



BANKING ACT, No. 30 OF 1988

(Incorporating Amendments up to 31st December, 2006)

Central Bank of Sri Lanka.

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BANKING ACT No. 30 OF 1988

AN ACT TO PROVIDE FOR THE INTRODUCTION AND OPERATION OF A PROCEDURE FOR THE LICENSING OF PERSONS CARRYING ON BANKING BUSINESS AND OF CARRYING ON THE BUSINESS OF ACCEPTING DEPOSITS AND INVESTING SUCH MONEY; FOR THE REGULATION AND CONTROL OF MATTERS RELATING TO SUCH BUSINESS; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[§ 2, 33 of 1995.]

Acts
Nos.30 of 1988,
39 of 1990,
33 of 1995,
02 of 2005,
15 of 2006.

[Act No. 30 of 1988 – 25th August, 1988]
[Act No. 39 of 1990 – 12th November, 1990]
[Act No. 33 of 1995 – 19th December, 1995]
[Act No. 02 of 2005 – 10th December, 2005]
[Act No. 15 of 2006 – 31st March, 2006]

1. This Act may be cited as the Banking Act, No. 30 of 1988.

Short title and date of operation.

(2) The provisions of this Act, other than Part V, shall come into operation on such date* as may be appointed by the Minister by Order published in the *Gazette* (hereinafter referred to as the “appointed date”).

[* 16th September, 1988]

(3) The provisions of Part V of this Act shall come into operation on such later date* as may be appointed by the Minister by Order published in the *Gazette*.

[* 20th September, 1990]

PART I

LICENSING OF PERSONS CARRYING ON BANKING BUSINESS

2. (1) On or after the appointed date, no banking business shall be carried on except by a company under the authority of a licence issued by the Monetary Board with the approval of the Minister.

Licensing of banks.

(2) Where such company is a company incorporated outside Sri Lanka no licence shall be issued unless such company has complied with the provisions of Part XIII of the Companies Act, No. 17 of 1982.

(3) Any company which has been issued a licence under the provisions of this Act, shall, hereinafter, be referred to as a “licensed commercial bank”.

(4) Notwithstanding the provisions of subsections (1) and (2) of this section and of section 3 of this Act, all commercial banks

specified in Schedule I to this Act, which on the appointed date are carrying on banking business, shall be issued a licence in accordance with the provisions of this Act.

(5) Any company which carries on banking business in contravention of subsection (1) shall be guilty of an offence under this Act.

[§ 3, 33 of 1995.]

(6) For the purpose of this section “company” shall have the same meaning as in section 449 of the Companies Act, No. 17 of 1982, and including a company duly incorporated outside Sri Lanka, or a body corporate formed in pursuance of any statute of any foreign country, Royal Charter or letters patent and a body corporate established by or under any written law and shall not include the Central Bank or a private company incorporated outside Sri Lanka except the banks specified in Schedule I to this Act.

Application for a licence.

3. (1) An application for a licence shall be made in writing to the Monetary Board in such manner as may be determined by the Monetary Board.

(2) Every application for a licence shall be accompanied by

(a) a copy of the Memorandum and the Articles of Association of the company or the constitution of the company or any other document associated with the same;

(b) copy of the balance sheet and profit and loss account if any, of the company in respect of the year, preceding the year in which the licence is applied for; and

[§ 4, 33 of 1995.]

(c) in the case of an application by a company or body corporate incorporated outside Sri Lanka, a written undertaking supported by a resolution of its Board of Directors, stating that such company or body corporate, as the case may be, shall on demand by the Central Bank provide such funds as may be necessary to meet all obligations and liabilities incurred in the carrying on of its business of banking in Sri Lanka, and a report containing such information as may be determined by the Monetary Board from the monetary authority of the country in which such company or body corporate was incorporated or formed as the case may be;

(3) On receipt of an application under subsection (1) the Monetary Board may, where such Board considers it necessary,

require the applicant to furnish such other document or particulars, in order to determine whether a licence should be issued or not.

(4) No company incorporated in Sri Lanka under any written law shall make an application for the issue of a licence—

- (a) unless such company is registered as a public company;
- (b) unless the Memorandum of Association of the company sets out as the primary objects of such company, the carrying on of the business of accepting deposits of money subject to withdrawal on demand by cheque, draft, order or otherwise; and
- (c) if the Memorandum of Association of the company provides for the carrying on of any other form of business, unless the Memorandum of Association of the company limits such forms of business to one or more of the forms of business specified in Schedule II to this Act.

(5) Any person who submits an application and other documents under subsections (1), (2) and (3) containing information which is to his knowledge false or misleading in any material particular, shall be guilty of an offence under this Act.

4. (1) The Monetary Board may require any company or body corporate incorporated outside Sri Lanka, which has applied for a licence under section 3, to undertake to remit to Sri Lanka, prior to the commencement of their business in Sri Lanka, a sum of money, determined with the approval of the Minister, in United States Dollars, or its equivalent in any designated foreign currency. The amount so remitted may form part of the assigned capital of such company or incorporated body and shall be kept as a deposit with the Central Bank or in such other manner as may be determined from time to time by the Monetary Board.

Companies and bodies corporate, incorporated outside Sri Lanka to remit currency to Sri Lanka. [§ 5, 33 of 1995.]

(2) The Monetary Board may, where such Board considers it necessary or expedient to do so in the interest of national economy, from time to time, make further determinations as regards the remittance of money after the expiry of a period of six months from the date of the last of such determinations.

(3) A determination made under this section shall apply uniformly to all companies and bodies corporate incorporated outside Sri Lanka which apply for a licence after each such determination.

Issue of licence.
[§ 6, 33 of 1995.]

5. (1) On receipt of an application under section 3, the Monetary Board, having considered the documents and particulars accompanying such application, and being satisfied that the terms and conditions of such licence will be observed by the applicant and having regard to the interests of the national economy, may, with the approval of the Minister, issue a licence to the applicant authorising such applicant to carry on banking business in Sri Lanka.

(2) The licence shall specify—

- (a) whether the bank shall carry on domestic banking business or offshore banking business, or both such business; and
- (b) the place or places or area within which any bank may carry on business.

(3) Every licensed commercial bank shall display a copy of the licence issued to it under subsection (1) in a conspicuous place within the premises of any such bank.

Limits imposed on all licensed commercial banks.

6. Subject to the provisions of section 17, no licensed commercial bank shall—

- (a) carry on any banking business other than the business specified in the licence; or
- (b) carry on any other form of business other than those specified in Schedule II to this Act.

Bank of Ceylon, People's Bank &c., not to be restricted by preceding provisions in the exercise of powers.

7. Nothing contained in the provisions of section 6 shall be construed so as to restrict the Bank of Ceylon or the People's Bank, established under the Bank of Ceylon Ordinance (Chapter 397), the People's Bank Act, No. 29 of 1961, respectively, and any Regional Rural Development Bank established under the Regional Rural Development Bank Act, No. 15 of 1985, in the exercise of the powers conferred on each such bank by and under the aforesaid statutes applicable to each of such banks, respectively.

Payment of licence fee.

8. (1) Every licensed commercial bank shall pay to the Central Bank an annual licence fee as may be determined by the Monetary Board, having regard to the different classes of banking business carried on by such bank.

(2) The Monetary Board shall inform each such licensed commercial bank the amount payable as licence fee, and the manner in which such fee shall be paid.

(3) Where a licence fee is determined in respect of classes of banking business such fee shall apply to all banks carrying on such classes of business.

9. (1) Where the Monetary Board is satisfied that any licensed commercial bank has—

- (a) failed to commence business within nine months of the issue of the licence under section 5; or
- (b) failed to pay up any debts incurred by it, on such debts becoming due; or
- (c) where a petition or action for relief has been filed against it, had appointed in respect of it, under any bankruptcy law or any other law which provides for relief of debtors or which relates to debtors, a custodian or receiver; or
- (d) ceased to carry on banking business,
- (e) where it is a licensed commercial bank incorporated outside Sri Lanka, had its licence or authority to operate, cancelled or withdrawn by the appropriate authority or regulatory body of the country in which such bank was incorporated,

Consequences of failure to commence business on the issue of a licence &c.

[§ 7, 33 of 1995.]

the Monetary Board may give notice that it would cancel the licence issued to such bank and shall communicate such notice to the licensed commercial bank.

(2) A licensed commercial bank may tender objections in writing to the Monetary Board against the notice of cancellation under subsection (1), within thirty days of the date of receipt of such notice, giving reasons why the licence issued to it under section 5 should not be so cancelled.

(3) After the expiration of sixty days from the date of notification of the cancellation and after considering the objections tendered to the Board under subsection (2), the Monetary Board may withdraw such notice or cancel the licence issued to the licensed commercial bank, and shall notify the bank accordingly.

(4) A cancellation of a licence under subsection (3) shall take effect—

- (a) where no appeal against the cancellation is preferred under subsection (5), after the period for preferring such appeal has expired; or
- (b) where an appeal against the cancellation is preferred under subsection (5), after the cancellation is up-held by the Court of Appeal,

and notification of such cancellation shall be published in the *Gazette*.

(5) Any person aggrieved by a decision of the Monetary Board in respect of any cancellation under subsection (3), may appeal against such decision to the Court of Appeal within fourteen days of his being informed by the Board of such cancellation.

(6) Until rules are made under Article 136 of the Constitution pertaining to appeals under this section, the rules made under that Article pertaining to applications by way of revision to the Court of Appeal shall apply to every appeal made under this section.

(7) The Court of Appeal may on an appeal made to it under subsection (5), confirm, revise, modify or set aside the decision against which the appeal is made and make any other order as the interests of justice may require.

Directions of Board where notice of cancellation is issued.

10. (1) Where notice for the cancellation of a licence has been issued by the Monetary Board under subsection (1) of section 9, the Board may give directions to the licensed commercial bank—

- (a) prohibiting it from dealing with or disposing of its assets in any manner specified in such direction;
- (b) prohibiting it from entering into any transaction or class of transactions so specified; or
- (c) prohibiting it from soliciting deposits.

(2) Whereas a licensed commercial bank has failed to comply with the directions issued under subsection (1) the Monetary Board may further direct—

- (a) such bank to forthwith suspend its business within Sri Lanka, and, in the case of a bank incorporated or established in Sri Lanka, its business within and outside Sri Lanka; and
- (b) the Director of Bank Supervision to take charge of its business and of its books, records, and assets, and it shall be lawful for the Director of Bank Supervision to take such steps as are necessary for him to comply with the directive of the Monetary Board.

(3) Where the Director of Bank Supervision takes charge of all books, records and assets under subsection (2) and the Monetary Board withdraws the cancellation unconditionally, the Monetary Board shall direct the Director of Bank Supervision to deliver forthwith to such bank the books, records and assets taken into his custody.

(4) Notwithstanding anything in any written law for the time being in force, no action or proceedings may be instituted by any licensed commercial bank in any court in respect of any directions given bona fide under this section, and any loss or damage incurred or likely to be incurred or alleged to be incurred by reason of any such direction.

11. (1) Where a licence of a licensed commercial bank is cancelled, the Monetary Board shall direct the licensed commercial bank forthwith to suspend its business in Sri Lanka and, in the case of a licensed commercial bank incorporated or established within Sri Lanka, the business both within and outside Sri Lanka, and shall also direct the Director of Bank Supervision to take charge of its business and its books, records and assets and to take such steps as may be necessary to prevent the continuance of the business of banking by such bank. It shall be lawful for the Director of Bank Supervision to take such action as he may deem necessary to comply with the directive of the Monetary Board.

Commercial bank to suspend business.

(2) Where the cancellation of a licence has been made in respect of a licensed commercial bank incorporated or established within Sri Lanka by or under any written law for the time being in force, the Director of Bank Supervision shall forthwith make application to a court of competent jurisdiction to commence proceedings for the winding up of the business of such bank, and he shall be appointed liquidator for the purposes of winding up of the bank in accordance with the provisions of Part VIII of this Act.

(3) Where cancellation of a licence has been made in respect of a licensed commercial bank incorporated outside Sri Lanka, the Director of Bank Supervision shall forthwith inform the head office of such bank that it should honour the obligations and liabilities incurred in the carrying on of the business of the branch established within Sri Lanka, and shall take such steps as may be necessary to enforce any such undertaking as may have been given in this regard in accordance with the provisions of subsection (2) of section 3.

(4) The Monetary Board may, in addition to the procedures laid down in subsections (1), (2) and (3) of this section, take such other steps in respect of the licensed commercial bank, as it may deem necessary by—

- (a) requiring such bank to forthwith take any action or to do any act or thing which the Board may consider necessary in relation to the business of such bank;
- (b) appointing a fit and proper person to advise such bank in regard to the proper conduct of the business of such bank;

- (c) assuming control of and carrying on business of such bank or by delegating the control so assumed by the Board, to another person in order to carry on the business of the bank;
- (d) re-organising such bank by increasing its capital, arranging for new shareholders and reconstituting its board of directors; and
- (e) making such arrangements as are necessary for the amalgamation of such bank with any other licensed commercial bank, that consents to such amalgamation.

Section 30 of the Monetary Law Act to be applicable. [§ 8, 33 of 1995.]

11A. Nothing contained in sections 9, 10 and 11 of this Act, shall in any way affect the powers conferred on the Monetary Board by section 30 of the Monetary Law Act.

Approval of the Monetary Board necessary prior to carrying on certain transactions &c.

12. (1) The written approval of the Monetary Board given with the concurrence of the Minister, shall be required—

- (a) for a licensed commercial bank to open or close a branch, agency or office of such bank, in any part of Sri Lanka or to effect a change in the location of any existing place of business;
- (b) for a licensed commercial bank incorporated or established within Sri Lanka by or under any written law to open or close a branch, agency, or office in any place outside Sri Lanka,
- (c) for a licensed commercial bank to acquire the business of another licensed commercial bank or of any branch of another licensed commercial bank;
- (d) for any person or nominee of such person, partnership, company or corporation to acquire a material interest in a licensed commercial bank incorporated or established within Sri Lanka by or under any written law;

For the purposes of this paragraph “material interest” means the holding of over ten *per centum* of the issued capital of such licensed commercial bank; and

- (e) for banks incorporated or established outside Sri Lanka to open a representative office or such other place of business within Sri Lanka.

(2) The approval under this section may be granted subject to such terms and conditions as may be specified by the Monetary Board with the concurrence of the Minister.

13. (1) The Monetary Board may, with the approval of the Minister, on a report by the Director of Bank Supervision, by order made in writing, withdraw the approval or vary the terms and conditions of an approval granted under section 12, including the closure of a branch, agency or office of a licensed commercial bank. Notice of the decision of the Monetary Board shall be communicated by the Director of Bank Supervision to such bank which shall carry out all the obligations and meet all the liabilities of the branch, agency or office.

Withdrawal or variation of approval under section 12.

(2) Any licensed commercial bank to whom notice has been issued under subsection (1) may within thirty days of the date of such order, tender objections in writing to the Monetary Board giving reasons why such approval should not be withdrawn or the terms and conditions varied.

(3) After the expiration of sixty days from the date of the notice and after considering the objections placed before the Board under subsection (2), the Monetary Board shall, with the approval of the Minister—

- (a) by order made in writing, cancel the notice of withdrawal or the variation unconditionally; or
- (b) by order made in writing and published in the *Gazette*, confirm the withdrawal or variation with or without modification.

(4) Where the order for the closure has been made under subsection (1), the Monetary Board shall direct the Director of Bank Supervision to take all steps as may appear necessary in the circumstances, to satisfy himself that all persons who have deposited moneys in that branch, agency or office are given the opportunity to withdraw such moneys expeditiously and to ensure that such measures as would safeguard the interest of such depositors are taken. It shall be lawful for the Director of Bank Supervision to take such steps accordingly.

13A. (1) Notwithstanding the provisions contained in paragraph (a) of subsection (1) of section 12, the Deputy Governor may on, guidelines issued by the Monetary Board for such purpose, grant approval for the establishment of mobile banking units, subject to such terms and conditions as he may determine, from time to time.

Mobile banking units. [§ 9, 33 of 1995.]

(2) The Deputy Governor may on a report of Director of Bank Supervision, by order made in writing withdraw the approval granted under subsection (1) or vary the terms and conditions of such approval, and notice of the decision shall be communicated to the relevant licensed commercial bank.

Compliance of persons and banks suspected of carrying on banking business.

14. (1) Where the Governor of the Central Bank has reasonable grounds to believe that any person or any commercial bank is carrying on banking business without a licence, the Governor may direct the Director of Bank Supervision or any other officer of the Central Bank to examine the books, accounts and records for the purpose of ascertaining whether such person or bank has contravened, or is contravening any of the provisions of this Act.

(2) The Director of Bank Supervision or such other officer so authorised by the Governor in terms of subsection (1) may require such person or the bank to furnish to him such information or to produce for inspection any books, minutes, accounts, cash, securities, vouchers, other documents and records as he may consider necessary to obtain for the purpose of such examination, and it shall be the duty of such person or bank to furnish such information and to submit to such officer for examination such books, minutes, accounts, cash, securities, vouchers, other documents and records, as the case may be, when so required.

(3) Any person who fails to furnish such information or to produce any books, minutes, accounts, cash, securities, vouchers, other documents and records when required to do so under subsection (2) shall be guilty of an offence under this Act.

(4) Any refusal by any person or commercial bank to furnish such information or to submit such books, minutes, accounts, cash, securities, vouchers, other documents and records in contravention of the provisions of subsection (2) shall be *prima facie* evidence of such person or bank carrying on banking business without a licence.

Memorandum and Articles to be altered with approval. [§ 10, 33 of 1995.]

14A. A licensed commercial bank which is a company as defined in section 449 of the Companies Act, No. 17 of 1982, shall not alter its Memorandum of Association and the Articles of Association, without the prior written approval of the Monetary Board.

Provisions of this Part not to apply to the Monetary Board or Central Bank.

15. The provisions of this Part shall not be construed to mean that a licence under section 5, or approval under section 12, shall be required for the Monetary Board or the Central Bank to exercise, perform or discharge the powers, duties or functions, in respect of banking business conferred on, or imposed on, or assigned to, the Monetary Board under the Monetary Law Act or any written law.

PART II

BANKING NAMES AND DESCRIPTIONS

16. (1) No company other than a licensed commercial bank shall, except with the prior written approval of the Monetary Board, use as part of its name or its description any of the words “bank”, “banker”, or “banking” or any of its derivatives, or its transliterations, or their equivalent in any other language and no licensed commercial bank shall carry on the business of banking in Sri Lanka, unless it uses as part of its name at least one of such words:

Restriction on use of certain names and descriptions. [§ 11, 33 of 1995.]

Provided, however, a licensed commercial bank incorporated outside Sri Lanka and carrying on the business of banking and whose name does not contain the word “bank”, “banker”, or “banking” in any language may carry on such business in Sri Lanka notwithstanding the omission of these words in its name.

(2) No firm, individual or group of individuals, shall, except with the prior written approval of the Monetary Board, for the purpose of carrying on any business, use a part of its or his name or description any of the words “bank”, “banker” or “banking” or any of its derivatives, or its transliterations, or their equivalent in any other language.

[§ 11, 33 of 1995.]

(3) Nothing in this section shall apply to—

- (a) a subsidiary of a licensed commercial bank formed for one or more of the purposes mentioned in subsection (1) of section 17 of this Act;
- (b) any association of licensed commercial banks formed for the protection of their interests;
- (c) a trade union registered under the Trade Unions Ordinance (Chapter 138) which is an association or combination of workers, who are employees of a banking institution within the meaning of section 127 of the Monetary Law Act, or of the Central Bank;
- (d) an agency, institution, person or body of persons which falls within the meaning of paragraphs (b) and (d) of the definition of “banking institution” contained in section 127 of the Monetary Law Act;
- (e) a company which, within one week of its incorporation, applies for a licence under section 2 and until such time as the decision of the Monetary

Board in respect of the application is conveyed to the company;

- (f) the representative office of a commercial bank incorporated or established outside Sri Lanka.

17. (1) A licensed commercial bank incorporated or established in Sri Lanka shall not have as its subsidiary a company which is not a licensed commercial bank:

Provided however, such bank may, with the written permission of the Monetary Board, have a subsidiary which carries on any one or more of the following businesses:—

- (a) carries on the business of providing training in any one of the subjects relating to banking, accountancy, valuation, project appraisal and credit appraisal;
- (b) carries on the business of engaging in hire purchase transactions;
- (c) carries on the business of providing medium and long term credit for development;
- (d) carries on the business of factory leasing and warehousing;
- (e) carries on the business of providing management consultancy services;
- (f) becomes the subsidiary only by reason of a licensed commercial bank having to acquire the share of a company consequent to such licensed commercial bank capitalising the capital and the interest accrued thereon and which is unpaid by the company to the bank, on loans granted by the licensed commercial bank;
- (g) carries on any form of business which in the opinion of the Monetary Board is not inconsistent with the business of banking and the provision of finance:

Provided, further that the provisions of this subsection shall not apply to a subsidiary formed before the appointed date by any licensed commercial bank incorporated or established in Sri Lanka.

(2) A licensed commercial bank shall not accord to any of its subsidiary companies, treatment which is more favourable than the treatment accorded to other constituents of the bank, carrying on the same business as any such subsidiary company.

A licensed commercial bank not to have as its subsidiary a company which is not a licensed commercial bank.
[§ 12, 33 of 1995.]

[§ 12, 33 of 1995.]

(3) For the purposes of this Act a company shall, subject to the provisions of subsection (4) of this section, be deemed to be a subsidiary of another if, and only if—

- (i) that other company holds more than half in nominal value of its equity share capital; or
- (ii) that other company is a shareholder of it and controls the composition of its board of directors; or
- (iii) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

(4) In determining whether one company is a subsidiary of another—

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to the provisions of paragraphs (c) and (d), any shares held or power exercisable—
 - (i) by any person as a nominee for that other except where that other is concerned only in a fiduciary capacity; or
 - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity, shall be treated as held or exercisable by that other;
- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first mentioned company or of a trust deed for securing the issue of such debentures shall be disregarded;
- (d) any shares held or power exercisable by, or by a nominee of, that other or its subsidiary [not being held or exercisable as referred to in paragraph (c)] shall be treated as not held or exercisable by that other, if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money, and the shares are held or power is exercisable as aforesaid by way of security, only for the purposes of a transaction entered into in the ordinary course of that business.

(5) For the purposes of this Act, a company shall be deemed to be another's holding company if, and only if, that other is its subsidiary.

(6) In this Part the expression “equity share capital” in relation to a company, means its issued share capital excluding any part thereof which, neither in respect of dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

Purchase of shares fifty per cent or less by a licensed commercial bank.
[§ 12, 33 of 1995.]

17A. (1) subject to the provisions of subsection (2), a licensed commercial bank shall not acquire or hold shares in any company other than a listed public company, and—

- (a) any share holding acquired by such bank shall not be in excess of such percentage of its capital funds as the Monetary Board may determine from time to time; and
- (b) the aggregate amount invested in the shares of listed public companies (excluding companies which are subsidiaries of the bank) shall not exceed, such percentage of its capital funds as may be determined from time to time by the Monetary Board;

Provided however a licensed commercial bank may, without exceeding the limits specified above, acquire shares in a public company other than a listed company, if such acquisition becomes necessary for the purpose of rehabilitating such company to make it financially viable.

- (2) The provisions of subsection (1), shall not apply to—
 - (a) investment in a subsidiary company of such bank which is a licensed commercial bank;
 - (b) investments in any other subsidiary company of the bank acquired with the approval of the Monetary Board;
 - (c) any shareholding which the bank might acquire in the course of the satisfaction of any debt due to such bank, or as a consequence of the underwriting of a share issue:

Provided that where as a result of the acquisition of these shares the total investment of the bank exceeds the percentage of capital funds as determined by the Monetary Board under subsection (1), the Bank shall dispose of such excess shares within two years or such longer period as may be determined by the Monetary Board, of the date of such acquisition;

- (d) any acquisition or holding of shares in any company which in the opinion of the Monetary

Board is established for the advancement and promotion of human resources development and technological development in the banking and financial sectors.

(3) for the purpose of this section “listed public company” means any public company which has its securities listed or quoted in a stock exchange licensed under the Securities and Exchange Commission Act, No. 37 of 1987.

PART III

CAPITAL REQUIREMENTS, RESERVE FUNDS AND MAINTENANCE OF LIQUID ASSETS

18. Notwithstanding anything contained in any other written law, no licensed commercial bank shall, on or after the appointed date, commence or carry on business in Sri Lanka unless it complies with all the requirements specified in this Part.

Compliance with provisions of this Part essential.

***19.** (1) Subject to the provisions of subsection (3), every licensed commercial bank

Capital. [§ 14, 33 of 1995.]

- (a) which has been issued with a licence prior to the date of commencement of this section, shall at all times maintain an equity capital in an amount not less than twenty-five million rupees;
- (b) which has been issued with a licence after the date of commencement of this subsection, shall at all times maintain an equity capital in an amount not less than one hundred million rupees or such other amount as the Monetary Board may, having regard to the viability and stability of the banking system and the interest of the national economy and with the concurrence of the Minister, determine from time to time.

(2) “equity capital” shall mean—

- (a) paid up capital if it is a licensed commercial bank incorporated or established in Sri Lanka by or under any written law;
- (b) the amount assigned to such bank by the head office, if it is a licensed commercial bank incorporated or established outside Sri Lanka.

(3) (a) The Monetary Board may, vary from time to time the amounts specified as the minimum amounts required to be maintained by a licensed

[§ 2, 15 of 2006.]

* See section 43(1) of Act No. 33 of 1995.

commercial bank as equity capital from the sub-section (1) of this section, having regard to –

- (i) the deposit liabilities or to the total liabilities including contingent liabilities or to the total assets or to any specified category of assets, of a licensed commercial bank; or
 - (ii) the viability and stability of the banking system and the interest of the national economy.
- (b) For the purpose of computing the minimum required equity capital, when such amount is prescribed in reference to liabilities or assets, both capital and liabilities or assets shall be of such kind and computed in such manner as the Monetary Board may from time to time determine having regard to the interest of national economy.
- (c) The Monetary Board shall, in writing, communicate to all licensed commercial banks any variation made by it in respect of the equity capital required to be maintained by a licensed commercial bank.
- (d) Where any licensed commercial bank is required by such variation to augment its equity capital, it shall upon application to the Monetary Board, be afforded a period of twelve months, or such longer period as may be granted by the Monetary Board, in which to comply with that requirement.

(4) In the case of a licensed commercial bank incorporated or established in Sri Lanka by or under any written law, the limit of foreign participation in the capital of such bank, shall at no time exceed the limit, established from time to time, by the Monetary Board.

[§ 14, 33 of 1995.]

(5) A licensed commercial bank shall not reduce its equity capital without the prior written approval of the Monetary Board.

(6) A licensed commercial bank shall not create any charge upon any unpaid capital of such bank and any such charge created in contravention of these provisions shall be null and void.

- (7) (a) Every licensed commercial bank shall at all times maintain a capital adequacy ratio as may be determined by the Monetary Board, which shall in determining such ratio to be maintained, as far as practicable adopt the guidelines for capital adequacy set out by Bank for International Settlements in Basle.

- (b) Any variation in the capital adequacy ratio referred to in paragraph (a) shall be communicated to every licensed commercial bank by the Monetary Board in writing, provided that every licensed commercial bank which is required by such variation to augment its capital, shall be afforded a period of twelve months or such longer period as may be granted by the Monetary Board, in which to comply with such requirement.

*(9) Where the equity capital or capital funds of a licensed commercial bank have become deficient in terms of the provisions of the preceding subsections the Monetary Board may, grant a reasonable period of time for the rectification of such deficiency.

20. (1) Every licensed commercial bank shall maintain a reserve fund and shall, out of the net profits after the payment of tax of each year, before any dividend is declared or any profits are transferred to the head office or elsewhere, transfer to such reserve fund—

Reserve fund.

- (a) a sum equivalent to not less than five *per centum* of such profits until the amount of the said reserve fund is equal to fifty per centum of the paid-up or assigned capital of such bank, as the case may be; and
- (b) a further sum equivalent to not less than two *per centum* of such profits until the amount of the said reserve fund is equal to the paid-up or assigned capital of such bank as the case may be:

Provided, however, that an amount not less than twenty-five *per centum* of the net profits shall be utilised for setting off such intangible assets as may be determined by the Monetary Board, before such profits are transferred to the reserve fund.

(2) The reserve fund of any licensed commercial bank shall not be reduced nor impaired:

Provided, however, that the Monetary Board may, specify circumstances in which the reserve fund may be reduced, and shall permit a reduction when a transfer is made for the purpose of increasing the paid-up or assigned capital, as the case may be. The Monetary Board shall permit an impairment of the reserve fund when it is the only means of preventing an impairment of paid-up or assigned capital, as the case may be, subject to the condition that within a given period of time, the deficiency shall be rectified.

* Subsection (8) omitted by section 14 of Act No. 33 of 1995.

Liquid assets.

21. (1) Every licensed commercial bank shall maintain liquid assets in such amount as may from time to time be determined by the Monetary Board having regard to the nature of the business carried on by such bank, which shall not in a daily average each month, be less than such percentage of the total of its liabilities, less its liabilities to the Central Bank and to the shareholders:

Provided, however, the percentage determined by the Monetary Board shall not be less than twenty *per centum* and not more than forty *per centum* of the total of its liabilities, less its liabilities to the Central Bank and to the shareholders.

(2) The Director of Bank Supervision may, by notice in writing, require every licensed commercial bank to furnish to him such return or returns as he may deem necessary for the purposes of satisfying himself that the provisions of subsection (1) have been complied with, and every licensed commercial bank so noticed, shall furnish such return or returns as may be required.

(3) Any licensed commercial bank which fails to comply with the provisions of subsection (1) shall, within such time as may be determined by the Monetary Board, pay to the Central Bank a charge on the amount of the deficiency calculated at such rate as may be determined by the Monetary Board.

(4) Any licensed commercial bank which fails to comply with the provisions of subsection (3) shall be guilty of an offence under this Act.

Payment of dividends.

22. No licensed commercial bank incorporated or established within Sri Lanka by or under any written law shall pay any dividend on its shares and no licensed commercial bank incorporated outside Sri Lanka shall transfer abroad any profits earned in Sri Lanka, until all its capitalised expenses, including preliminary expenses and other items of expenditure not represented by tangible assets, have been completely written off.

PART IV

OFF-SHORE BANKING BUSINESS

Licence to engage in off-shore banking.

23. No off-shore banking business shall be carried on except by a commercial bank Licensed to carry on off-shore banking and such bank shall carry on its business in accordance with such off-shore banking scheme formulated by the Monetary Board:

Provided that the banks specified in Schedule I, which on the appointed date are carrying on off-shore banking business under the

“Foreign Currency Banking Scheme” established by the Monetary Board shall be issued a licence in terms of section 5 enabling such banks to carry on off-shore banking business under this Part.

24. (1) All off-shore operation of a licensed commercial bank under this Part, shall be carried on by its off-shore unit, and subject to the provisions of subsection (2), Parts III, V and VI of this Act, shall not apply in respect of such off-shore banking business.

Parts III, V and VI not to apply to off-shore banking in certain circumstances. [§ 15, 33 of 1995.]

(2) The Monetary Board may by notice published in the *Gazette* declare, that all or any of the provisions contained in Parts III, V and VI of this Act shall apply in respect of all off-shore banking business of a licensed commercial bank in general or in respect of its off-shore banking business with residents only.

25. The Monetary Board may, by order made with the approval of the Minister, authorise an off-shore unit of a licensed commercial bank subject to such terms and conditions as the Monetary Board may, with the approval of the Minister, impose, having regard to the interests of national economy, to carry on all or any of the following businesses:—

Nature of business an off-shore unit is authorised to carry on.

- (a) accept time and demand deposits from any non-resident in any designated foreign currency provided that, in the case of time deposits, such deposits shall not be less than ten thousand United States dollars, or its equivalent, or such higher amount as may be determined by the Monetary Board, and provided that no savings accounts from which funds are withdrawable by cheque shall be opened by such off-shore unit;
- (b) borrow any sum in a designated foreign currency from any non-resident;
- (c) extend accommodation to any non-resident in any designated foreign currency;
- (d) engage in any transaction in any designate foreign currency with any other off-shore unit; and
- (e) engage in any other transaction authorised by the Monetary Board with the approval of the Minister, in any designated foreign currency.

26. The Monetary Board may, with the approval of the Minister, by order authorise licensed commercial banks to engage in off-shore banking business in any or all of the businesses specified under section 25 with a resident, subject to such terms and conditions as the Monetary Board may specify with the approval of the Minister having regard to the interests of national economy.

Monetary Board to authorise off-shore banking business. [§ 16, 33 of 1995.]

Off-shore unit to prepare balance sheet and profit and loss account.

27. Every licensed commercial bank shall, in respect of its off-shore unit, prepare—

- (a) a balance sheet as at the last working day of each financial year of such licensed commercial bank;
- (b) a profit and loss account in respect of such year.

Monetary Board to specify form of balance sheet and profit and loss account.

28. The Monetary Board may specify the form of the balance sheet and profit and loss account referred to in section 27 and the balance sheet and profit and loss account shall be prepared in such form as is specified.

Parts III, VI and VII of Chapter V of the Monetary Law Act not to apply in certain circumstances. [§ 17, 33 of 1995.]

29. (1) Subject to the provisions of subsection (2), the provisions of Parts III, VI and VII of Chapter V of the Monetary Law Act shall not apply in respect of off-shore banking business of a licensed commercial bank.

(2) The Monetary Board may, by notice published in the *Gazette*, declare that all or any of the provisions of Parts III, VI, and VII of Chapter V of the Monetary Law Act (Chapter 422), shall apply in respect of the off-shore banking business of a licensed commercial bank in general or in respect of its off-shore banking business with residents only.

Preparation of annual report.

30. (1) Every commercial bank engaged in off-shore banking business, shall appoint annually, a qualified auditor to audit the accounts of its off-shore unit and such auditor shall submit a report to such licensed commercial bank in respect of the accounts, balance sheet and profit and loss account of such off-shore unit. The auditor shall state in his report whether in his opinion, the balance sheet and profit and loss account are full and fair and properly drawn up and whether they exhibit a true and correct statement of affairs of the licensed commercial bank.

(2) A certified copy of the report shall be sent to the Monetary Board, and if the Monetary Board is of the opinion that the auditor has not discharged his duty to the best of his ability the Board may, order the licensed commercial bank to appoint another auditor for the purpose of preparing a fresh report.

Monetary Board to cause examination consequent to auditor's report.

31. The Monetary Board may cause an examination of any off-shore unit to be made by officers duly, authorised by it, in that behalf, in consequence of the auditor's report, or the auditor's failure to submit a report, or because of other relevant information that affords the Monetary Board reasonable grounds to believe that the off-shore unit is not in a sound financial condition or that it is engaging in fraudulent, unsafe or unsound banking practices or that the requirements of this Part have not been complied with in the carrying on of its business.

32. Every off-shore banking unit shall maintain the books, minutes, accounts, cash securities, vouchers, other documents and records as may be determined by the Monetary Board, having regard to the nature of the business carried on by such off-shore unit.

Maintenance of books, accounts &c.

33. (1) It shall be lawful for the Director of Bank Supervision or any officer of the Department of Bank Supervision or any officer authorised under section 31—

Powers of the Director of Bank Supervision over off-shore unit.

- (a) to require any director, officer or employee of any off-shore unit to furnish him with such information as he may consider necessary to obtain, for the purpose of ascertaining the true condition of the affairs of any off-shore unit;
- (b) to require any such director, officer, or employee to produce for inspection by him at such time as he may specify any books, minutes, accounts, cash securities, vouchers, other documents and records in the possession of such director, officer or employee containing or likely to contain any such information.

(2) It shall be the duty of every director, officer or employee of any off-shore unit to afford to the Director of Bank Supervision or to any officer of his department or any officer authorised under section 31 whenever required so to do, in terms of subsection (1), the fullest opportunity to examine books, minutes, accounts, cash securities, vouchers, other documents and records in his possession containing or likely to contain any such information.

[§ 19, 33 of 1995.]

(3) If any books, minutes, accounts, cash securities, vouchers, other documents and records are not produced or information not furnished in accordance with the provisions of subsection (2), the officer so defaulting shall be guilty of an offence under this Act.

34. Subject to the provisions of this Part, the Monetary Board may, from time to time, call for information, reports and returns as it may deem necessary for the purposes of this Part and may publish information and data extracted therefrom which does not disclose particulars of individual transactions.

Power of Monetary Board to call for information.

***34B.** (1) Every officer of a licensed commercial bank operating a numbered account on behalf of a customer and every person, who by reason of his capacity or office, has any access to the records, registers, correspondence or any other material of such

Secrecy. [§ 2, 39 of 1990.] [§ 19, 33 of 1995.]

* Part IVA (Section 34A, 34B, 34C and 34D) inserted by Act, No. 39 of 1990, was repealed (other than Section 34B) by Section 18, of Act, No. 33 of 1995.

bank relating to such numbered account shall keep absolute secrecy with regard to the contents thereof, in the interests of the customer to whom the account relates.

(2) Where a licensed commercial bank has opened a numbered account on behalf of a customer, the identity of the owner of the numbered account shall be absolutely inviolate and every officer of such licensed commercial bank and every other person referred to in subsection (1) shall not give, divulge or reveal any information whatsoever regarding the name or identity of the owner of such numbered account to any individual, corporation, bank, court, institution, entity, department, official, agent, representative of the Government of Sri Lanka or any other government or to any other legal or natural person, judicial or military authority, unless—

- (a) the owner of such numbered account gives his permission so to do; or
- (b) legal proceedings are instituted by, or against such licensed commercial bank by, or against, the owner of such numbered account relating to a banking transaction arising from such numbered account; or
- (c) he is required to do so—
 - (i) by any provision of any law giving effect to an international convention on narcotics or hijacking, in any criminal proceedings instituted under that law, in any court;
 - (ii) by an order of the Supreme Court, made on application therefor, on the ground that moneys in such account have been, or are being, used in furtherance of an act which constitutes an offence under the Prevention of Terrorism Act, No. 48 of 1979.

[§ 19, 33 of 1995.]

(3) For the purpose of this section “numbered account” means an account opened with a licensed commercial bank authorised by the Monetary Board under repealed section 34A, that is identified only by a number, code, word or such other means as was determined by the Monetary Board.

[§ 45, 33 of 1995.]

(4) Notwithstanding the repeal of Part IVA by the Banking (Amendment) Act, No. 33 of 1995, the holder of a numbered account shall, within a period of two years commencing from such date as may be determined by the Monetary Board by Notification published in the *Gazette*, close such account and until the close of the account be entitled to operate that account: Provided however no

funds shall be credited to any such numbered account, save and except any sum that may be payable as interest on the moneys deposited in such account. Where the owner of a numbered account fails to close such account within the period specified, such account shall, from and after the date of expiry of that period, cease to enjoy the facilities granted to it by virtue of it being a numbered account.

PART V

ACCOUNTS, AUDIT, INFORMATION AND INSPECTION

35. Every licensed commercial bank shall prepare at the expiration of each financial year—

Preparation of balance sheet and profit and loss account.

- (a) a balance sheet as at the last working day of such financial year; and
- (b) a profit and loss account in respect of such year.

36. (1) The balance sheet of a licensed commercial bank shall set out the state of affairs of such bank as at the end of the financial year to which such balance sheet relates.

Balance sheet.

(2) There shall be shown in the balance sheet or in any statement annexed thereto—

- (a) capitalised expenses not represented by tangible assets under separate headings, so far as they are not written off;
- (b) the market value of investments;
- (c) the method adopted to value fixed assets if there had been any valuation of such assets during the financial year;
- (d) the aggregate amounts of advances after the provisions for bad and doubtful debts;
- (e) any increase or decrease in the provision for depreciation, renewals or diminution in the value of fixed assets;
- (f) the sources and applications of funds;

- (g) reserves, provisions and liabilities distinguishable from each other;
- (h) except in the case of the first balance sheet after the coming into force of this Part of this Act the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet.

Profit and loss
account.

37. There shall be shown in the profit and loss account or in any statement annexed thereto—

- (a) the amount charged to revenue by way of provision for depreciation, renewals or diminution in value of fixed assets;
- (b) the amount charged to revenue for Sri Lanka income tax and other Sri Lanka taxation on profits and distinguishable from such accounts, the amounts, of material, set aside or proposed to be set aside for liabilities in respect of tax due in the current year of taxation or a succeeding year;
- (c) the aggregate amount of dividends paid or proposed to be paid;
- (d) the amount of remuneration of auditors;
- (e) the amount charged to revenue representing the aggregate amount of the emoluments of directors;
- (f) the amount set aside or proposed to be set aside to, or withdrawn from, reserves;
- (g) under separate headings, the profit or loss or the income and expenses arising from transactions such as are not usually carried on by banking companies and are carried on owing to circumstances of an exceptional or non-recurrent nature or by a change in the basis of accounting;
- (h) except in the case of the first profit and loss account after the coming into force of this Part of this Act, the corresponding amount at the end of the immediately preceding financial year for all items shown in the profit and loss account.

38. (1) Every licensed commercial bank incorporated or established within Sri Lanka by or under any written law shall transmit to the Director of Bank Supervision, and publish within five months after the close of the financial year its audited balance sheet as at the close of the financial year, and exhibit them in a conspicuous place of each of its places of business until the balance sheet and profit and loss account for the succeeding financial year are prepared and exhibited.

Publications of balance sheet and profit and loss account. [§ 20, 33 of 1995.]

(2) Every licensed commercial bank incorporated outside Sri Lanka shall transmit to the Director of Bank Supervision within five months of the close of each financial year its audited balance sheet as at the close of the financial year and its profit and loss account for such financial year in respect of its business in Sri Lanka.

[§ 20, 33 of 1995.]

(3) The Monetary Board may specify the form of the balance sheet and profit and loss account referred to in this Part and where such form is specified, the balance sheet and profit and loss account of every licensed commercial bank shall be prepared in such form as may be specified.

(4) Every commercial bank licensed to carry on banking business in Sri Lanka shall within six months of the close of the financial year, exhibit in a conspicuous place within the place of business of such commercial bank—

- (a) the profit and loss account for such financial year in respect of its business within Sri Lanka including the business of its off-shore unit; and
- (b) the consolidated balance sheet as at the end of such financial year setting out the state of affairs of such commercial bank and of its affiliates and subsidiaries, until its next profit and loss account and balance sheet are exhibited.

38A. (1) The Monetary Board may having regard to the need to ensure that experienced and competent qualified auditors are engaged in auditing the accounts of licensed commercial banks, issue guidelines to the Director of Bank Supervision who shall select from time to time in accordance with such guidelines, such number of qualified auditors to audit the accounts of licensed commercial banks and transmit a list of such selected qualified auditors to all licensed commercial banks.

Director of Bank Supervision to issue list of qualified auditors. [§ 21, 33 of 1995.]

(2) It shall be the duty of all licensed commercial banks to select their auditors for purpose of auditing its accounts from and out of the list transmitted under subsection (1).

Appointment
of auditor.
[§ 22, 33 of
1995.]

39. (1) Every licensed commercial bank shall appoint annually from and out of the list issued by the Director of Bank Supervision under section 38A, a qualified auditor to audit the accounts of such bank. The duties of such auditor shall be—

- (a) in the case of a licensed commercial bank incorporated or established within Sri Lanka by or under any written law, to prepare a report in respect of the accounts, balance sheet and profit and loss account examined by him, to be submitted to each of its shareholders; and
- (b) in the case of a licensed commercial bank incorporated outside Sri Lanka, to submit a report to its head office in respect of the accounts, balance sheet and the profit and loss account examined by him.

(2) Every such report, which shall be completed within three months of the end of the financial year, shall contain a statement by the auditor as to whether in his opinion the balance sheet and profit and loss account contain a full and fair and properly drawn up statement and whether they represent a true and correct statement of the bank's affairs, and if the auditor has called for an explanation or any information from the officers or agents of such licensed commercial bank whether such explanation or information is satisfactory.

(3) The report of the auditor made in accordance with subsections (1) and (2) shall, in the case of a licensed commercial bank incorporated or established within Sri Lanka by or under any written law, be read together with the report of the Board of Directors of the licensed commercial bank at the annual general meeting of its share-holders, and, in the case of a licensed commercial bank incorporated outside Sri Lanka, be transmitted to the head office of such licensed commercial bank. A copy of such report shall be transmitted to the Director of Bank Supervision. Where the Director of Bank Supervision is not satisfied with the report of the auditor, he may make a request to the Monetary Board for the appointment of a new auditor to submit a fresh report.

(3A) Notwithstanding the provisions of subsection (3), the Director of Bank Supervision may, on receipt of the report referred to in that subsection, call upon the auditors to—

- (a) submit such additional information in relation to the audit, as the Monetary Board considers necessary;
- (b) enlarge or extend the scope of the audit of the business and affairs of the bank;

[§ 22, 33 of
1995.]

- (c) carry out such other examination required by him or recommend to the licensed commercial bank any procedure in respect of a particular matter; and
- (d) submit a report on any of the matters referred to in paragraphs (b) and (c),

and the cost of such additional audit or such other work shall be met by the Central Bank.

(4) If a licensed commercial bank fails to appoint an auditor under subsection (1) or the Director of Bank Supervision has made a request to the Monetary Board in terms of subsection (3), the Monetary Board shall have the power to appoint an auditor for such licensed commercial bank.

(5) Every auditor appointed under subsection (1) or (4) shall have a right of access at all times to the books, accounts and vouchers and all documents and records belonging to the licensed commercial bank, which he considers necessary for the performance of his duties, and he shall be entitled to require from the officers of such bank such information and explanations as he thinks necessary for the performance and proper discharge of his duties and functions as auditor.

(6) The remuneration of the auditor, whether appointed by the licensed commercial bank or by the Monetary Board, shall be paid by the licensed commercial bank and, in the case of an auditor appointed by the Monetary Board under subsection (4), he shall be paid such amount as may be determined by the Monetary Board.

(7) No person having an interest in any licensed commercial bank or any director, officer, employee, agent of such licensed commercial bank shall be eligible for appointment as auditor for that licensed commercial bank. Any person appointed as auditor who shall after such appointment acquire any interest in or become a director, officer, employee or agent of such licensed commercial bank shall forthwith cease to act as such auditor.

(8) Nothing contained in this section shall apply to the audit of the accounts of any licensed commercial bank which is a public corporation.

40. Where any licensed commercial bank has, due to circumstances beyond its control, failed to comply with the provisions of section 35, or where an auditor appointed by such licensed commercial bank has, due to reasons beyond his control, failed to complete the audit report as specified, the Monetary Board may, on an application made by such licensed commercial bank, grant a reasonable period of time for compliance with the preceding provisions of this Part.

Consequences
of failure to
submit audit
report &c.

Monetary Board to cause examination of a licensed commercial bank or any of its subsidiaries.

41. (1) The Monetary Board shall, from time to time, cause an examination of any licensed commercial bank or any of its subsidiaries, to be made by an officer duly authorised by it, whenever it appears to the Board that such examination is necessary or expedient in order to examine whether such licensed commercial bank is in a sound financial condition and whether the carrying on of business by the licensed commercial bank has been in accordance with the provisions of this Act or any other written law.

(2) Every licensed commercial bank and any subsidiary of such licensed commercial bank referred to in subsection (1) shall permit the officer authorised by the Monetary Board, to inspect at any time as requested by such officer all books, minutes, accounts, cash securities, vouchers, other documents and records relating to its business and shall be required to furnish such information concerning its business as may be requested by such officer.

(3) If any books, minutes, accounts, cash, securities, vouchers, other documents and records are not produced or information not furnished in accordance with the provisions of subsection (2) or if any information furnished or item produced is false in any material particular the defaulting licensed commercial bank or subsidiary or both, as the case may be, shall be guilty of an offence under this Act.

PART VI

DISQUALIFICATION FOR APPOINTMENT AS DIRECTOR, SECRETARY, &C. OF LICENSED COMMERCIAL BANKS

Disqualification for being appointed or elected director. [§ 23, 33 of 1995.]

42. (1) No person shall be appointed or elected as a director of a licensed commercial bank if he—

- (a) has been, under any written law in force in Sri Lanka, found or declared to be of unsound mind; or
- (b) is a person who, having been declared insolvent or bankrupt under any law in force in Sri Lanka or in any other country, is an undischarged insolvent or bankrupt; or
- (c) has been convicted of an offence involving moral turpitude and punishable with a term of imprisonment; or
- (d) is an employee or a director of any other licensed commercial bank or an employee (other than the chief executive officer) of the bank.

(2) A director of a licensed commercial bank shall be removed from the office of director if—

- (a) he becomes subject to any of the disqualifications mentioned in subsection (1); or
- (b) he becomes permanently incapable of performing duties; or
- *(d) has done an act or thing which is manifestly opposed to the objectives and interests of the licensed commercial bank.

****43.** A licensed commercial bank shall appoint as its Secretary, a person who possesses such qualifications as may be prescribed for a secretary of a company under subsection (1) of section 176 of the Companies Act, No. 17 of 1982 and on being appointed the Secretary, shall unless such person is already an employee of such licensed commercial bank, become an employee of that bank and shall not become an employee of any other institution so long as such person continues to be employed as the Secretary of such licensed Commercial Bank.

Secretary of a licensed commercial bank. [§ 24, 33 of 1995.]

44. (1) No person shall be appointed as Manager, Secretary or other official of a licensed commercial bank and any person appointed as Manager, Secretary or other official of such bank shall be removed from office if he—

Disqualification for being appointed as Manager or Secretary of a licensed commercial bank.

- (a) is a person, who having been declared insolvent or a bankrupt under any law in Sri Lanka or in any other country, is an undischarged insolvent or bankrupt; or
- (b) is serving or has served a sentence of imprisonment imposed by any court in Sri Lanka or by any other country; or
- (c) has been convicted of any act which is of a fraudulent or illegal character.

(2) No person who has been a director or has been a chief executive officer of a licensed commercial bank which has been wound up by an Order of court shall, without the written approval of the Monetary Board, act as a director or chief executive officer of a licensed commercial bank.

* Paragraph (c) repealed by Act, No. 33 of 1995. (See Section 23)

** The qualifications required to be held by a Secretary of a licensed commercial bank imposed by section 43 shall not apply to any person holding office as secretary to any licensed commercial bank as on the date of commencement of Act, No. 33 of 1995 (other than section 19) provided such person is holding the office of Secretary as a full time employee of the bank. (See section 43(2) of Act, No. 33 of 1995)

(3) No licensed commercial bank shall employ or be managed by a managing agent other than an employee of such licensed commercial bank.

PART VII

CONTROL OVER LICENSED COMMERCIAL BANKS

Power of the Director of Bank Supervision.

45. (1) Where the Director of Bank Supervision is of the opinion that a licensed commercial bank—

- (a) is engaging in unsafe or unsound practices in the carrying on of its business, which—
 - (i) is likely to jeopardise its obligations to its depositors; or
 - (ii) is likely to result in such bank being unable to meet its obligations; or
- (b) has contravened or failed to comply with the provisions of the Monetary Law Act or the provisions of this Act,

he may issue order directing such licensed commercial bank—

- (a) to cease and desist from any such practice or contravention ; or
- (b) to comply with the provisions of the Monetary Law Act or the provisions of this Act; or
- (c) to take necessary action to correct the conditions resulting from such practice or contravention.

(2) Any licensed commercial bank dissatisfied with an order given under subsection (1), may, before the expiry of thirty days from the date of the issue of such order, appeal in writing to the Monetary Board and the Monetary Board shall render its decision within fifteen days of receipt of such appeal.

Monetary Board to give directions to licensed commercial banks. [§ 25, 33 of 1995.]

46. (1) The Monetary Board may give directions as it may deem necessary to all or any licensed commercial bank specifying—

- (a) the class or classes of advances which may or may not be made by such bank;
- (b) the margins to be maintained in respect of secured advances;
- (c) the maximum amount of accommodation which having regard to the equity capital, reserves and deposits of such licensed commercial bank and

other relevant considerations, as may be made by such bank—

- (i) to any one, company, public corporation, firm, association of persons or individual;
- (ii) in the aggregate to—
 - (a) to an individual, his close relations or to a company or firm in which he has a substantial interest.;
 - (b) a company and one or more of the following:—
 - (aa) its subsidiaries;
 - (bb) its holding company;
 - (cc) its associate company;
 - (dd) a subsidiary of its holding company; or
 - (ee) a company in which such company or its subsidiary, or its holding company, or a subsidiary of its holding company has a substantial interest;
- (d) the maximum percentage of the share capital in a licensed commercial bank incorporated in Sri Lanka—
 - (i) held by a company, an incorporated body, or an individual;
 - (ii) held in the aggregate by—
 - (a) a company and one or more of the following:-
 - (aa) its subsidiaries;
 - (bb) its holding company;
 - (cc) a subsidiary of its holding company; or
 - (dd) a company in which such company or its subsidiary, or its holding company, or a subsidiary of its holding company has a substantial interest; or

- (b) an individual and one or more of the following:—
 - (aa) his close relations;
 - (bb) a company in which he has a substantial interest or in which his close relation has a substantial interest
 - (cc) the subsidiary of such company;
 - (dd) a holding company of such company;
 - (ee) a subsidiary of such company's holding company;
 - (ff) a company in which such company, or its subsidiary, or its holding company or a subsidiary of its holding company has a substantial interest; or
 - (gg) an incorporated body other than a company in which such individual or his close relation has a substantial interest.
- (c) companies in each of which an individual or company as the case may be, has either directly, indirectly or beneficially a substantial interest or significant management interest.

[§ 3, 15 of 2006.]

[§ 25, 33 of 1995.]

For the purpose of this subsection, a company is deemed to be an “associate company” of another company, where not less than twenty *per centum* and not more than fifty *per centum* of its shares are held by that other company.

(2) A direction issued under subsection (1) shall have effect notwithstanding that such direction will require a licensed commercial bank to effect a change in the nature or amount of any of its assets or liabilities, whether acquired or incurred before or after the date of the coming into operation of this Act, provided that a licensed commercial bank which is required to so effect a change, is afforded a period of twelve months from the date of such direction or such longer period as may be granted by the Monetary Board in which to comply with that requirement.

(3) In order to comply with a direction issued to it under paragraph (d) of sub-section (1), a licensed commercial bank may direct a person holding shares in such bank to reduce the number of shares held by such person in such bank, whether such shares were acquired by such person before or after the appointed date, within such period as may be specified in such direction; and it shall be the duty of such person to comply with such direction.

(4) A person who fails to comply with a direction given to him under sub-section (3) shall be guilty of an offence under this Act, and shall on conviction after summary trial by a Magistrate be liable to imprisonment for a term not exceeding eighteen months or to a fine not exceeding one thousand rupees or to both such imprisonment and fine.

46A. The Monetary Board shall have the power to require both general and specific provisions relating to bad and doubtful debts, to be made by licensed commercial banks and it shall be the duty of all licensed commercial banks to conform with the requirement so imposed.

Imposition of general and specific provisions on requirements for bad and doubtful debts.
[§ 26, 33 of 1995.]

47. (1) The provisions of this section shall apply only to licensed commercial banks carrying on domestic banking business.

Conditions for the grant of a loan by way of accommodation.

(2) No licensed commercial bank shall grant accommodation against the security of —

- (a) its own shares; or
- (b) shares of companies which have a substantial interest in it; or
- (c) shares of companies in which the companies referred to in paragraph (b) have a substantial interest.

(3) No licensed commercial bank shall grant any accommodation to any of its directors or to a close relation of such director, unless such security as may from time to time be approved by the Monetary Board, is given, and such accommodation is sanctioned at a meeting of the Board of Directors with not less than two thirds of the number of directors constituting the Board of Directors of the licensed commercial bank (other than the director concerned), voting in favour of such accommodation.

(4) Accommodation granted by a licensed commercial bank to a director or to a close relation of such director shall not exceed the amount of the accommodation, if any, extended to him or such close relation, and outstanding on the day prior to the date of his appointment as a director or on the day prior to the appointed date, whichever is later, or rupees five hundred thousand, whichever is more, and such accommodation is secured by such security as may from time to time be approved by the Monetary Board for the purposes of this section.

(5) No licensed commercial bank shall grant accommodation to any concern in which such director who on the day prior to the

date of his appointment as a director or on the date prior to the appointed date, whichever is earlier, has a substantial interest, unless such a security, as may from time to time be approved by the Monetary Board is given, and such accommodation is sanctioned at a meeting of the Board of Directors, with not less than two thirds of the number of directors constituting the Board of Directors of the licensed commercial bank (other than the director concerned), voting in favour of such accommodation.

(6) Where any accommodation has been granted by a licensed commercial bank to a person or a close relation of a person or to any concern in which the person has a substantial interest and if the person is a director of that licensed commercial bank on the appointed date or is appointed a director after the appointed date, steps shall be taken to obtain such security as may be approved for that purpose by the Monetary Board, within one year from the appointed date or from the date of appointment as director, whichever is applicable:

[§ 27, 33 of 1995.]

Provided that the provisions of this section shall not apply to a director who at the time of the grant of an accommodation, was an employee of the bank and the accommodation was granted under a scheme applicable to the employees of such bank.

(7) Where such security has not been provided as specified in subsection (6), the licensed commercial bank shall take steps to recover any amount due on account of any accommodation together with interest, if any, due thereon—

- (a) within the period specified at the time of the grant of accommodation or at the expiry of a period of six months of the termination of the period specified in subsection (6), whichever is earlier;
- (b) where no period has been specified, at the expiry of a period of one year of the termination of the period specified in subsection (6):

Provided that the Monetary Board may, in any case, on an application in writing made to it by the licensed commercial bank in that behalf, extend the period for the recovery of the accommodation until a date, not beyond the period of three years commencing from the expiry of six months specified in paragraph (a):

Provided further, that the provisions of this subsection and of subsection (6) shall not apply if and when the director concerned vacates such office

whether by death, retirement, resignation or otherwise.

(8) Where no security has been provided within the period specified in subsection (6), or the amount due has not been repaid in terms of subsection (7) in respect of an accommodation granted to a director or to a concern in which the director has a substantial interest, such director shall be deemed to have vacated office on the expiry of the period specified in subsection (7).

(9) Every director of a licensed commercial bank, who is in any manner whatsoever, whether directly or indirectly, interested in any accommodation or proposed accommodation from that licensed commercial bank, shall as soon as is practicable, declare the nature of his interest to the Board of Directors and the Secretary or Manager of such licensed commercial bank shall cause the declaration to be circulated forthwith to all the directors.

(10) A director shall not take part in any deliberations or decisions of the Board with regard to any business transacted or proposed to be transacted by a licensed commercial bank in which the director or a close relation of the director, or a concern in which the director has a substantial interest, is interested, and the director shall withdraw from the meeting of the Board at which such business is discussed or transacted while the deliberation is in progress or decision is being made.

(11) No accommodation or any part thereof granted by a licensed commercial bank to a director or to a close relation of the director or to a concern in which the director has a substantial interest shall be remitted without the prior approval of the Monetary Board, and any remission without such approval shall be void and of no effect.

(11A) Where any accommodation is granted by a licensed commercial bank to a director or to a close relation of such director or to any concern in which such director has a substantial interest during the course of any financial year such accommodation shall be disclosed in the accounts for that financial year.

[§ 27, 33 of 1995.]

The requirement imposed under this subsection shall be in addition to and not in derogation of any requirement imposed by the Companies Act, No. 17 of 1982 or any other written law.

(12) Any director who contravenes the provisions of subsections (9) and (10) shall be guilty of an offence under this Act.

(13) For the purpose of this section—

“company” shall not include a company incorporated outside Sri Lanka ;

“director” shall not include a director of a licensed commercial bank incorporated outside Sri Lanka.

Licensed commercial bank not to engage in buying, selling, & c.

48. (1) Notwithstanding anything contained in any other written law or in any contract, no licensed commercial bank shall directly or indirectly deal in the buying or selling or bartering of goods, except in connection with the realisation of security given to or held by it, or engage in any trade, or buy, sell or barter goods for others, otherwise, than in connection with bills of exchange received for collection or negotiation or with such of its business as is referred to in Schedule II or in any other law or in the Bank of Ceylon Ordinance (Chapter 397) or in the People’s Bank Act, No. 29 of 1961, where the provisions of these enactments are applicable.

(2) The provisions of the preceding subsection shall not apply to any such business as aforesaid, which was being carried on by a bank on the appointed date:

Provided that the said business shall be completed before the expiry of one year from the appointed date.

Purchase and acquisition of immovable property. [§ 28, 33 of 1995.]

48A. A licensed commercial bank shall not purchase or in any other way acquire any immovable property or any right therein, exceeding in the aggregate such percentage of its capital funds as may be determined by the Monetary Board from time to time, except as are reasonably required for the purpose of conducting its banking business or of housing or providing amenities for its staff:

Provided this restriction shall not prevent the bank from accepting any immovable property as security for a debt and in the event of default in payment of the debt, from holding such immovable property until its sale at the earliest opportunity.

Prohibition in the sale, transfer, &c., of immovable assets.

49. Without the prior approval obtained in writing of the Monetary Board, no licensed commercial bank shall sell, transfer, assign or dispose of any of its immovable assets below the market value of the assets or increase the valuation of the assets as recorded in the books of the bank above the market value of the assets.

In case of insolvency to inform Director of Bank supervision. [§ 29, 33 of 1995.]

49A. Any licensed commercial bank which considers that it is, or is likely to be unable to meet its obligations or is about to become insolvent or is about to suspend payments due to depositors and other creditors, shall forthwith inform the Director of Bank Supervision of that fact.

PART VIIA*

VESTING THE BANKING BUSINESS OF A LICENSED
COMMERCIAL BANK

49B. (1) Whereupon a report made by the Director of Bank Supervision, the Monetary Board is satisfied that any licensed commercial bank is unable to carry on banking business in Sri Lanka, or is unable to meet the demands of its depositors and other persons who have had transactions with such licensed commercial bank (in this Part of this Act referred to as “the defaulting bank”) and that its continuance in business is likely to involve serious economic loss to, and to adversely affect, the monetary and banking system and the national economy, the Monetary Board may, notwithstanding the provisions of any other law to the contrary, by Order published in the *Gazette*, vest the business carried on by a defaulting bank being a business which it is authorised to carry on by or under the Act or such part thereof as the Monetary Board may determine, in another licensed commercial bank (in this Part of this Act referred to as the “acquiring bank”) which consents to such vesting.

Order vesting
banking
business of
any licensed
bank.
[§ 30, 33 of
1995.]

(2) For the purpose of subsection (1) the “business carried on by a defaulting bank” includes—

- (a) all immovable and movable property owned by the defaulting bank on, the day preceding the relevant date (including cash balances, reserve funds, investments and deposits) ;
- (b) all rights, powers, privileges, authorities and interests arising in, or out of any property, movable or immovable, owned by the defaulting bank on the day preceding the relevant date;

* (1) Where the business of any licensed commercial bank has been vested in another licensed commercial bank under any written law, prior to the coming into force of Part VIIA of the principal enactment the Minister may by Order published in the *Gazette*, vest in the second mentioned licensed commercial bank any immovable property owned by the first mentioned commercial bank and any leasehold rights over any immovable property enjoyed by such first mentioned licensed commercial bank on the day preceding the date on which such business, was vested, in the second mentioned licensed commercial bank.

The second-mentioned licensed commercial bank shall pay to the first-mentioned licensed commercial bank, in respect of the vesting made by an Order compensation in such amount as is determined by the Monetary Board taking into account the value of the assets and liabilities vested in the second-mentioned licensed commercial bank as on the date of the vesting of the business of such first-mentioned licensed commercial bank in the second-mentioned licensed commercial bank, and any other relevant matters relating to such vesting.

(See Section 44 of Act No.33 of 1995).

- (c) all the liabilities of the defaulting bank and subsisting on the day preceding the relevant date; and
- (d) all books, accounts and documents relating or appertaining, to such undertaking in Sri Lanka.

49C. No order under section 49B shall be made by the Monetary Board unless—

Order to be made after the acquiring bank agrees to comply with terms and conditions. [§ 30, 33 of 1995.]

- (a) the Monetary Board is satisfied that the proposed acquiring bank, is capable of carrying on in a competent manner the business of the defaulting bank proposed to be vested, and of meeting liabilities of the defaulting bank to its depositors and creditors pertaining or relating to the business proposed to be vested;
- (b) the proposed acquiring bank agrees in writing to comply with such terms and conditions as may be specified by the Monetary Board relating to the manner in which—
 - (i) any existing assets of the defaulting bank pertaining or relating to the business proposed to be vested, are to be used and any existing liabilities of the defaulting bank pertaining or relating to the business proposed to be vested are to be met;
 - (ii) any payments due to a sovereign Government from the defaulting bank are to be made.

49D. With effect from the date of publication of the Order under section 49B in the *Gazette*, (in this Part of this Act referred to as the “relevant date”) vesting the business of the defaulting bank or part thereof in the acquiring bank—

Effect of an Order. [§ 30, 33 of 1995.]

- (a) the acquiring bank shall have control and possession of the vested business of the defaulting bank, and become the transferee of the vested business of such defaulting bank;
- (b) the licence issued under this Act to the defaulting bank to carry on the business vested in the acquiring bank shall be modified to the extent necessary to enable the defaulting bank to carry on such part of its business as has not been vested in the acquiring bank;

- (c) the acquiring bank shall comply with such terms and conditions as are agreed to by such bank under paragraph (b) of section 49C and such other directions as the Monetary Board may give to such bank under this Act; and
- (d) the licence issued under this Act to the defaulting bank to carry on banking business, shall where both domestic and off-shore banking business of such bank are vested in the acquiring bank, be deemed to be cancelled.

49E. Notwithstanding anything to the contrary in this Act or any other written law, the liability of the acquiring bank to meet the demands of any foreign currency depositor of the defaulting bank, in case of the foreign currency deposits of the defaulting bank not being made available to the acquiring bank, shall be only in respect of such depositors as agree to accept the terms and conditions of any scheme for the grant of relief to such depositors, as may be formulated by the Monetary Board, upon a review of the business of the defaulting bank and only to the extent set out in such scheme:

The extent of the liability of the acquiring bank in respect of foreign currency depositors. [§ 30, 33 of 1995.]

Provided, however, that in the event of such foreign currency deposits being made available to the acquiring bank or the acquiring bank recovering such foreign currency deposits or other assets abroad of the defaulting bank, the Monetary Board shall have the power to give directions to the acquiring bank with regard to the payment to such foreign currency depositors, of the deposits so made available or deposits and other assets so recovered, and the acquiring bank shall comply with such directions.

49F. (1) For the purpose of ascertaining the value of the vested business of the defaulting bank on the day immediately preceding the relevant date, the Director of Bank Supervision shall cause an audit of such vested business to be conducted by a qualified auditor appointed by him with the approval of the Monetary Board.

Audit of accounts and valuations of vested business. [§ 30, 33 of 1995.]

(2) The auditor appointed under subsection (1) shall submit a report to the Director of Bank Supervision within three months from the date of his appointment and the Director of Bank Supervision shall forward such report to the Monetary Board and the Monetary Board shall consider the report and if necessary, require the Auditor to furnish any further information, or explanations as it may consider necessary.

(3) The auditor appointed under subsection (1) shall examine the accounts of the defaulting bank and ascertain the correctness of the balance sheet and furnish a report stating—

- (a) whether he has or has not obtained all the information and explanations required by him;
- (b) whether the balance sheet and accounts referred to in the report are properly drawn up so as to exhibit a true and fair view of the defaulting bank's affairs; and
- (c) the value of the assets and liabilities of the vested business.

(4) the Monetary Board, after considering the report of the auditor, shall direct the acquiring bank to pay in such manner and within such time as it may specify the value of the vested business to the defaulting bank or its liquidators or successors, as the case may be.

(5) The payment required to be made to the defaulting bank in pursuance of a direction under subsection (4) and all payments required to be made to the auditor appointed under subsection (1), shall be made by the acquiring bank in accordance with such terms and conditions as may be determined by the Monetary Board.

49G. With effect from the relevant date—

- (a) all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation, and other instruments of whatever nature pertaining, or relating to the vested business of the defaulting bank and subsisting, or having effect on the day immediately preceding the relevant date, and to which the defaulting bank is a party or which are in favour of the defaulting bank, shall be deemed with effect from the relevant date to be contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation or other instruments entered in to or granted, as the case may be, by the acquiring bank;
- (b) all actions and proceedings of whatever nature instituted by or against the defaulting bank pertaining or relating to the vested business of the defaulting bank and pending on the day immediately preceding the relevant date, shall be deemed with effect from the relevant date to be actions and proceedings instituted by or against the acquiring bank, and may be continued or prosecuted accordingly;
- (c) all such officers and servants of the defaulting bank as are connected with such part of the

Saving provisions.
[§ 30, 33 of 1995.]

business of the defaulting bank as was vested or all the officers and servants of the defaulting bank where the entirety of the business of the bank is vested, as the case may be, on the day immediately preceding the relevant date, who are not offered employment with the acquiring bank, shall be entitled to the payment of compensation.

49H. Where any officer or servant of the defaulting bank is entitled to be paid compensation, the acquiring bank shall determine the amount of compensation that shall be paid in consultation with the Commissioner of Labour and such determination shall be deemed not to affect the right such officer or servant may have under any other written law.

Payment of compensation. [§ 30, 33 of 1995.]

49J. Any person who contravenes or fails to comply with any provision of this Part or term or condition imposed thereunder shall be guilty of an offence under this Act.

Offences. [§ 30, 33 of 1995.]

49K. Nothing contained in the provisions of paragraph (c) of subsection (1) of section 12 shall apply, in relation to the vesting of banking business of a defaulting bank or part thereof, to an acquiring bank.

Section 12(c) not to apply in respect of defaulting bank. [§ 30, 33 of 1995.]

49L. In this Part of this Act unless the context otherwise requires—

Interpretation. [§ 30, 33 of 1995.]

“ value of the vested business ” means the value of the assets of the defaulting bank vested in the acquiring bank by virtue of an Order made under section 49B (excluding unrecoverable assets as determined by the auditor appointed under section 49F) less the value of the liabilities of the defaulting bank vested in the acquiring bank, by virtue of such Order;

“ vested business ” in relation to an acquiring bank or a defaulting bank, means the banking business of the defaulting bank or part thereof, which is vested in such acquiring bank by an Order under section 49B.

PART VIII

LIQUIDATION OF LICENSED COMMERCIAL BANKS INCORPORATED WITHIN SRI LANKA AND CLOSURE OF BRANCHES OF LICENSED COMMERCIAL BANKS INCORPORATED OUTSIDE SRI LANKA

50. The Director of Bank Supervision shall be appointed as the liquidator for the purposes of this Part.

Liquidator.

Liquidation.

51. No voluntary liquidation of a licensed commercial bank incorporated or established in Sri Lanka by or under any written law shall be effected without the prior authorisation of the Monetary Board obtained in writing. The authorisation shall be granted only if it appears to the Monetary Board that—

- (a) the licensed commercial bank is solvent and has sufficient liquid assets to repay its depositors and other creditors without delay; and
- (b) the liquidation has been approved by the affirmative vote of the shareholders of at least three-fourths of the outstanding shares entitled to vote at a meeting called expressly for this purpose:

Provided that if the liquidation is to be effected in whole or in part through the sale of any of the assets of the licensed commercial bank to, and the assumption of its deposit liabilities by, another licensed commercial bank, the Monetary Board may, upon a finding of imminent danger of insolvency, waive the requirement for shareholder approval:

Provided further, that the provisions of paragraph (c) of subsection (1) of section 12 shall not apply to such assumption of liabilities.

Licensed commercial bank to cease to carry on business.

52. Where a licensed commercial bank has received the authorisation of the Monetary Board to liquidate, such bank shall—

- (a) immediately cease to carry on business, exercising only such powers as are necessary to effect an orderly liquidation;
- (b) repay sums of money due to its depositors and other creditors;
- (c) wind up all operations undertaken prior to the receipt of the authorisation.

Notice of liquidation to be sent to depositors, creditors &c.

53. Any licensed commercial bank which is subject to voluntary liquidation shall, within thirty days of the receipt of the authorisation referred to in section 51 cause a notice of voluntary liquidation, to be sent by registered post to all depositors, to the creditors, and persons otherwise entitled to the funds or property held by such licensed commercial bank as a fiduciary, lessor of a safe deposit box or bailee. The Monetary Board shall specify the information to be included in the notice. The Monetary Board may, where it considers it expedient so to do, exempt the posting of such notice to specified persons upon a showing of reasonable cause therefor by such licensed commercial bank. The notice shall be kept

displayed in a conspicuous place within the place of business of the licensed commercial bank, and shall be given such other publicity as the Monetary Board may direct.

54. The authorisation to go into voluntary liquidation shall not prejudice the rights of a depositor or other creditor or owner to payment in full of his claim, and the rights on an owner of funds or other property held by the licensed commercial bank. All lawful claims shall be paid promptly and all funds and other property held by the licensed commercial bank shall be returned to their rightful owners within such maximum period as the Monetary Board may determine.

Safeguard rights of depositors and creditors.

55. Where the Monetary Board is of the opinion that any licensed commercial bank has discharged all its obligations as referred to in section 54 the name of such bank shall be removed from the list of licensed commercial banks and the outstanding assets shall be distributed among its rightful owners in proportion to their respective rights. No distributions shall be made until—

Licensed commercial bank removed from list of licensed commercial banks.

- (a) all claims of depositors or other creditors or owners have been paid and, in the case of disputed claims, before the licensed commercial bank has transmitted to the Central Bank sufficient funds to meet any liability that may arise after a judicial decision;
- (b) any funds payable to depositors, other creditors and owners who have not claimed them, have been transmitted to the Central Bank;
- (c) any other funds or property held by the licensed commercial bank which could not be returned to the rightful owner in accordance with the provisions of this section, have been dealt with in accordance with section 72.

56. Where the Monetary Board is of the opinion that—

Compulsory liquidation.

- (a) the assets of licensed commercial bank whose voluntary liquidation, it has authorised, will not be sufficient for the full discharge of all its obligations; or
- (b) the completion of voluntary liquidation is unduly delayed,

it shall forthwith take steps to revoke the licence issued to such bank and commence proceedings for the compulsory liquidation of such bank in conformity with the procedures set out hereunder.

Director to take charge of all books, records and assets.

57. When the cancellation of the licence of a licensed commercial bank incorporated or established in Sri Lanka has become final in terms of subsection (3) of section 9, the licensed commercial bank shall forthwith suspend its business within and outside Sri Lanka, and the Director of Bank Supervision shall direct that liquidation proceedings in accordance with the provisions of this Act be taken. As soon as possible after initiating the liquidation proceedings an inventory of the assets and contingent liabilities of the licensed commercial bank shall be made and a copy thereof transmitted to the Monetary Board, which copy shall be available at the office of the Monetary Board for examination by the parties having an interest in the business of such bank.

Director of Bank Supervision to have full management and control for the purpose of liquidation.

58. The Director of Bank Supervision shall be vested with the full and exclusive power of management and control of the affairs of any licensed commercial bank for the purpose of compulsory liquidation and shall have the power—

- (a) to wind up its operations by the institution of liquidation proceedings in Court;
- (b) to stop or limit the payments of its obligations;
- (c) to execute any instrument in the name of the licensed commercial bank; and
- (d) to initiate, defend and conduct in its name any action or proceedings to which the licensed commercial bank may be a party.

Claims &c., to be extended where liquidation proceedings have been instituted.

59. Under liquidation proceedings—

- (a) any term, statutory, contractual or otherwise, on the expiration of which a claim or right of the licensed commercial bank would expire or be extinguished, shall by the operation of this section, be extended by six months from the date of the commencement of the proceedings;
- (b) any attachment or lien, except a lien existing six months prior to the date as specified in paragraph (a), shall be vacated, and no attachment or lien, except a lien created by the Director of Bank Supervision, in the application of the provisions of this Part, shall attach to, any property or assets of the licensed commercial bank in liquidation;
- (c) any transfer of any assets of the licensed commercial bank made after or in contemplation of its insolvency shall be void.

60. (1) Within a period of six months from the date on which the cancellation of a licence becomes final, the Director of Bank Supervision may, subject to the provisions of any other law for the time being in force, terminate—

Power of Director of Bank Supervision to terminate contracts &c.

- (a) any contract of employment entered into with such bank;
- (b) any contract for services to which such licensed commercial bank was a party; or
- (c) any obligation of the licensed commercial banks including its obligations, if any, as a lessee.

(2) A lessor who shall have received ninety days notice that the Director of Bank Supervision is exercising discretionary powers to terminate the lease shall have no claim for rent other than rent accrued on the date of termination of the lease, nor for damages by reason of such termination.

61. As soon as possible after the cancellation of a licence becomes final, the Director of Bank Supervision shall make a final distribution by taking such steps as are necessary to terminate all functions performed in a fiduciary capacity by the licensed commercial bank and return all assets and property held by the licensed commercial bank as a fiduciary to the owners thereof, and settle its fiduciary accounts.

Termination of fiduciary functions.

62. As soon as possible after the cancellation of a licence becomes final, the Director of Bank Supervision shall dispatch by registered post to all depositors, owners, other creditors, safe deposit box lessees, and the bailors of property held by the licensed commercial bank, a statement of the nature and amount for which their claim is shown in the licensed commercial bank's books. The statement shall specify that any objections if any must be filed with the Director of Bank Supervision before a specified date not later than sixty days from the issue thereof, and shall invite safe deposit box lessees and bailors to withdraw their property in person. The Director of Bank Supervision may, subject to confirmation by the Monetary Board, obtained prior to the commencement of the sixty day period, exempt the dispatch of the statements by post to specified persons upon the licensed commercial bank showing reasonable cause therefor.

Director of Bank Supervision to issue statement to depositors &c.

63. (1) Any safe deposit box, the contents of which have not been withdrawn before the date specified, shall be opened in the manner prescribed by the Director of Bank Supervision. The contents and any unclaimed property shall be held by the licensed commercial bank as bailee, and—

Safe deposit boxes.

- (a) all monies shall, upon direction by the Monetary Board, be transferred to a special account in the Central Bank;
- (b) any article other than money shall, upon direction by the Monetary Board, be referred to the Minister for a direction as to the method of disposal of the same.

(2) The money referred to in paragraph (a) and articles referred to in paragraph (b) shall be deemed to be abandoned property in terms of the provisions of Part IX, if the owner thereof, has, over a period of ten years from the date of deposit of such money or articles, as the case may be, not evidenced an interest in the same. The provisions of section 72 shall apply in respect of such items as from the date of their transfer.

Functions of Director of Bank Supervision in relation to liquidation proceedings of a licensed commercial bank.

64. Within three months after the date specified in the notice for filing of objections or such longer period as may be determined by Monetary Board, the Director of Bank Supervision shall—

- (a) reject any claim if he doubts the validity thereof;
- (b) determine the amount, if any, owing to each identifiable depositor or other creditor and the priority attaching to his claim under the provisions of this Act;
- (c) prepare a Schedule of the scheme of work he proposes to take;
- (d) notify each person whose claim has not been allowed in full, and publish once a week for three consecutive weeks, a notice in three daily newspapers in the Sinhala, Tamil and English languages, which contains an intimation of the date and place, where the Schedule of the scheme of work he proposes to take, will be available for inspection. The date so intimated, shall be a date not sooner than thirty days from the date of the third publication in the newspaper, upon which the Director of Bank Supervision will file the Schedule in Court.

Objection to Schedule.

65. Within twenty one days after filing of the schedule referred to in paragraph (c) of section 64, any depositor creditor, shareholder or other interested person may file objections to any step proposed to be taken. Any objections filed shall be considered by the Court upon such notice to the Director of Bank Supervision and interested parties as the Court may specify. If an objection is

sustained, the Court shall direct that an appropriate modification be made to the Schedule. After filing the Schedule the Director of Bank Supervision may, from time to time, make partial distribution to the holders of claims which are undisputed or which have been allowed by the Court, on condition that a proper reserve is established for the payment of disputed claims. As soon as possible after all objections have been decided upon, the Director of Bank Supervision shall make the final distribution.

66. (1) The claims set out hereunder shall have priority as against the general assets of the licensed commercial bank in the order indicated below—

Priority of claims.

- (a) necessary and reasonable expenses incurred by the Director of Bank Supervision in the application of the provisions of this Part;
- (b) wages and salaries of officers and employees of the licensed commercial bank in liquidation for the three month period preceding the revocation of the licence of the licensed commercial bank;
- (c) taxes, rates, and deposits owed to the Government and Local authorities;
- (d) fees and assessments due to the Monetary Board;
- (e) savings and time deposits to the extent of rupees five thousand or less;
- (e) other deposits.

(2) After payment of all other claims filed, with interest thereon calculated at a rate to be fixed by the Director of Bank Supervision, with the approval of the Court, any remaining claims which were not filed within the prescribed time shall be paid.

(3) If the amount available in respect of a particular category of claims is insufficient to provide payment in full, the said amount shall be distributed pro-rata among the parties of that claim.

67. Any assets remaining after all claims have been paid shall be distributed among all the shareholders in proportion to their participation.

Distribution of assets.

68. Funds remaining unclaimed after the final distribution referred to in section 61 is made, which are not subject to the other provisions under this Act, shall upon direction by the Monetary Board, be transferred to a special account in the Central Bank. The Monetary Board may utilise such funds for the purposes as may be determined by the Monetary Board after consultation with the

Unclaimed funds.

Minister. The funds shall be abandoned properly, in terms of Part IX of this Act, if the owner has not, within the ten years immediately preceding the date of the final distribution under section 61, evidenced any interest in the funds. Section 72 shall apply in respect of such funds as from the time of their transfer under this section.

Audited account to be submitted to Court.

69. Once all assets have been distributed in accordance with the provisions of this Act, the Director of Bank Supervision shall render an audited account to Court. Upon approval of the account by Court, and where the Court makes an order to terminate the liquidation, the Monetary Board shall be relieved of any liability in connection with the liquidation. The Director of Bank Supervision shall proceed to terminate the judicial existence of the licensed commercial bank concerned, in accordance with such provisions of the Companies Act, No. 17 of 1982, and applicable thereto, which are not inconsistent with the provisions of this Act.

Closure of licensed commercial banks incorporated outside Sri Lanka.

70. (1) When a licensed commercial bank incorporated outside Sri Lanka wishes to close down its business in Sri Lanka the approval of the Monetary Board for the closure shall be granted, subject to such terms and conditions as the Board may specify. Where approval is granted by the Board the affairs of the licensed commercial bank in Sri Lanka shall be wound up in accordance with the procedures set out in subsection (4).

(2) When a cancellation of the licence of a licensed commercial bank incorporated outside Sri Lanka has been made final under subsection (3) of section 9, the licensed commercial bank shall terminate its business in Sri Lanka and its affairs shall be wound up in accordance with the provisions of subsection (4).

(3) When liquidation proceedings in respect of a licensed commercial bank incorporated outside Sri Lanka are started at the place where the head office is located, the Monetary Board shall order the closure of the licensed commercial bank in Sri Lanka.

(4) When the business of the licensed commercial bank is closed down under subsection (1) or (2) or (3), the licensed commercial bank which is the subject of liquidation, shall retain only such powers as are necessary to wind up its affairs within Sri Lanka, which shall be done expeditiously and in an orderly manner. The Director of Bank Supervision shall supervise the winding up under subsection (1) or (2) or (3) of this section, in accordance with the provisions of subsections (1) and (3) of section 11, take all measures necessary to ensure that no assets owned by the licensed commercial bank, which is the subject of liquidation are removed from Sri Lanka until all obligations and liabilities incurred by such bank, to which the undertaking referred to in paragraph (c) of subsection 2 of

section 3 relates, have been met in accordance with the undertaking. The provisions of section 63 and 68 shall apply to the winding up of the affairs under this section.

(5) Where the Monetary Board is of the opinion that the licensed commercial bank has discharged all the obligations referred to in the preceding provisions of this section, the name of such bank shall be removed from the list of licensed commercial banks.

71. In the event of conflict or inconsistency between the provisions of this Part of this Act and the provisions of the Monetary Law Act (Chapter 422) or the Companies Act No. 17 of 1982, the provisions of this Part shall prevail.

This Part to prevail over any other law.

PART IX

ABANDONED PROPERTY

72. (1) In addition to the articles referred to in sections 63 and 68 the articles enumerated in subsection (2) of this section, held by a licensed commercial bank other than such articles so held by an offshore unit of a licensed commercial bank, shall be presumed to be abandoned if the owner has, within a period of ten years immediately after the date of deposit, or payment of funds towards the purchase of shares or other interests, or issuing of instruments, or the date upon which funds held in a fiduciary capacity became payable, or capable of being distributed, or the expiration of the period for which the safe deposit box was rented, as the case may be—

Abandoned Property.

- (a) not increased or decreased the amount of the deposit or funds or presented the pass book or other record for the crediting of interest or dividends in respect of the articles enumerated in paragraphs (a) and (b) of subsection (2) of this section;
- (b) not increased or decreased the principal or accepted payment of principal or income in respect of funds held in a fiduciary capacity;
- (c) not had any correspondence with the licensed commercial bank concerning such articles;
- (d) not otherwise indicated an interest in the articles as evidenced by a memorandum concerning them by the licensed commercial bank.

(2) The following shall be the articles referred to in subsection (1):—

- (a) any general deposit (demand, savings or matured time deposit) made in Sri Lanka with that licensed commercial bank together with any interest or dividend thereon excluding any lawful charges;
- (b) any funds paid in Sri Lanka towards the purchase of shares or other interests in a licensed commercial bank together with any interest or dividend, excluding any lawful charges;
- (c) any sum payable on cheques or on written instruments, on which the licensed commercial bank is directly liable;
- (d) any intangible personal property and any income or interest thereon held in a fiduciary capacity for the benefit of another person;
- (e) any contents of a safe deposit box upon which the rental period has expired and concerning which notice has been sent by registered post to the last known address of the lessee and to which the lessee has failed to respond within three years.

Abandoned property to be transferred to a special account.

73. (1) Any licensed commercial bank holding any abandoned property referred to in section 72, shall make a report to the Monetary Board in such form as the Monetary Board may determine stating the nature of the articles held and in the case of money, the amount of money.

(2) Notwithstanding anything in any other law, all monies included in the report shall, if the Monetary Board directs, be transferred by the licensed commercial bank to a special account in the Central Bank and may be utilised by the Monetary Board for such purposes as may be determined by the Monetary Board after consultation with the Minister.

(3) The articles included in the report that do not fall under subsection (2) shall be referred by the Monetary Board to the Minister for such action as he shall prescribe.

Publication of notice regarding abandoned property.

74. Within thirty days from the submission of the report required by subsection (1) of section 73, the licensed commercial bank shall publish a notice in the Sinhala, Tamil and English daily newspapers stating the name of the owner and particulars concerning the property and shall despatch, by registered post a notice to the owner to his last known address containing particulars concerning the property, provided that the Monetary Board may exempt the licensed commercial bank from the mailing of such notice upon the licensed commercial bank showing reasonable cause therefor.

75. (1) Where any person furnishes proof to the satisfaction of the Monetary Board that moneys lying to the credit of an account which was in his name or in the name of a person from whom he derives title, have been transferred to a special account in the Central Bank under section 73, that person shall, subject to such terms, conditions or restrictions as are imposed in respect of such money by or under any written law, be entitled to the repayment of such moneys by the Central Bank together with the interest payable on such moneys up to the date of such repayment, in accordance with such rates and conditions as are applicable to the account to the credit of which such money were lying before they were transferred to the special account in the Central Bank.

Repayment by the Central Bank.

76. Any licensed commercial bank which fails to file the report or to pay or deliver property presumed to be abandoned as required by section 74 shall be guilty of an offence under this Act.

Failure to deliver property presumed to be abandoned to be an offence.

PART IXA

LICENSED SPECIALISED BANKS

76A. (1) From and after such date as may be determined by the Minister by Order published in the *Gazette*, the business of accepting deposits of money and investing and lending such money shall not be carried on except by a company which has an equity capital in an amount not less than fifty million rupees and under the authority of a licence issued by the Monetary Board for such purpose under this Part of this Act:

Licensing of certain institutions. [§ 31, 33 of 1995.]

Provided however, the requirement to obtain a licence shall not apply in respect of a company registered as a Finance Company under Finance Companies Act, No. 78 of 1988, a Co-operative Society registered under the Co-operative Societies Law, No. 5 of 1972, a building society incorporated under the National Housing Act (Chapter 401) and to a company licensed as a licensed commercial bank under the provisions of this Act and to any organisation established or registered under any written law, not being an organisation established primarily for the purpose of making profit, which accepts deposits only from its registered members and has obtained permission in writing from the Monetary Board to accept such deposits and to invest or lend the monies so accepted.

(2) Where such company is a company incorporated outside Sri Lanka, no licence shall be issued under this Part of this Act unless such company has complied with the provisions of Part XIII of the Companies Act, No. 17 of 1982.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section and of section 76B, all institutions specified in Schedule III of this Act, shall be issued a licence in accordance with the provisions, of this Part of this Act on or after the date determined by the Minister under subsection (1).

(4) Any company carrying on business in contravention of subsection (1), shall be guilty of an offence under this Act.

(5) For the purposes of this section “company” shall have the same meaning as defined in section 449 of the Companies Act, No. 17 of 1982 and includes a company duly incorporated outside Sri Lanka, or a body corporate formed in pursuance of any statute of any foreign country, Royal Charter or letters patent and a body corporate established by or under any written law and shall not include a private company incorporated outside Sri Lanka; and “equity capital” shall have the same meaning as in subsection (2) of section 19 of this Act.

Application for
licence.
[§ 31, 33 of
1995.]

76B. (1) Every application for a licence under section 76A shall be made to the Monetary Board in the prescribed form, and shall contain a declaration by the applicant that the particulars stated in the application are to the knowledge and belief of the applicant true and accurate.

(2) Every application for a licence shall be accompanied by—

- (a) a copy of the Memorandum and the Articles of Association of the Company or the constitution of the company or any other document associated with the same;
- (b) in the case of an application by a company or body corporate incorporated outside Sri Lanka, a written undertaking supported by a resolution of its Board of Directors stating that such company or body corporate, as the case may be, shall on demand by the Central Bank provide such funds as may be necessary to cover all obligations and liabilities incurred in the carrying on of its business in Sri Lanka, and a report containing such information as may be determined by the Monetary Board from the monetary authority of the country in which such company is incorporated.

(3) On receipt of an application under subsection (1) the Monetary Board may, where such Board considers it necessary, require the applicant to furnish such other documents or particulars

as may be necessary, in order to determine whether a licence should be issued or not to such company.

(4) Any applicant who submits an application and other documents under this section containing information which to his knowledge is false or misleading in any material particular shall be guilty of an offence under this Act.

76C. (1) On receipt of an application under section 76B, the Monetary Board having considered the documents and particulars accompanying such application, and being satisfied—

Issue of licence.
[§ 31, 33 of 1995.]

- (a) that it is appropriate to permit the applicant to use the term “bank” or any of its derivatives or its transliterations;
- (b) that the terms and conditions of the licence will be observed by the applicant; and
- (c) that it is not detrimental to the interests of the national economy to issue such licence to the applicant,

may, with the approval of the Minister, issue a licence to the applicant under this Part of this Act.

(2) The licence shall specify the place, places or area within which such company may carry on its business, and such company shall not carry on business in any other place except with the written approval of the Monetary Board.

(3) Any company which has been issued with a licence under this Part of this Act shall hereinafter be referred to as a “licensed specialised bank.”.

(4) A licensed specialised bank may carry on such forms of business as are specified in Schedule IV to this Act, subject to such restriction as may be expressly stipulated in the licence on the form of business that it may be permitted to carry on.

(5) A licensed specialised bank carrying on business under the authority of a licence issued under this Part of this Act shall be deemed not to act in contravention of section 2 of the Finance Companies Act, No. 78 of 1988.

76D. (1) A company which has been issued with a licence under this Part of this Act shall use as part of its name or its description any of the words “bank”, “banker” or “banking” in any language:

Use of the term “Bank”.
[§ 31, 33 of 1995.]

Provided however, a company incorporated outside Sri Lanka or an institution specified in Schedule III to this Act, whose name

does not contain the word “bank”, “banker” or “banking” in any language may carry on its business notwithstanding the omission of these words from its name or description.

(2) Nothing in this section shall apply to a company which, within one week of its incorporation, applies for a licence under section 76B and until such time as the decision of the Monetary Board in respect of the application is conveyed to the company.

Register of specialised banks.
[§ 31, 33 of 1995.]

76E. The Monetary Board shall keep and maintain in the prescribed form a register of every institution licensed as a licensed specialised bank under this Part of this Act.

Cancellation of licence.
[§ 31, 33 of 1995.]

76F. (1) Without prejudice to its powers under section 76M where the Monetary Board is satisfied that any licensed specialised bank has—

- (a) failed to commence business within nine months of the issue of the licence; or
- (b) failed to pay up any debts incurred by it, on such debts becoming due; or
- (c) where a petition or action for relief has been filed against it, had appointed in respect of it, under any bankruptcy law or any other law which provides for relief of debtors or which relates to debtors, a custodian or receiver; or
- (d) ceased to carry on business in respect of which the licence was issued; or
- (e) continuously violated or contravened the provisions of this Part of this Act or any directions issued thereunder; or
- (f) had its licence or authority to operate cancelled or withdrawn by the appropriate authority or regulatory body of the country in which such bank is incorporated,

the Monetary Board may, give notice that it would cancel the licence issued to such licensed specialised bank and shall communicate such notice to such bank.

(2) A licensed specialised bank may tender objections in writing to the Monetary Board against the notice of cancellation given under subsection (1), within thirty days of the date of receipt of such notice, giving reasons why the licence issued to it should not be so cancelled.

(3) After the expiration of sixty days from the date of the notice of the cancellation and after considering the objections tendered to the Monetary Board under subsection (2), the Board may withdraw such notice or cancel the licence issued and shall notify such bank accordingly.

(4) A cancellation of a licence under subsection (3), shall take effect—

- (a) where no appeal is preferred under subsection (5), after the period for preferring such appeal has expired; or
- (b) where an appeal against the cancellation is preferred under subsection (5), after the cancellation is upheld by the Court of Appeal, and notification of such cancellation shall be published in the *Gazette*.

(5) Any person aggrieved by a decision of the Monetary Board in respect of any cancellation under subsection (3), may appeal against such decision to the Court of Appeal within fourteen days of his being informed by the Board of such cancellation.

(6) Until rules are made under Article 136 of the Constitution pertaining to appeals under this section, the rules made under that Article pertaining to applications by way of revision to the Court of Appeal shall apply to every appeal made under this section.

(7) The Court of Appeal may on an appeal made to it under subsection (5), confirm, revise, modify or set aside the decision against which the appeal is made and make any other order as the interests of justice may require.

(8) Where a licence is cancelled, the Monetary Board shall remove the name of such licensed specialised bank from the register maintained under section 76E and may issue such directions as it considers necessary, including directions for winding up of such licensed specialised bank.

(9) Where the licensed specialised bank fails to comply with a direction issued under subsection (8) for the winding up of the company within thirty days of the issue of such directions, the Monetary Board may require the Director of Bank Supervision to file action for the winding up of the licensed specialised bank, and the provisions of section 76M shall apply to such winding up.

76G. (1) Subject to the provisions of subsection (3), every licensed specialized bank shall at all times maintain an equity capital

Equity capital
to be
maintained by

a licensed
specialized
bank.
[§ 4, 15 of
2006.]

in an amount not less than fifty million rupees or such other amount as the Monetary Board may, with the concurrence of the Minister, from time to time determine, having regard to the viability and stability of the banking system and the interest of the national economy.

(2) For the purpose of this section “equity capital” shall have the same meaning as is assigned to it in subsection (2) of section 19.

(3) (a) The Monetary Board may, vary from time to time the amounts specified as the minimum amounts required to be maintained by a licensed specialized bank as equity capital under subsection (1) of this section, having regard to –

- (i) the deposit liabilities or to the total liabilities including contingent liabilities or to the total assets or to any specified category of assets, of a licensed specialized bank; or
- (ii) the viability and stability of the banking system and the interest of the national economy.

(b) For the purpose of computing the minimum required equity capital, when such amount is prescribed with reference to liabilities or assets both capital and liabilities or assets shall be of such kind and computed in such manner as the Monetary Board may from time to time determine having regard to the interest of national economy.

(c) The Monetary Board shall, in writing, communicate to all licensed specialized banks any variation made by it in respect of the equity capital required to be maintained by a licensed specialized bank.

(d) Where any licensed specialized bank is required by such variation to augment its equity capital, it shall upon application to the Monetary Board, be afforded a period of twelve months, or such longer period as may be granted by the Monetary Board, in which to comply with that requirement.

(4) In the case of licensed specialized bank incorporated or established in Sri Lanka by or under any written law, the limit of foreign participation in the capital of such bank, shall at no time exceed the limit, established from time to time, by the Monetary Board.

(5) A licensed specialized bank shall not reduce its equity capital without the prior written approval of the Monetary Board.

(6) A licensed specialized bank shall not create any charge upon any unpaid capital of such bank and any such charge created in contravention of these provisions shall be null and void.

(7) (a) Every licensed specialized bank shall at all times maintain a capital adequacy *ratio* as may be determined by the Monetary Board, which shall in determining such *ratio* to be maintain, as far as practicable adopt the guidelines for capital adequacy set out by Bank for International Settlements in Basle.

(b) Any variation in the capital adequacy *ratio* referred to in paragraph (a) shall be communicated to every licensed specialized bank by the Monetary Board in writing, provided that every licensed specialized bank which is required by such variation to augment its capital, shall be afforded a period of twelve months or such longer period as may be granted by the Monetary Board, in which to comply with such requirement.

(8) Where the equity capital or capital funds of a licensed specialized bank have become deficient in terms of the provisions of the preceding subsections, the Monetary Board may, grant a reasonable period of time for the rectification of such deficiency.

76H. The provisions of Part V of this Act shall apply in respect of licensed specialised banks as if the expression “ licensed commercial bank ” wherever that expression occurs in that Part was substituted with the expression “ licensed specialised bank ”.

Part V of this Act to apply. [§ 31, 33 of 1995.]

76J. (1) Notwithstanding the provisions of any other law, the Monetary Board may give directions to licensed specialised banks or to any category of licensed specialised banks, regarding the manner in which any aspect of the business of such banks is to be conducted and in particular—

Directions of the Monetary Board. [§ 31, 33 of 1995.]

- (a) the maintenance of capital adequacy ratios by the licensed specialised banks of such amounts as may be determined by the Monetary Board;
- (b) the maintenance of the reserve fund of a licensed specialised bank including its reduction or impairment;
- (c) the terms and conditions under which deposits may be accepted, the maximum rates of interest payable on such deposits and the maximum periods for which deposits may be accepted and the maximum amount which may be deposited with a licensed specialised bank in the name of one person in one or more accounts;
- (d) the terms and conditions under which any loan, credit facility or any type of accommodation may be granted by such banks, the maximum rates of interest that may be charged on such loans, credit facilities or other types of accommodation and the maximum periods for which any such loan, credit facility or other type of accommodation may be granted;

- (e) the maximum rates which may be paid to, or charged by, such banks by way of commissions, discounts, fees or other receipts or payments whatsoever;
- (f) the minimum initial payment a prospective hirer should make on any hire purchase agreement and specific different initial payments for different classes of transactions; such minimum initial payment may be expressed as a percentage of the value of the goods hired under such agreement;
- (g) the terms and conditions under which investments may be made by such banks;
- (h) the maximum permissible maturities for loans, credit facilities or other types of accommodation and investments made by such banks, and the nature and amount of the security that may be required or permitted for various types of lending, credit and investment operations;
- (i) the form and manner in which books of accounts or other records or documents are to be maintained by such banks;
- (j) the exclusion from the income of licensed specialised banks in whole or in part, unpaid interest in respect of loans granted, if such loans have become overdue;
- (k) the minimum ratio which the liquid assets of such banks should bear to the total deposit liabilities of such banks;
- (l) the maintenance of cash balances by licensed specialised banks with the Central Bank if so required by the Monetary Board, and the minimum ratio such cash balances should bear to the deposit liabilities of licensed specialised banks;
- (m) conditions which should be applicable to withdrawal by depositors of deposits before maturity;
- (n) prohibiting such banks from increasing the amount of their loans, credit facilities, other types of accommodation or investments;
- (o) fixing limits to the rate at which the amount of any loans, investments or accommodation made or granted by them may be increased within specified periods;

- (p) requiring the decrease of the amount of their loans, investments or accommodation to specified limits within a specified period;
- (q) the maximum percentage of the share capital in a licensed specialised bank which may be held—
 - (i) by a company, an incorporated body, or an individual;
 - (ii) in the aggregate by—
 - (a) a company and one or more of the following:—
 - (aa) its subsidiary companies
 - (bb) its holding company;
 - (cc) a subsidiary company of its holding company;
 - (dd) a company in which such company or its subsidiary company, or its holding company, or a subsidiary company of its holding company has a substantial interest; or
 - (b) an individual and one or more of the following:—
 - (aa) his close relation;
 - (bb) a company in which he has a substantial interest or in which his close relation has a substantial interest;
 - (cc) the subsidiary company of such company;
 - (dd) a holding company of such company;
 - (ee) a subsidiary company of such company's holding company;
 - (ff) a company in which such company or its subsidiary company, or its holding company has a substantial interest; or
 - (gg) an incorporated body other than a company in which such individual or his close relation has a substantial interest;
- (c) companies in each of which an individual or a company as the case may be, has either directly, indirectly or beneficially a substantial interest or significant management interest.

Provided, however that a direction given under this paragraph shall not require the reduction of the shares of a person held in a licensed specialised bank on the date of commencement of this Part of this Act, otherwise than on a requirement imposed on such bank under the provisions of paragraph (d) of subsection (1) of section 76K or on a shareholder under the provisions of paragraph (d) of subsection (1) of section 76N;

- (r) the margins to be maintained in respect of secured advances;
- (s) the terms and conditions relating to leasing agreements between the licensed specialised bank and a lessee;
- (t) restriction on the types of activities that may be carried on by licensed specialised banks.

(2) The maximum rates of interest fixed by any direction under paragraphs (c) and (d) of subsection (1) shall, if so determined by the Monetary Board, apply in respect of any deposit accepted or in respect of any loan, credit facility or any other financial accommodation granted, before the date of such direction:

Provided, however, that nothing in such direction shall—

- (a) apply to any interest accrued before the date of such direction in respect of any such deposit or loan, credit facility or other financial accommodation; or
- (b) require the reduction of the rate of interest payable on any deposit accepted, or loan credit facility, or financial accommodation granted before the date of such direction, if such reduction would constitute a breach of the contract or agreement relating to such deposit, loan, credit facility or other financial accommodation, as the case may be.

(3) For the purposes of this Part of this Act, the Monetary Board may give directions where necessary to any particular licensed specialised bank in particular on such matters as are specified in subsection (1).

(4) The Monetary Board may, in its discretion, pay interest on any cash balance maintained by a licensed specialised bank in the Central Bank in pursuance of a direction issued to it under paragraph (l) of subsection (1) at such rate as may be determined by the Monetary Board.

(5) A licensed specialised bank which fails to act in compliance with a direction issued under this section or acts in contravention of such direction shall be guilty of an offence under this Act.

Procedure where Director of Bank Supervision is of opinion that a licensed specialised bank is following unsound practices. [§ 31, 33 of 1995.]

76K. (1) Where the Monetary Board on a report made by the Director of Bank Supervision is of the opinion that a licensed specialised bank—

- (i) is following unsound or improper financial practices, detrimental to the interest of its depositors; or
- (ii) is likely to carry its business in a manner detrimental to the interests of its depositors; or
- (iii) has contravened or failed to comply with any provisions of this Part and of Part V of this Act, or any direction issued thereunder,

the Monetary Board may direct such bank—

- (a) to cease following any such practice or desist from any such contravention; or
- (b) to comply with the provisions of this Part and Part V of this Act; or
- (c) to take necessary action to correct the conditions resulting from such practice or contravention; or
- (d) to secure the reduction of the number of shares held in the company by any person.

(2) Any licensed specialised bank dissatisfied with an Order given under subsection (1) may, before the expiry of thirty days from the date of the issue of such Order, appeal in writing to the Monetary Board and the Board shall render it decision within fifteen days of receipt of such appeal.

(3) In order to comply with a direction issued to it under paragraph (d) of subsection (1), a licensed specialised bank may direct a person holding shares in such bank to reduce the number of shares held by such person in such bank, whether such shares were acquired by such person before or after the date of commencement of this Part of this Act, within such period as may be specified in such direction; and it shall be the duty of such person to comply with such direction.

(4) The licensed specialised bank or shareholder who fails to comply with a direction given to it or him under subsection (1) or subsection (3), as the case may be, shall be guilty of an offence

under this Act, and shall on conviction after summary trial by a Magistrate be liable to imprisonment for a term not exceeding eighteen months or to a fine not exceeding one thousand rupees or to both such imprisonment and fine.

76L. (1) The Director of Bank Supervision may at any time, examine or authorise any officer of his department to examine, the books and accounts of any licensed specialised bank.

(2) The report on any such examination shall be furnished to the Governor of the Central Bank by the Director of Bank Supervision as soon as such examination is completed. The Director of Bank Supervision may recover the costs of such examination from the licensed specialised bank.

(3) It shall be lawful for the Director of Bank Supervision or any officer authorised by him—

- (a) to administer, in accordance with the Oaths Ordinance, oaths or affirmations to any director, manager, secretary, employee or auditor of any licensed specialised bank;
- (b) to require any director, manager, secretary, employee or auditor of any licensed specialised bank to furnish all such information relating to the affairs of the bank, as the Director of Bank Supervision or any officer authorised by him may consider necessary to ascertain, for the purpose of this Part of this Act.
- (c) to require any director, manager, secretary, employee or auditor of any licensed specialised bank to produce for inspection any books, records or document relating to the affairs of the bank, in his possession or custody, which is likely to contain any such information;
- (d) in any case where there is evidence of mismanagement by a licensed specialised bank, to require any director, manager or secretary of such bank to submit the accounts of the bank for audit by an auditor authorised by the Director of Bank Supervision and to require the bank to furnish such information, or produce such books, records or documents and to pay such fees, as may be specified or authorised by the Director of Bank Supervision to such auditor.

Power of
Director of
Bank
Supervision to
examine
books and
accounts of a
licensed
specialised
bank.
[§ 31, 33 of
1995.]

(4) It shall be the duty of every director, manager, secretary, employee or any auditor of any licensed specialised bank to comply with any requirement imposed on him under this section and to afford to the Director of Bank Supervision or to any officer authorised by him or to any auditor authorised by him under paragraph (d) of subsection (3), access to all books and records of that licensed specialised bank including its cash balances, assets and liabilities whenever requested to do so by the Director of Bank Supervision.

(5) The Director of Bank Supervision may, where he considers it necessary to ascertain the true condition of the affairs of a licensed specialised bank and to ascertain whether such bank is carrying on business in a manner detrimental to its present or future depositors, by notice in writing require any person whom he considers to have information relating to the licensed specialised bank, to furnish such information to him or to any officer authorised by him or to any auditor authorised by him under paragraph (d) of subsection (3) or to attend in person before him or any officer authorised by him at such place and at such date and time as may be specified in such notice, so that the person may be examined on such matters as may be specified in such notice.

(6) For the purpose of ascertaining the true condition of the affairs of the licensed specialised bank, the Director of Bank Supervision may if he thinks it necessary for the purpose of an examination under subsection (5), also examine the business of any company which is or has at any relevant time been—

- (a) a holding company or subsidiary company of the licensed specialised bank under examination;
- (b) a subsidiary company of a holding company of the licensed specialised bank;
- (c) an associate company of that licensed specialised bank,

and may exercise in relation to any such company, any of the powers conferred on him by the preceding provisions of this section.

In this subsection “associate company” when used in relation to a licensed specialised bank, means a company in which the licensed specialised bank holds ordinary shares equivalent to twenty *per centum* or more but less than fifty *per centum* of the paid up share capital of the company.

(7) Any person who fails to comply with any requirement imposed on him by the Director of Bank Supervision under subsections (5) or (6) shall be guilty of an offence under this Act.

76M. (1) In any case where the Director of Bank Supervision is satisfied after examination by himself or by any officer authorised by him of the affairs of a licensed specialised bank, or upon information received from the bank, that it is insolvent or is likely to become unable to meet the demands of its depositors or that its continuance in business is likely to involve loss to its depositors or creditors, the Director of Bank Supervision shall make a report accordingly to the Governor of the Central Bank for submission to the Monetary Board; and if such Board, upon review of the facts and circumstances, is of opinion that action should be taken as hereinafter provided, the Monetary Board may make an order directing the bank forthwith to suspend business and direct the Director of Bank Supervision to take all measures as may be necessary to prevent the continuation of business by such bank. Any person who obstructs the Director of Bank Supervision from taking such measures to prevent the continuation of business by the company shall be guilty of an offence under this Act.

Winding-up or
dissolution.
[§ 31, 33 of
1995.]

(2) Notwithstanding anything in any other law, no action or proceeding may be instituted in any court for the purpose of securing the review or revocation of any order made in good faith under subsection (1) or in respect of any loss or damage incurred, or likely or alleged to be incurred by reason of such order.

(3) An order made by the Monetary Board under subsection (1) in respect of any licensed specialised bank shall cease to have effect upon the expiration of a period of sixty days from the date on which it is made and it shall be the duty of the Monetary Board as soon as practicable and in any event before the expiration of such period—

- (a) to make an order permitting the bank to resume business, either unconditionally or subject to such conditions as the Monetary Board may consider necessary in the public interest; or in the interest of the depositors and other creditors of the bank; or
- (b) to cancel the licence issued to such licensed specialised bank, and—
 - (i) where the licensed specialised bank is a company within the meaning of section 449 of the Companies Act, No. 17 of 1982, direct the Board of Directors of such company to apply for winding up of the company under the supervision of court in accordance with the provisions of Part IX (other than section 347) of such Companies Act;

- (ii) where the licensed specialised bank is a public corporation established by or under any written law, inform the Minister to whom such public corporation has been assigned to enable him to take all such necessary steps under the Finance Act, No. 38 of 1971, for dissolving such corporation; or
- (iii) where the licensed specialised bank is a company or other body incorporated outside Sri Lanka, its business affairs shall be wound up in accordance with the provisions contained in section 70 of this Act and the provisions of that section shall apply, *mutatis mutandis*, in respect to such winding up.

(4) The provisions of section 66 of this Act shall apply in relation to the priority of claims in a winding up proceedings of a company referred to in sub-paragraph (i) of paragraph (b) of subsection (3).

Power of
Director of
Bank
Supervision to
issue
directions in
respect of
connected
matters.
[§ 31, 33 of
1995.]

76N. (1) Notwithstanding the provisions of this Act or of any other written law to the contrary or the Memorandum and Articles of Association of a licensed specialised bank, the Monetary Board may, where an order has been made by the Board under paragraph (a) of subsection (3) of section 76M—

- (a) make such arrangements as it considers necessary for the amalgamation of the licensed specialised bank with another licensed specialised bank or any other institution, with the consent of such other licensed specialised bank or institution;
- (b) re-organise such licensed specialised bank by increasing its capital and arranging for new shareholders and by reconstituting its board of directors; or
- (c) re-construct the licensed specialised bank in any such manner as it considers to be in the interest of depositors, including the closing down of unviable sections of the business and re-organising the management;
- (d) direct any shareholder of any licensed specialised bank to divest or transfer the ownership of the shares owned by him, to a person nominated by the Monetary Board, on payment by such person of compensation determined as follows:—

- (i) where such shares are quoted, at the market value thereof; or
- (ii) where such shares are not quoted, at a price to be determined by a valuer nominated by the Monetary Board.

(2) A shareholder who fails to comply with a direction given to him under paragraph (d) of subsection (1) shall be guilty of an offence.

PART X

GENERAL

77. Every director, manager, officer or other person employed in the business of any licensed commercial bank or licensed specialised bank shall before entering upon his duties sign a declaration pledging himself to observe strict secrecy in respect of all transactions of the bank, its customers and the state of accounts of any person and all matters relating thereto, and shall by such declaration pledge himself not to reveal any other matters which may come to his knowledge in the discharge of his duties except—

Declaration of secrecy.
[§ 32, 33 of 1995.]

- (a) when required to do so—
 - (i) by a court of law;
 - (ii) by the person to whom such matters relate;
- (b) in the performance of his duties; and
- (c) in order to comply with any of the provisions of this Act or any other law.

78. No suit or prosecution shall lie against any member of the Monetary Board or any officer or servant of the Central Bank for any act which in good faith is done or purported to be done by the Monetary Board or by any officer or servant of the Central Bank under this Act; or against any director, officer or employee of any licensed commercial bank or licensed specialised bank for any act which in good faith is done or purported to be done by him under this Act or on the direction of the Monetary Board.

Protection for action taken under this Act or on the directions of the Monetary Board.
[§ 33, 33 of 1995.]

79. (1) Any person who contravenes the provisions of subsection (1) of section 2, subsection (5) of section 3, subsection (2) of section 15, subsection (2) of section 16, subsection (1) of section 17, subsection (2) of section 33, subsection (2) of section 41, subsections (9) and (10) of section 47 and section 77 of this Act or any rule or regulation made thereunder, and the licensed commercial bank and every officer or servant of such bank who knowingly and wilfully authorises or permits such default, shall be guilty of an

Offences.

offence under this Act and shall be liable, on conviction after summary trial before a magistrate to imprisonment of either description for a term not exceeding three years or to a fine not exceeding one million rupees or to both such imprisonment and such fine.

[§ 3, 39 of 1990.]

(1A) Any person who contravenes the provisions of section 34B shall be guilty of an offence under this Act and shall on conviction, after summary trial before a magistrate be liable to imprisonment of either description for a term not exceeding three years or to a fine not exceeding one million rupees or to both such imprisonment and fine, and where such offence is committed knowingly or wilfully or with reason to believe that it will cause damage or harm to any other person, to rigorous imprisonment for a term of not less than five years and not exceeding ten years and to a fine of one million rupees or twice the amount, in Sri Lanka currency, of the amount revealed or divulged to be in such account, whichever is higher.

[§ 3, 39 of 1990.]

(2) Every person who is guilty of an offence under this Act for which no punishment has been specified under subsection (1) or subsection (1A) shall after summary trial before a magistrate be liable to imprisonment for a term not exceeding eighteen months or to a fine not exceeding five hundred thousand rupees or to both such imprisonment and such fine.

Compounding of offences. [§ 34, 33 of 1995.]

79A. The Director of Bank Supervision may with the approval of the Monetary Board and having regard to the circumstances in which an offence under this Act was committed, compound such offence for a sum of money not exceeding two hundred and fifty thousand rupees.

(2) The compounding of any offence under this section shall have the effect of an acquittal of the accused.

Persons who fail to take reasonable steps &c., under the Act to be guilty of an offence. [§ 35, 33 of 1995.]

80. (1) Any person who, being a director, manager, officer or employee of a licensed commercial bank or licensed specialised bank, as the case may be—

- (a) fails to take all reasonable steps to secure compliance by the licensed commercial bank or licensed specialised bank, as the case may be, with the requirements of that Act; or
- (b) fails to comply with any direction issued by the Monetary Board under the provisions of this Act;
- (c) fails to take all reasonable steps to secure the correctness of any statement submitted under the provisions of this Act;

- (d) wilfully makes a false entry or causes such an entry to be made in any book or record or in any report, slip, document, or statement of the business, affairs, transactions, conditions, assets or liabilities or accounts of such licensed commercial bank or licensed specialised bank, as the case may be;
- (e) wilfully omits to make an entry in any book or record or in any report, slip, document, or statement of the business, affairs, transactions, conditions, assets or liabilities or accounts of such licensed commercial bank or licensed specialised bank, as the case may be, or wilfully causes any such entry to be omitted; or
- (f) wilfully alters, abstracts, conceals or destroys an entry in any book or record or in any report, slip, document, or statement of the business, affairs, transactions, conditions, assets or liabilities or accounts of such licensed commercial bank or licensed specialised bank, as the case may be, or wilfully causes any such entry to be altered, abstracted, concealed or destroyed;

shall be guilty of an offence under this Act, and shall, on conviction after summary trial by a magistrate be liable to a term of imprisonment for a term not exceeding eighteen months or to a fine not exceeding one thousand rupees or to both such imprisonment and fine.

(2) In any proceedings against a person under subsection (1) it shall be a defence to prove that he had reasonable grounds to believe that another person was charged with the duty of securing compliance with the requirements of this Act or with the duty of ensuring that these statements were accurate and that such person was competent and in a position to discharge that duty.

81. Where an offence under this Act is committed by a body corporate, every person, who at the time of the commission of the offence was a director or an officer of the body corporate, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge, or that he exercised all due diligence to avoid the commission of such offence.

Offence by a body corporate.

81A. Parliament shall have power by resolution passed in that behalf to amend Schedules II and IV to this Act.

Schedules II and IV to be amended by resolution. [§ 36, 33 of 1995.]

82. (1) The Minister may make regulations in respect of matters required by this Act to be prescribed or in respect of which regulations are authorised to be made.

Regulations.

(2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister shall, as soon as is convenient, after its publication in the Gazette, be brought before Parliament for approval.

(4) Every regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder. Notification of the date on which any regulation is deemed to be rescinded shall be published in the *Gazette*.

This Act to prevail over other laws. [§ 37, 33 of 1995.]

82A. In the event of any conflict or inconsistency between the provisions of this Act and the provisions of any other written law, the provisions of this Act shall prevail.

Licensed commercial bank deemed to be an approved credit agency.

83. A licensed commercial bank which is granted a licence in terms of section 5 shall be deemed to be—

- (i) an approved credit agency for purposes of the Trust Receipt Ordinance (Chapter 85) and the Mortgage Act (Chapter 89);
- (ii) an “approved bank” for purposes of the Finance Act No. 65 of 1961.

Pawn Brokers Ordinance not to apply. [§ 38, 33 of 1995.]

83A. The provisions of the Pawn Brokers Ordinance (Chapter 99) shall not apply to a licensed commercial bank and such bank may carry on the business of pawn brokers subject to such conditions as may be determined by the Monetary Board.

Commercial bank deemed to be an exempted company. [§ 38, 33 of 1995.]

***83B.** A company incorporated outside Sri Lanka which has been issued a licence under section 5 of this Act as a licensed commercial bank shall, with effect from the date of issue of such licence, be deemed to be an exempted company for the purposes of the Companies (Special Provisions) Law, No. 19 of 1974.

* Notwithstanding anything to the contrary in any written law, every interest in any property in Sri Lanka acquired by any licensed commercial bank referred to in section 83B of the principal enactment and all acts done by any such bank, on and after the date of issue of a licence under section 5 of the principal enactment in respect of that bank and prior to the date of commencement of section 83B of that enactment, shall be deemed for all purposes to have been validly acquired or validly done, as the case may be.

(See Section 46 of Act, No. 33 of 1995)

83C. (1) No person shall directly or indirectly initiate, offer, promote, advertise, conduct, finance, manage or direct a Scheme where a participant is required to contribute or pay money or monetary value and the benefits earned by the participant are largely dependent on—

- (a) increase in the number of participants in the Scheme; or
- (b) increase in the contributions made by the participants in the Scheme.

For the purpose of this subsection —

“money” means a monetary unit or a medium of exchange that is issued, established, authorized or adopted by Sri Lanka or a foreign government; and

“monetary value” means a medium of exchange whether or not redeemable in money, including in the form of stored value, payment instrument or credit to account and shall also include gold coin and gold bullion.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction after summary trial before a Magistrate to imprisonment of either description for a term not exceeding three years or to a fine not exceeding rupees one million or to both such imprisonment and fine. Where the offence is committed wilfully or knowingly, or with knowledge that the act will cause damage or harm to any other person, to rigorous imprisonment for a term not less than three years and not more than five years and to a fine of rupees two million or twice the aggregate amount in Sri Lanka currency revealed or divulged to have been received from the participants in the Scheme, whichever is higher.

(3) An officer of the Central Bank authorized in that behalf by the Governor, may, where information has been received that there has been or is likely to be a contravention of the provisions of subsection (1), conduct an investigation into such matter. In carrying out his duties under this section the authorised officer may,—

- (a) enter and search any premises where he has reason to believe that any acts relating to the commission of the offence specified in subsection (1) are being committed or any books or other records or documents relating to such acts are kept or maintained at such place;
- (b) call for further information or documents;
- (c) examine any documents, books or records, including records maintained in electronic form or computer generated transcripts;

Prohibition on
conduct of
certain
Schemes.
[§ 38, 2 of
2005.]

- (d) obtain copies of any documents, books or records or computer generated transcripts or any part thereof,

for the purpose of ascertaining whether any person has contravened or is likely to contravene the provisions of subsection (1).

(4) Any person who obstructs or resists the authorised officer in the exercise of his powers under this section, shall be guilty of an offence under this Act.

(5) Any person who fails to furnish any information within his knowledge, or any book or other record or documents or computer generated transcripts relating to such acts which are in his custody or possession, shall be guilty of an offence under this Act.

(6) In any prosecution for an offence under this section, the extracts from any books or other record or documents or computer generated transcripts relating to such acts shall be admissible in evidence and shall be *prima facie* evidence of the facts stated therein.

(7) The Central Bank shall provide any information, documents, books, records or computer generated transcripts obtained in the course of an investigation conducted under subsection (3) to the law enforcement authorities and shall co-operate with such authorities in the prosecution of a person for violation of the provisions of subsection (1).

(8) Upon an application made to it by an officer of the Police above the rank of an Inspector of Police and upon satisfying itself that a *prima facie* case exists against a person for the violation of the provisions of subsection (1), the High Court of the Western Province established under Article 154P of the Constitution holdern in Colombo shall issue an *ex parte* Order against the offender prohibiting him from engaging in any act specified in subsection (1).

(9) The High Court may, upon application made in that behalf by the person on whom an order under subsection (8) has been made or by any other person adversely affected by such order, and upon hearing all parties as it may consider necessary, make order revoking the order made by it under subsection (8), or permit any act prohibited under subsection (8) conditionally or unconditionally, if it is satisfied that such revocation or permission is necessary to avoid undue damage to legitimate business or the legitimate interests of the applicant.

PART XI

REPEAL

84. The Monetary Law Act (Chapter 422) is hereby amended by the repeal of sections 116A, 121A and 121B of that Act.

Amendment to the Monetary Law Act (Cap 422).

85. The Companies Act No. 17 of 1982 is hereby amended by the repeal of Part XIV of that Act.

Amendment to the Companies Act, No. 17 of 1982.

PART XII

INTERPRETATION

86. In this Act, unless the context otherwise requires—

Interpretation.

“accommodation” means any loan or overdraft or advance or any commitment to grant any loan or overdraft or advance, including a commitment to accept a contingent liability;

“banking business” means the business of receiving funds from the public through the acceptance of money deposits payable upon demand by cheque, draft, order or otherwise, and the use of such funds either in whole or in part for advances, investments or any other operation either authorised by law or by customary banking practices;

“capital funds” means

[§ 39, 33 of 1995.]

(a) in the case of a licensed commercial bank the equity capital and the reserve fund as provided for in section 20 and includes reserves other than funds reserved for specified purposes;

(b) in the case of a licensed specialised bank, the equity capital and the reserves of such bank other than funds reserved for a specified purpose;

“Central Bank” means the Central Bank of Sri Lanka established under the Monetary Law Act, (Chapter 422);

“close relation” means spouse or dependant child;

“company” means a company formed and registered under the Companies Act, No. 17 of 1982;

“concern” means a company or firm;

“designated foreign currency” means a foreign currency determined as a designated foreign currency by the Monetary Board;

“director” means—

(a) in relation to a licensed commercial bank incorporated in Sri Lanka, any person by whatever designation he may be called, carrying out or empowered to carry out substantially the same functions in relation to the direction of the licensed commercial bank as those carried out by a director of a company incorporated under the Companies Act;

(b) in relation to a licensed commercial bank incorporated outside Sri Lanka, any person by whatever designation he may be called carrying out or empowered to carry out substantially the same functions in relation to the direction of a licensed commercial bank as those carried out by a director of a company incorporated under the Companies Act and the person in Sri Lanka responsible for carrying out the functions of such licensed commercial bank who shall be designated the principal authorised agent or his alternate;

“Director of Bank Supervision” means the Head of the Department of Bank Supervision of the Central Bank established under the Monetary Law Act, (Chapter 422);

“domestic banking business” means any banking business that is not subject to Part IV of this Act, dealing with off-shore banking;

“head office of a commercial bank” means the place where the office of the Board of Directors of the commercial bank is located;

“Finance Company” means a company registered under the provisions of the Finance Companies Act, No. 78 of 1988, as a Finance Company;

“liquid assets” means—

(a) cash;

(b) balances with licensed commercial banks;

(c) money at call in Sri Lanka;

(d) treasury bills and securities issued or guaranteed by the Government of Sri Lanka which have a maturity not exceeding one year;

[§ 39, 33 of 1995.]

- (e) goods receipts;
- (f) import and export bills;
- (g) such other assets as may be determined by the Monetary Board;

“local authority” means any Municipal Council, Urban Council or any Development Council and includes any Authority created and established by or under any law to exercise, perform and discharge, powers, duties, and functions corresponding to or similar to the powers, duties and functions, exercised, performed and discharged by any such Council;

“Monetary Board” means the Monetary Board of the Central Bank of Sri Lanka established under the Monetary Law Act, (Chapter 422);

“non-resident” means an individual, company, body corporate or other judicial person or any unincorporated body not included in the definition of “resident”;

“place of business” means any branch or office of a licensed commercial bank in Sri Lanka including a mobile office open to the public;

“public corporation” means any corporation, board or other body which was or is established by or under any written law other than the Companies Ordinance, with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise;

“qualified auditor” means—

- (a) an individual who, being a member of the Institute of Chartered Accountants of Sri Lanka or of any other Institute established by law, possesses a certificate to practise as an Accountant, issued by the Council of such Institute;
- (b) a firm of Accountants each of the resident partners of which, being a member of the Institute of Chartered Accountants of Sri Lanka or of any other Institute established by law, possesses a certificate to practise as an Accountant, issued by the Council of such Institute;

“resident” means—

- (a) a citizen of Sri Lanka residing in Sri Lanka;
- (b) an individual who is not a citizen of Sri Lanka but who has been in Sri Lanka for at least six months and continues or intends to be in Sri Lanka;

- (c) a company incorporated in Sri Lanka, or a body corporate established under any written law or any firm, partnership or other organisation in Sri Lanka;
- (d) a branch, subsidiary, affiliate, extension, office or any other unit of a company or other judicial person established under the laws of any foreign country, operating in Sri Lanka;

“ substantial interest ” —

- (a) in relation to a company, means the holding of a beneficial interest by another company or an individual or his close relation, whether singly or taken together, in the shares thereof the paid up value of which exceeds rupees one million or ten *per centum* of the paid up capital of the company, whichever is less, or the existence of a guarantee or indemnity given by an individual or his close relation or by another company on behalf of such company;
- (b) in relation to a firm, means the beneficial interest held therein by an individual or his close relation, whether singly or taken together, which represents more than ten *per centum* of the total capital subscribed by all partners of the said firm or the existence of a guarantee or indemnity given by an individual or his or her spouse or parent or child on behalf of such firm.

SCHEDULE I [Section 2 (4)]

1. Algemene Bank Nederland N.V.
2. American Express Bank Ltd.
3. Amsterdam-Rotterdam Bank N.V.
4. Bank of Ceylon
5. Bank of Credit & Commerce International (Overseas) Ltd.
6. Bank of Oman Ltd.
7. Banque Indosuez
8. Citibank N.A.
9. Commercial Bank of Ceylon Ltd.
10. Deutsche Bank A.G
11. Grindyals Bank Plc.
12. Habib Bank A G Zurich
13. Habib Bank Ltd.
14. Hatton National Bank Ltd.
15. Hongkong & Shanghai Banking Corporation
16. Indian Bank
17. Indian Overseas Bank
18. Middle East Bank Ltd.

20. People's Bank
21. Standard Chartered bank
22. State Bank of India
23. Union Bank of the Middle East Ltd.
24. Sampath Bank Ltd.
25. Seylan Trust Bank Ltd.
26. Any Bank established under the provisions of the Regional Rural Development Bank Act, No. 15 of 1985.

SCHEDULE II [Section 3 (4)]

- (a) opening, maintaining and managing deposit, savings and other similar account;
- (b) the borrowing, raising or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debenture certificates, scripts and other instruments, and securities whether transferable or negotiable or not; granting and issuing of letters of credit, travellers cheques and circular notes; the buying, selling and dealing in billion, specie; the buying and selling of foreign exchange including foreign bank notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scripts or other forms of securities on behalf of constituents or others; the negotiating of loans and advances; the receiving of all kinds of bonds, scripts or valuables on deposits, or for safe custody or otherwise and the carrying on of the business of safe deposits, the collecting and transmitting of money and securities;
- (c) the carrying on of an agency function for and on behalf of the Government or local authorities or for or on behalf of any person in respect of any business related to the provision of financial services, or to act as the managing agent for any financial institution; [§ 40, 33 of 1995.]
- (d) contracting for public and private loans and negotiating and issuing the same;
- (e) the promoting, effecting, insuring, guaranteeing, under writing, participating in managing and carrying out of any issue, public or private, of state, municipal or other loans or of shares, stock debentures or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue;
- (f) carrying on and transacting every kind of guarantee and indemnity business;
- (g) promoting or financing or assisting in promoting or financing any business undertaking or industry either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise;

- (h) acquisition by purchase, lease, exchange, hire or otherwise of any property immovable or movable and any rights or privileges which the company may think necessary or convenient to acquire or the acquisition of which in the opinion of the company is likely to facilitate the realisation of any securities held by the company or to prevent or diminish any apprehended loss or liability;
- (i) managing, selling and realising all property movable and immovable which may come into the possession of the company in satisfaction or part satisfaction of its claims;
- (j) acquiring, holding and generally dealing with any property and any right, title or interest in any property movable or immovable which may form the security or part of the security for any loans or advances or which may be connected with any such security;
- (k) undertaking and executing trusts including functioning as a trustee of any Unit Trust;
- (l) undertaking the administration of estates as executors, trustees or otherwise;
- (m) taking or otherwise acquiring and holding shares in any other company;
- (n) establishing and supporting or aiding in the establishment and support of associations, institutions, funds, trustees and conveniences calculated to benefit employees or ex-employees of the company or the dependants or connections of such persons, granting pensions and allowances and making payments towards insurance, subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful objects;
- (o) the acquisition, construction, maintenance and alterations of any building or works necessary or convenient for the purposes of the company.
- (p) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or part of the property and rights of the company;
- (q) acquiring and undertaking the whole or any part of the business of any person or company when such business is of a nature enumerated or described in this Act;
- (r) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company;
- (s) the provision of management consultancy services and other technical support services;
- (t) providing for the training in banking, accounting, valuation, project and credit appraisal and allied subjects;
- (u) engaging in the business of hire-purchase services, factoring, leasing and warehousing;
- (v) providing for medium and long term credit for development;
- (w) the business of pawn broking;
- (x) entering into arrangements for a joint venture with any person or company for conducting a financial services enterprise or conducting

[§ 40, 33 of 1995.]

[§ 40, 33 of 1995.]

[§ 40, 33 of 1995.]

[§ 40, 33 of 1995.]

any enterprise providing support services for the conduct of its business;

- (y) any other business which the Monetary Board may authorise a licensed commercial bank to engage in. [§ 40, 33 of 1995.]

SCHEDULE III [Section 76A (3)]

1. National Development Bank of Sri Lanka established by the National Development Bank of Sri Lanka Act, No. 2 of 1979 [§ 41, 33 of 1995.]
2. Development Finance Corporation established by the Development Finance Corporations Act, No. 35 of 1955.
3. State Mortgage and Investment Bank established by State Mortgage and Investment Bank Act, No. 13 of 1975.
4. National Savings Bank established by the National Savings Bank Act, No. 30 of 1971.
5. Housing Development Finance Corporation (Bank) of Sri Lanka established by the Housing Development Finance Corporation of Sri Lanka Act, No. 7 of 1997. [§ 17, 15 of 2003.]

SCHEDULE IV [Section 76C (4)]

- [§ 41, 33 of 1995.]
- (a) accepting time and savings deposits and opening, maintaining and managing deposit, savings and other similar accounts excluding however the carrying on of banking business as defined in the Act.
 - (b) granting loans and advances or participating with other financial institutions in granting loans or advances or participating with other financial institutions in granting loans or advances to any enterprise engaged or about to engage in industry, agriculture or commerce or to any other enterprise;
 - (c) granting loans and advances by way of refinance of any loans or advances granted by financial institutions to industrial agricultural commercial and other enterprises;
 - (d) granting loans or advances—
 - (i) for the purchase or lease of any land for the construction of a dwelling house;
 - (ii) for the construction, repairs, renovation or extension of a dwelling house;
 - (iii) for the purchase or lease of a dwelling house;
 - (iv) for any purpose incidental, accessory or ancillary to any purpose mentioned in (i), (ii) and (iii) above; or
 - (v) for the liquidation of any debt already incurred for any purpose mentioned in (i), (ii), (iii) and (iv) above;
 - (e) providing short term loans and advances to any industrial, agricultural, commercial or other enterprise and financing or lending in the institutional money market;

- (f) arranging, guaranteeing, managing and syndicating loans either in rupees or foreign currency for any public or private company, corporation or association or for the Government or any local government authority whether from its own resources or from other banks and financial institutions;
- (g) participating in loans, equities, underwriting arrangements and guarantees with other financial institutions;
- (h) undertaking wholesale lending to financial institutions;
- (i) promoting and assisting in the promotion, establishment, expansion and modernisation of any industrial, agricultural, commercial or other enterprise including participating in raising capital both internal and external for such enterprise;
- (j) guaranteeing loans raised or to be raised by industrial, agricultural, commercial and other enterprises from financial institutions or participating with other financial institutions in guaranteeing such loans;
- (k) guaranteeing deferred payments due from any industrial, agricultural, commercial and other enterprises;
- (l) guaranteeing obligations of financial institutions arising out of the underwriting of capital issues of industrial, agricultural, commercial and other enterprises;
- (m) participating in the equity of industrial, agricultural, commercial and other enterprises and subscribing to, or purchasing or underwriting, the issue of stocks, shares, bonds or debentures of any such enterprises, and selling and dealing in such stocks, stores, bonds or debentures;
- (n) converting a part or whole of the bank's loans to industrial, agricultural, commercial and other enterprises and its subscriptions to bonds or debentures issued by any such enterprise into equity capital;
- (o) mobilising and promoting savings and for that purpose issuing and dealing in savings certificates and other bonds, certificates and instruments;
- (p) accepting, discounting, rediscounting, buying selling and dealing in bills of exchange promissory notes, coupons, drafts, debentures, certificates scrip and other instruments and securities whether transferable or negotiable or not, of industrial, agricultural, commercial and other enterprises;
- (q) promoting and introducing specialised financial products, services, packages and instruments;
- (r) providing money broking and margin trading facilities;
- (s) assisting in the development of capital and money markets;
- (t) undertaking trust functions including acting as managers of Unit Trust;
- (u) borrowing or accepting deposits from the Government or of agencies or institutions acting on behalf of the Government;

- (v) acting as agents for and administering the funds of any statutory body, corporation or other institution;
- (w) managing, supervising, controlling or participating in managing, supervising or controlling any industrial, agricultural, commercial or other undertaking of a customer for the purpose of protecting the interest of the bank in any loan granted by the bank;
- (x) buying existing debts of organisations on a commercial basis and providing, interest swap facilities and interest arbitrage facilities;
- (y) providing such services as technical, financial, management or administrative advice and assistance to industrial, agricultural, commercial and other enterprises;
- (z) assisting industrial, agricultural, commercial and other enterprises in financial restructuring, amalgamations, reconstructions, takeovers and mergers.
- (aa) undertaking portfolio management;
- (bb) undertaking development projects, including pilot projects, in industry, agriculture, commerce and other fields;
- (cc) buying, selling and dealing in bullion and specie and engaging in operations in exchange;
- (dd) granting and issuing letters of credit and circular notes;
- (ee) receiving, in consideration of the functions the banks may be performing, commissions, brokerage interest, remuneration or fees;
- (ff) undertaking rehabilitation of sick industries;
- (gg) setting up or assisting the setting up of the necessary organisation for selling or marketing any product of any agricultural or industrial undertaking;
- (hh) engaging in the construction of warehouses, godowns, stores and buildings required for agricultural, industrial and commercial activities;
- (ii) acquiring or purchasing any movable or immovable property, or any industrial, agricultural, commercial or other enterprise, and managing or arranging for the management of such property or enterprise and selling or otherwise disposing of such property or enterprise;
- (jj) purchasing, leasing, letting or hire, selling outright or selling on a hire purchase basis warehouses, godowns, stores and buildings, machinery, equipment and other goods;
- (kk) investing moneys of the bank;
- (ll) conducting surveys, studies and seminars in the field of economics, finance, development, management and other related fields;
- (mm) conducting lotteries and prize competitions;
- (nn) any other business which the Monetary Board of the Central Bank of Sri Lanka may authorise a specialised licensed Bank to engage in.

*** Notwithstanding a conflict between the provisions of the principal enactment as amended by this Act, No. 33 of 1995 and the provisions of any written law by or under which any authority which is required to obtain a licence under such principal enactment was established all acts, decisions or things commenced under such written law and pending and incomplete on the date of the coming into operation of this Act, No. 33 of 1995 (other than section 19) may be carried on and completed as if there had been no such amendment to the principal enactment. [Section 43 (1) of Act, No. 33 of 1995].