws, Rules and Regulations etc.	Non-compliance	Comments of the Management	Recommendation
Subject to Section 175 of Intellectual Property Act No.36 of 2003, Section 58 (10) (ii) of Intellectual Property Regulation No.01 of 2006 .	Although the registration can be renewed on payment of surcharge specified within 6 months from the expiry of the validity period in terms of Section 175 (5) of the Intellectual Property Act No. 36 of 2003 relating to registration of Agents, since it should be removed from the register if the renewal fee had not been paid within 2 weeks of the expiry of the registration period in terms of Section 10 (ii) of the Regulation 58, an inconsistent had occurred.	Steps are being taken to rectify the shortcomings identified in the implementation of the provisions of the Act practically.	Actions should be taken in accordance with the provisions of the Act.

2. Financial Review

2.1 Financial Results

The operating result of the year under review amounted to a surplus of Rs. 91,523,739 and the corresponding surplus as compared to the preceding year was Rs. 75,794,322 . Accordingly, a growth of Rs. 15,729,417 was observed in the financial result. The improvement in the revenue of trademark by Rs. 6,369,878 and receiving of investment profit amounted to Rs. 10,355,053 had mainly attributed to this growth.

3. Operating Review

3.1 Identified Losses

The following observation is made.

Audit Observation

Despite the Intellectual Property Marketing Promotion Center was being constructed in a land belonging to the Co-operative Wholesale Establishment, since the lands related to that were acquired for the development of tourism industry related activities, the approval for the recovery of a sum of Rs. 22,298,751 incurred for that from the Urban Development Authority had been received on 23 April 2015 for the Cabinet memorandum No. 403/15/0272/625 /007 of 13 March 2015. However, the foresaid amount could not be able to recover even by the end of the year under review.

Comments of the Management

As the CWE refuses to reimburse the expenses for the Intellectual Property Promotion Centre, actions will be taken as per the future instructions of the Public Accounts Committee of the Parliament.

Recommendation

Reimbursement of expenses or acting as per the legal advices.

3.2 Operational Inefficiencies

The following observations are made.

Audit Observation

(a) Registration of Trademarks

- (i) The number of trademarks registered during the year under review was 5,192 and there were 625 applications from 1992 to 2007 within that. A trademark is valid for a period of 10 years and the applications received prior to the year 2008 that were included in the registered trademarks during the year under review had expired the validity period of 10 years by the time they were registered.

Comments of the Management

Registration of a trademark is a complex process consisting of several steps. Various causes are affected for the lack of adequate staff and many reasons affected for the existence of more time interval between the date of filing the application and the issuance of registration certificates.

Recommendation

Arrangements should be made to expedite the trade registrations.

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| (ii) | The number of applications received in the year 2018 was 11,483 and out of that the number of applications that had completed the examinations were only 5,042 . The number of Gazette Notifications published were 485 and the Registration Certificates were issued for two applications. | Due to giving priority to applications received in previous years, applications received during the year under review had delayed. | Trademark registration should be expedited by accelerating the services providing to applicants. |
| (iii) | According to the reports submitted, the number of applications that have not started the registration process at the beginning of the year under review is 1752 and that number had grown up to 6446 by the end of the year. Further, it was also observed that the number had increased to 9690 by August 22, 2019 . | Registration of a trademark is a complex process consisting of several steps. Lack of adequate staff and existence of more time interval between the date of filing the application and the issuance of registration certificates is the reason for this. | Trademark registration activities needs to be updated. |
| (iv) | The number of files which are being processed in various stages of registration by the end of the year 2018 was 68,687 and it was 65,169 by the end of the year under review. | The mark may be accepted or not accepted and the applicant may or may not continuously maintain the mark until the registration of the mark in terms of the provisions of the Intellectual Property Act. | Trademark registration activities needs to be updated. |
| (v) | The number of registered trademarks for the year 2018 was 5,192 and the number of registered trademarks of the preceding year was 10,622 . The number of registered trademarks decreased by 5,430 or 51 per cent in the year under review for more than the previous year. | The delays had occurred due to only a limited number of officers issued certificates completing other work steps. | Trademark registration activities needs to be updated |

(b) Registration of Patents for Innovations

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| (i) | The number of Patents registered during the year under review was 212 and those were the applications received from 2006 to 2017. Accordingly, a period from 1 year to 12 years had elapsed for the registration of these patents. | The observation is accepted. | The Patent issuance activities need to be updated. |
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<p>(ii) The license must be renewed annually after the date of the grant of the Patent. However, although the total number of Patents registered was 4,619 by the 01 January 2018, the renewals made in the year 2018 were only 460 files, or 10 per cent.</p>	<p>The observation is accepted.</p>	<p>It is suitable to implement the licensee awareness programmes on registration and renewal activities.</p>
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<p>(iii) The number of applications in progress in various stages of the registration process by the end of the year under review were 4,598 and there were 69 primary investigation level files, 1,213 files to be tested for innovations, 10 files to be published in the Gazette and 19 files to be issued certificates were available in it.</p>	<p>The observations are accepted.</p>	<p>Licensing activities should be accelerated.</p>
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(c) Industrial Plans

<p>(i) The number of registered industrial plans in the year under review were 124 and those were the applications received from 2013 to 2018. Accordingly, a period from 08 months to 5 years had elapsed for the registration of these applications.</p>	<p>The observations are accepted.</p>	<p>Registration activities of industrial plans should be accelerated.</p>
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<p>(ii) The number of Industrial Plans in various stages of the registration process were 1,880 by the end of the year under review. There were 89 preliminary investigation files consisted in it.</p>	<p>The observations are accepted.</p>	<p>Registration activities of industrial plans should be accelerated.</p>
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<p>(iii) Even though the Registration of Industrial Plans had to be published in the Gazette regarding the renewal of Industrial Plans in terms of section 46 (3) of the Act , actions had not been taken in respect the 14 Industrial Plans renewed during the year accordingly.</p>	<p>It should be corrected as per Section 43 (3) of the Act and necessary action is being taken for that.</p>	<p>Actions should be taken in accordance with the provisions of the Act.</p>
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<p>(iv) The number of applications received in the year 2018 were 288 and though out of which 230 had completed preliminary investigations, the number of Gazette</p>	<p>The observations are accepted.</p>	<p>The activities of issuing registration certificates should be accelerated.</p>
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Notifications was 69. Only 16 registration certificates had been issued from it.

(d) Establishment of Technology and Innovation Support Centres (TISC)

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| <p>(i) Although it had been planned to establish Technology and Innovation Support Centres in 09 Vidatha Centres in the year under review TISC had been started at the Information and Communication Technology Agency (ICTA) and the Institution of Engineers of Sri Lanka (IESL) only.</p> | <p>It was impossible to establish Technology and Innovation Centers in the Vidatha Centres on practical issues raised.</p> | <p>Actions should be taken in accordance with plans.</p> |
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3.3 Idle or Underutilized Properties , Plants and Equipment

The following observation is made.

Audit Observation

Twelve computers had been purchased on 30 December 2016 at a total cost of Rs. 1,198,800 for the distribution among Technology and Innovation Centres. However, actions had not been taken to distribute these computers among the respective Centres until 09 August 2019

Comments of the Management

Actions are being taken to distribute the computers.

Recommendation

Since computers will be out-dated due to not taking necessary actions to distribute, arrangements should be made to purchase only the necessary items and delivery of purchased items should be done without delay .

4. Accountability and Good Governance

4.1 Annual Action Plan

The following observations are made.

Audit Observation

- (a) Although the Company had planned to issue registration certificates for 9,600 trademarks in the year under the Action Plan for the year 2018, only 5,192 or 54 per cent of the registration certificates were issued.

Comments of the Management

There were delays as only a limited number of officers issued certificates while completing other work.

Recommendation

Activities of trademark registration needs to be updated.

(b) Even though it had been planned to provide the required physical and human infrastructure and to develop the IPAS system to create a copyright database to deal with copyright for the establishment of a separate unit in the year under review as per the Action Plan , that task has not been fulfilled.

It is expected to be completed by 2020.

Actions should be taken in accordance with the Action Plan.

4.2 Internal Audit

 The following observation is made.

Audit Observation

 The internal audit activities of the Institute were carried out by the Internal Audit Unit of the Ministry during the year under review and Internal Audit Reports had not been issued conducting an internal audit in respect of the activities of the Fund in accordance with the Management Audit Department Circular No. DMA / 2009 (I) of 09 June 2009 .

Comments of the Management

 An Internal Auditor post for the Department has been approved by letter dated 06.04.2017 and the Department of Management Services has instructed to appoint an officer for the post in 2020 due to the lack of provisions in the year 2019.

Recommendation

 Actions should be taken as per the circular.