

Intellectual Property Fund - 2021

1. Financial Statements

1.1 Qualified Opinion

The audit of the financial statements of the Intellectual Property Fund for the year ended 31 December 2021 comprising the statement of financial position as at 31 December 2021 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 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 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 2021, 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

I expressed qualified opinion 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 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 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 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 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 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 on the Preparation of 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 were made.

Audit Observation	Comments of the Management	Recommendation
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a) Though, the remaining stock as at 31 December had been valued at Rs.2,853,549, of Stationery, purchased during the year under review, the total stationery expense had been adjusted to the Statement of Financial Performance without showing it as a closing stock in the financial statements.	No comments made.	The value, of remaining stocks of stationery, should be adjusted as closing stock in the Financial Statements.
b) The valid period of the Anti-Virus Software, purchased at Rs. 222,725, for 75 Nos. office computers, had been from July 2021 to July 2022. Therefore, expenses for the year under review, had been overstated by a sum of Rs.118,982, attributable for the next year, which should have been adjusted.	The Accountant had been instructed to correct this error, when preparing accounts for the year 2022.	Expenses relevant for the year, should be clearly identified.

2. Financial Review

2.1 Financial Results

The operating result for the year under review had been a surplus of Rs.68,822,101 as compared with the corresponding surplus of Rs.67,051,672 for the preceding year, thus observing an improvement of Rs.1,770,429 in the financial results. The increase in Trademark Registration Income by Rs. 14,449,231 and decrease in the Total Expenses by Rs., 8,721,584 had mainly caused the said improvement even though there had been a decrease in the Investment Income by Rs. 21,178,840.

3. Operating Review

3.1 Management Inefficiencies

The following observations are made.

Audit Observation	Comments of the Management	Recommendation
(a) While, Intellectual Property Sales Promotion Center was under construction, in a land owned by The Cooperate Wholesale Establishment, without getting the title transferred, The Urban Development Authority had acquired the adjoining lands for activities of tourism industry development. Accordingly, approval was received by the Cabinet Paper No. CP/15/0272/623/007 dated 15 March 2015, to recover the sum of Rs. 22,298,751 spent for the construction of the building, from the Authority. As, the Cooperative Wholesale Establishment did not agree with the release of the above amount to the Intellectual Property Office by the Urban Development Authority after the valuation of the land, it was not possible to settle the said the amount even in the year under review.	Even though, Cabinet approval had been taken in 2014, to reimburse the amount spent, the Urban Development Authority has not reimbursed the amount so far. Accordingly, it has been decided to inform about the reimbursement of the amount of Rs.22,298,751.27 spent on the construction of the Intellectual Property Sales Promotion Center at the time of preparation of the agreement relating to obtaining a building from the Urban Development Authority under long-term lease basis.	Buildings should not be constructed without acquiring the ownership of a land, and arrangements should be made to receive the said amount from the Urban Development Authority to the Intellectual Property Office as approved by the Cabinet Paper No. CP/15/0272/623/007 dated 15 March 2015.

(b) The VAT amount of Rs.273,083 overpaid in the year 2019, had not been collected even in the year under review.

Accountant had been instructed to correct this error, when preparing accounts for the year 2022

Actions should be taken to collect overpaid amounts.

3.2 Operating Inefficiencies

The following observations are made.

Audit Observation

Comments of the Management

Recommendation

(a) The number of patents registered in the year 2021 was 181, of which 30 licenses were applied for in between 2008 and 2015. Since the validity period of a patent is 20 years from the date of application as per the Section 83(1), it was observed that most of the validity period has been spent on the registration process as it has taken a period around 06 to 13 years for the registration process. Therefore, the security expected by the applicant by obtaining a patent was not fulfilled.

Since the patent becomes valid from the date of application, the applicant's right is secured from the date of filing the application.

Steps should be taken to avoid delays in the registration process, since the validity period of a patent comes into force from the date of application.

(b) While examining a sample of 10 patent files registered in the year under review, time periods ranging from 10 months to 41 months had been spent for correcting errors in the secondary examination, which should have been done before exceeding 03 months from the date of notification, in terms of Section 78(2) of the Act and this had been a reason for the delay in registering patents.

Lack of technical knowledge required for drafting patent reports, insufficient number of officers for patent examinations, lack of number of officers with technical knowledge related to each technical field, have affected this.

Delays should be minimized in conducting secondary examinations and other related work.

(c) Though, it had been planned to complete 600 Nos. pending files related to previous years, in the year under review, it was not implemented as planned. As a result, there had been 1142 number

Although, 600 Nos. local pending files were planned to be examined by the officers of COSTI Institute, due to lack of response from the said institute, the project failed.

Required actions should be implemented to enable the registration of applications received during the year, in the

of pending applications (files) at 31 December 2021 out of applications for patents.

year under review itself.

(d) With the support of the World Intellectual Property Organization, it was proposed to establish Technology and Innovation Support Centers in every district of Sri Lanka, with the primary goals of facilitating access to patent and non-patent technical databases and reducing the number of applications being rejected due to errors in the submission of applications. Though, two centers were planned to be established in the year under review to reduce the number of rejected applications, which were in the range from 48 percent to 60 percent of the total number of applications, only one center of it, had been established.

Negotiations were made with 03 institutions, and agreements were reached regarding Memorandums of Understanding with them, even though it had been difficult to go to the institutions in the year 2021 due to the Covid-19 Pandemic situation and the movement restrictions and official agreements too have been received from the relevant institutions.

The necessary program should be implemented by expanding the network of Technology and Innovation Support Centers, to grant access to technical information for new inventors and to reduce the number of rejected applications.

(e) Since the implementation of projects of international data access systems such as Madrid & Hague Projects, and the mechanism for protection of rights related to Copyrights, is directly related with computer information technology, it was observed that, the delay in the upgrading of the Computer Software System (IPAS) of National Intellectual Property Office has adversely affected the performance of all these projects.

The draft agreement prepared as per the observations given by the Attorney General's Department was sent to ICTA for their observation, on 17 February 2022 for entering into an agreement again. The first reminder for that draft too, was sent to ICTA on 04 April 2022 and telephone discussions were made with the Chief Technical Officer and the Legal Adviser of it and copies of the agreement were handed over to expedite the completion of this task.

Actions should be taken to upgrade the Computer Software System (IPAS) and to provide technological facilities.

(f) A preliminary study was conducted in 2020 and a report was prepared regarding the accessing of Hague System which facilitates international registration of Industrial Designs. Although, it was

Although it was not possible to hold workshops as planned due to the Covid Pandemic existed, the preliminary study related to access the Hague system, has been conducted

The feasibility study should be expedited and decisions should be made as to whether Sri Lanka to access to The Hague system or

planned to conduct two studies and workshops in the year 2021 having further studied relevant legal conditions, the subject area of related technical matters, only one workshop was held. Also, according to the study report conducted, it was recommended that a decision should be made as to whether to access to the Hague system or not, after a feasibility study is done by getting recommendations from qualified committees. It was observed that due to the delay in the feasibility study which is done by getting recommendations from qualified committees, the decision related to accessing the Hague system is also delayed.

and according to the observations obtained in that study, it has recommended that before accessing the Hague system, the decision should be made after a feasibility study conducted by obtaining recommendations from qualified committees to examine the legal framework, cost benefit analysis, improvement of the institutional facilities (e.g. IT) required to access the Hague system and to further study on the experiences of different countries and according to the recommendations of the feasibility study report conducted accordingly, if it is decided that the Hague system of Sri Lanka should be accessed, the necessary further actions with regard to it, will be taken.

not.

(g) Although, arrangements have been made for the registration of layout designs for integrated circuits, registration and administration of geographical indicators, in chapters xxxi and xxxiii of the Act respectively, since the necessary amendments have not been made to the Act, the registration of those applications has not been started in the year under review. It was expected to create a successful international market for inherent products of Sri Lanka, especially through the registration of Geographical Indications.

Observation reports related to the registration of layout designs for integrated intellectual circuits were prepared on the Intellectual Property Act and Regulations and as per the observation, it was observed that registration through the provisions of the Act for registration, may create problematic situations. To streamline the registration system, it has been decided to refer the related information to the Intellectual Property Advisory Commission and that it is necessary to bring amendments to the Act for registration.

Necessary amendments should be made to the provisions of the Act for registration of layout designs for integrated circuits, and registration and administration of geographical indicators.

4. Accountability and Good Governance

4.1 Tabling of Annual Performance Reports in the Parliament

Audit Observation

Although the Annual Performance Reports should be tabled in Parliament within 150 days after the end of the financial year in accordance with (2)(e) of Finance Regulation 877 inserted in paragraph 15.1 of State Finance Circular No. 01/2020 dated 28 August 2020, As of 31 December 2021 so far, only the performance report related to the year 2016 had been tabled in Parliament.

Comment of the Management

There have been obstacles in obtaining approval for the annual reports related to the period from 2015 to 2019 due to the change of the line ministry on five occasions in a short period of time.

Recommendation

Annual performance reports should be tabled in the Parliament as per circular.