



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**BANKING (AMENDMENT)
ACT, No. 2 OF 2005**

[Certified on 10th February, 2005]

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Banking (Amendment) Act, No. 2 of 2005

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L.D. — O. 30/2000.

AN ACT TO AMEND THE BANKING ACT, NO. 30 OF 1988

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

1. This Act may be cited as the Banking (Amendment) Act, No. 2 of 2005. Short title.

2. Section 2 of the Banking Act, No. 30 of 1988 (hereinafter referred to as the "principal enactment") is hereby amended in subsection (3) of that section by the substitution for the words "provisions of this Act" of the words "provisions of this Part" . Amendment of section 2 of Act, No. 30 of 1988.

3. Section 3 of the principal enactment is hereby amended by the repeal of subsections (2), (3), (4) and (5) of that section and the substitution therefor of the following subsections:— Amendment of section 3 of the principal enactment.
 - (2) Every application for a licence shall be accompanied by —
 - (a) in the case of a company to be formed for the purpose of carrying on banking business—
 - (i) a copy of the draft Memorandum of Association and the Articles of Association of the company to be formed or the draft Constitution or any other document associated with the formation of such company; and
 - (ii) a statement containing the names, addresses, occupations and qualifications of the persons proposed as Directors, and if a Chief Executive Officer has been identified, of such officer;

- (b) in the case of a company formed before the date of the application and which intends to commence banking business,—
 - (i) a copy of the Memorandum of Association and the Articles of Association of such company or the Constitution or any other document associated with the formation of such company, together with the proposed amendments, if any, to such documents; and
 - (ii) a statement containing the names, addresses, occupations and qualifications of the Directors of the company and any Directors proposed to be nominated or appointed and of the Chief Executive Officer of such company;
 - (iii) a copy of the audited balance sheet and profit and loss account of the company for the preceding three years;
- (c) in the case of an application by a company or body corporate incorporated outside Sri Lanka, such company shall in addition to the documents specified in paragraph (b) submit—
 - (i) a written undertaking supported by a resolution of the Board of Directors of such company or body corporate, 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 incurred in or in connection with, its business in Sri Lanka; and
 - (ii) a report containing such information as may be determined by the Monetary Board, from the regulatory authority of the country in which such company or body corporate is incorporated.

(3) On receipt of an application under subsection (1) by the Monetary Board, the Director of Bank Supervision may, where such Director considers it necessary, require the applicant to furnish to the Monetary Board such other documents, information or other particulars, in order to determine whether a licence should be issued or not.

(4) Where on consideration of the documents, information and particulars submitted to the Monetary Board under subsections (1), (2) and (3) and on such further investigations as it may consider necessary, the Monetary Board is satisfied that the application may be approved in principle, it may issue a Letter of Provisional Approval to the applicant. On receipt of the Letter of Provisional Approval, the applicant shall take all preliminary measures as may be required in terms of such Letter, prior to the issue of a licence under section 5, and specified in such Letter.

(5) The Letter of Provisional Approval issued under subsection (4) shall be valid for the period stated in such Letter. Such period shall however not exceed twelve months from the date of issue of such Letter and the period of validity may only be extended by the Monetary Board in writing, in exceptional circumstances.

(6) The Monetary Board shall cause a copy of each Letter of Provisional Approval issued under subsection (4) and of any communication extending the period of validity of such Letter under subsection (5), or any withdrawal in terms of subsection (7), to be sent to the Registrar of Companies.

(7) The issue of Letter of Provisional Approval under subsection (4) shall not bind the Monetary Board to issue a licence under section 5 to the company or the company to be formed for the purpose of carrying on banking business (hereinafter referred to as a "proposed company"), in respect of which the Letter of Provisional Approval has been issued, and the Monetary Board may, on the basis of investigations

carried out by it under subsection (10) withdraw such Letter or refrain from issuing a licence under section 5 on any one or more of the following grounds :—

- (a) that the Monetary Board is not satisfied with the suitability of the company or the proposed company to be issued, with a licence;
- (b) that the company or proposed company has not complied with the conditions stipulated in the Letter of Provisional Approval have not been complied with;
- (c) that the company or proposed company has not complied with the requirements under this Act for the issue of a licence ;
- (d) that any information contained in the application for a licence or any information submitted in connection therewith by the company or proposed company is found to be false or incorrect; or
- (e) that there has been, in the opinion of the Monetary Board, a sufficiently significant change in the economic and the banking environment of the country that warrants the suspension of the issue of licence under section 5:

Provided however, the Monetary Board shall before withdrawing a Letter of Provisional Approval issued in terms of the provisions of this subsection to an applicant in terms of subsection (4), or if a decision is taken by the Monetary Board under this subsection to refrain from issuing a licence, give sufficient notice in writing to the applicant stating the grounds for such withdrawal or decision to refrain from issuing a licence and shall afford him an opportunity of being heard.

(8) A company or a proposed company in respect of which a Letter of Provisional Approval has been issued under subsection (4) shall not commence banking business before the issue of a licence under section 5. Every advertisement,

prospectus, notice or other publication issued by the company or proposed company before the issue of the licence shall be required to specify that it has not been issued a licence to carry on banking business under the Act.

(9) A licence shall not be issued under section 5 to a company formed and incorporated under the Companies Act, No.17 of 1982 unless —

- (a) the company is a public company;
- (b) the Memorandum of Association of the company sets out as its primary object, the carrying on of banking business as defined in this Act; and
- (c) the Memorandum of Association of the Company restricts the other forms of business the company may carry on, if any, to any or all of the forms of business specified in Schedule II to this Act.

(10) (a) The Monetary Board may, at any time prior to the issue of a licence under section 5, conduct such investigations as it may deem necessary to satisfy itself as to the suitability of the company or proposed company to be issued with a licence, having regard to the interests of the national economy, including the banking needs of Sri Lanka.

(b) At an investigation conducted under paragraph (a) the Monetary Board may require the applicant to satisfy the Board on any matter relevant to the suitability of the company or the proposed company and in particular —

- (i) the validity and acceptability of the documents and particulars submitted by the applicant;
- (ii) the financial status and history of the company or the proposed company;

- (iii) the financial standing, experience and suitability of the Directors, Chief Executive Officer and such other officers of the company performing executive functions as may be determined by the Monetary Board or the persons proposed to be appointed to such positions in the proposed company, as the case may be;
- (iv) of the adequacy of the capital of the company or based on the information furnished by the applicant on behalf of the proposed company, the ability of the proposed company to raise adequate capital;
- (v) of the ability of the company or the proposed company to cover all obligations and liabilities incurred in the conduct of business in Sri Lanka and to comply with the provisions of the Act;
- (vi) the applicant's compliance with the provisions of the Act or any directions given under the Act in relation to the application for a licence under the Act.

(11) Any person who submits information or particulars in an application for a licence or in any other document submitted in connection therewith or in the course of any inquiry or investigation conducted to ascertain the suitability of the company or the proposed company to be issued with a licence under this Act, which to the knowledge of the person is false or misleading in any material particular, shall be guilty of an offence under this Act.”.

Replacement of section 5 of the principal enactment.

4. Section 5 of the principal enactment is hereby repealed and the following section substituted therefor :—

“Issue of licence.

5. (1) Where the Monetary Board is satisfied that a licence may be issued to a company or a proposed company to carry on banking business, it may, with the approval of

the Minister, issue a licence to the company or proposed company to carry on banking business in Sri Lanka subject to such terms and conditions as may be imposed by the Monetary Board.

(2) The licence issued under subsection (1) shall specify —

- (a) whether it authorizes the company to carry on domestic banking business or off-shore banking business or both such businesses;
- (b) the place or places or the area within which such banking business may be carried on; and
- (c) the terms and conditions subject to which such licence is issued.

(3) Every licensed commercial bank shall display a copy of the licence issued to it under subsection (1) in a conspicuous place at its principal place of business in Sri Lanka and each of its branches.”.

5. Section 9 of the principal enactment is hereby repealed and the following section substituted therefor:—

Replacement of section 9 of the principal enactment.

“Notice of cancellation of licence issued to a licensed commercial bank.

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 any debts incurred by it, on such debts becoming due; or
- (c) had a petition or action for relief filed against such licensed commercial bank,

and has had appointed in respect of such bank under any bankruptcy law or any other law which provides for relief of debtors or which relates to debtors, a liquidator or receiver; or

- (d) ceased to carry on banking business; or
- (e) contravened any provisions of this Act or any direction, order or other requirement imposed under the Act; or
- (f) furnished false, misleading or inaccurate information or documents to the Monetary Board or in the case of a proposed company the applicant for the licence has furnished such information or documents in connection with its application for the licence; or
- (g) carried on, or is carrying on, its business in a manner likely to be detrimental to the interests of its depositors,

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

(2) A licensed commercial bank may tender objections in writing to the Monetary Board against the notice of intended cancellation under subsection (1), within fourteen 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) The Monetary Board may, within thirty days from the last date for tendering objections under subsection (2), after considering the objections if any, tendered to it under that

subsection and after hearing the licensed commercial bank in support of its objections, either withdraw the notice given under subsection (1) with or without conditions or cancel the licence issued to the licensed commercial bank, and shall notify the bank in writing accordingly.

(4) A licensed commercial bank aggrieved by a decision of the Monetary Board made under subsection (3) to impose conditions on the withdrawal of the notice given under subsection (1) or to cancel its licence, may within fourteen days of the date of receipt of the notification given under that subsection, appeal against such decision to the Court of Appeal.

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

(6) The Court of Appeal may on appeal made to it under subsection (4) confirm, reverse, modify or set aside the decision against which the appeal is made and may make any other order as the interests of justice may require.

(7) Without prejudice to subsection (1), the Monetary Board may, where it is satisfied that any licensed commercial bank incorporated outside Sri Lanka has had its licence or authority to operate in the country in which such bank was incorporated cancelled or withdrawn by the appropriate authority or regulatory body of that country, cancel the licence issued to the bank under this Part and shall notify the bank accordingly.

(8) (a) A cancellation of a licence of a licensed commercial bank under subsection (3) shall take effect—

- (i) where the bank does not prefer an appeal against such cancellation under subsection (4), on the expiration of the period for tendering such appeal; or
- (ii) where an appeal has been preferred against such cancellation, on the confirmation of the decision of the Monetary Board by the Court of Appeal or the Supreme Court, as the case may be;

(b) A cancellation of a licence of a licensed commercial bank under subsection (7), shall take effect from the date of the receipt by the bank of the notification under that subsection.

(9) Where a cancellation of a licence of a licensed commercial bank has taken effect under paragraph (a) or paragraph (b) of subsection (8), the Monetary Board shall, as soon as possible publish once in the *Gazette* in Sinhala, Tamil and English languages and once in a Sinhala, Tamil and English daily newspaper circulating in Sri Lanka, a notification of the cancellation of such licence.”.

Amendment of section 11 of the principal enactment.

6. Section 11 of the principal enactment is hereby amended by the repeal of subsections (2), (3) and (4) of that section and the substitution therefor of the following subsections :—

“(2) Where the cancellation of a licence of a licensed commercial bank incorporated or established within Sri Lanka by or under any written law for the time being in force, has taken effect under paragraph (a) of subsection

(8) of section 9, proceedings for the compulsory winding-up of the licensed commercial bank shall commence in accordance with the provisions of Part VIII of this Act.

(3) Where the cancellation of a licence of a licensed commercial bank incorporated outside Sri Lanka has taken effect under paragraph (a) or paragraph (b) of subsection (8) of section 9, the Director of Bank Supervision shall forthwith inform the head office of such bank to honour the written undertaking submitted under paragraph (a) of subsection (2) of section 3 and take such steps as may be necessary to enforce such undertaking and to close down the business of the bank in and with respect to Sri Lanka, in accordance with the provisions of Part VIII of this Act.

(4) Notwithstanding the provisions of section 9 or any other written law for the time being in force, the Monetary Board may, in any of the circumstances referred to in paragraphs (a) to (g) of subsection (1) of section 9 without proceeding to cancel the licence issued to a licensed commercial bank in terms of section 9, make order which may include any one or more of the following :—

- (a) directing the licensed commercial bank to suspend its business in Sri Lanka, and in the case of a licensed commercial bank incorporated or established within Sri Lanka, to immediately suspend its business outside Sri Lanka for such period as is specified in such order subject to such conditions as the Monetary Board may stipulate:

Provided that prior to such suspension, written notice shall be served on the licensed commercial bank, of the decision of the Monetary Board along with its reasons therefor, to suspend the business of such bank. The bank shall also be afforded an opportunity of being heard on such matter either orally or in writing, within a period of time which shall not be less than three working days as shall be specified in such notice;

- (b) requiring the licensed commercial bank which has been required to suspend business under paragraph (a) to hand over all books, records and assets of that licensed commercial bank to the Director of Bank Supervision;
- (c) requiring the licensed commercial bank to forthwith take or refrain from taking any action or to do or refrain from doing any act or thing as the Board may consider necessary in relation to the business of such bank;
- (d) appointing a fit and proper person to advise such bank with regard to the proper conduct of the business of such bank;
- (e) restraining any director, manager or controller of the licensed commercial bank from carrying out any function in or in relation to the bank and appointing a fit and proper person to carry out such functions, in or in relation to, such bank;
- (f) for the assumption of control of, and for the carrying on of the business of such bank by the Monetary Board or for delegating the control so assumed to another person in order to carry on the business of the bank;
- (g) for the re-organization of such bank, by arranging for the increase of its capital or reconstituting its board of directors or both such measures;
- (h) providing for such arrangements as are necessary for the amalgamation of such bank with any other licensed commercial bank that consents to such amalgamation; and
- (i) vesting the business of the licensed commercial bank in another licensed commercial bank which consents to such vesting and for the provisions

of Part VII A to apply to such vesting, as if the licensed commercial bank whose business is vested is a defaulting bank and the licensed commercial bank in which the business is vested, is an acquiring bank:

Provided, however that any measures taken under this section shall not preclude the Monetary Board from subsequently proceeding under section 9 where the Monetary Board is of the opinion that it is in the interest of the banking system to do so.

(5) Notice in writing of any measures taken under subsection (4) shall be given to the licensed commercial bank and to any director, manager or controller referred to in paragraph (e) of subsection (4) and such measures shall become effective from the date of the receipt of such notification or such other date as may be specified in the notice.”.

7. Section 12 of the principal enactment is hereby amended as follows :—

Amendment of section 12 of the principal enactment.

(1) in subsection (1) of that section —

(i) by the repeal of paragraph (c) thereof, and the substitution therefor of the following paragraph:—

"(c) for a licensed commercial bank to acquire the business or part of the business of another licensed commercial bank or a licensed specialised bank or of any branch of another licensed commercial bank or of a branch of a licensed specialised bank;"

(ii) by the repeal of paragraph (d) thereof and the re-lettering of paragraph (e) as paragraph (d) thereof ;

(iii) by the addition, immediately after the relettered paragraph (d) of that subsection, of the following paragraph:—

“(e) for the merger or consolidation of a licensed commercial bank or a branch thereof with any other licensed commercial bank or a licensed specialised bank.”;

(2) by the insertion immediately after subsection (1) thereof, of the following new subsections:—

“(1A). Application for approval of an acquisition under paragraph (c) of subsection (1) or a merger or consolidation under paragraph (e) of subsection (1) shall include —

- (a) a statement of the nature of the acquisition or merger or consolidation, as the case may be;
- (b) a copy of the proposed agreement, if any, under which the acquisition or merger or consolidation, as the case may be, is to be effected; and
- (c) such other particulars and documents as may be prescribed.

(1B) An approval under paragraph (c) of subsection (1), or paragraph (e) of subsection (1), or subsection (1c) shall not be granted, unless the Monetary Board is satisfied that such acquisition or merger or consolidation is in the interest of promotion of a safe, sound and stable banking system, and the fair competition prevailing in the banking industry. When granting approval for an acquisition under subsection (1c), to an individual or a corporate body, the Monetary Board shall, in determining whether such individual or the directors of such corporate body as the case may be, are fit and proper persons, have regard to the criteria set out in subsection (2) of section 42.

(1c)(a) An individual, partnership or corporate body shall not, either directly or indirectly or through a nominee or acting in concert with any other individual, partnership or corporate body, acquire a material interest in a licensed commercial bank incorporated or established within Sri Lanka by or under any written law without the prior written approval of the Monetary Board given with the concurrence of the Minister.

(b) Without prejudice to the generality of subsection (2) of this section, approval under paragraph (a) of this subsection may be granted subject to terms and conditions as the Monetary Board may deem fit.

(c) A licensed commercial bank shall not enter in the register of members of the bank as the holder of shares of the bank, the name of any individual, partnership, corporate body, or nominee who or which has contravened the provisions of paragraph (a).

For the purpose of this subsection—

“acting in concert” means acting pursuant to an understanding (whether formal or informal) to actively co-operate in acquiring a material interest in a licensed commercial bank so as to obtain or consolidate, control of that bank.

“material interest” means the holding of over ten *per centum* of the issued capital of a licensed commercial bank carrying voting rights.”.

8. Section 14 of the principal enactment is hereby amended by the repeal of subsection (1) thereof, and the substitution, therefor of the following subsection :—

Amendment of section 14 of the principal enactment.

“(1) Where the Governor of the Central Bank has reasonable grounds to believe that any persons is carrying on banking business in contravention of the provisions of this Act, the Governor may direct the Director of Bank Supervision or any other officer of the Central Bank to examine the books, accounts and records of such person for the purpose of ascertaining whether such person has contravened, or is contravening, any of the provisions of this Act.”.

Amendment of section 16 of the principal enactment.

9. Section 16 of the principal enactment is hereby amended as follows :—

- (1) by the repeal of subsection (1) of that section and the substitution therefor of the following subsection:—

"(1) No company other than a licensed commercial bank or a licensed specialised 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 or a licensed specialized bank shall carry on business in Sri Lanka unless it uses as part of its name at least one of such words :

Provided however, a licensed commercial bank or a licensed specialised bank incorporated outside Sri Lanka which does not have the word “bank”, “banker” or “banking” in any language in its name may carry on business in Sri Lanka notwithstanding the omission of these words in its name.”;

- (2) by the repeal of subsection (3) of that section and the substitution therefor of the following subsection :—

“(3) Nothing in this section shall apply—

- (a) to a subsidiary of a licensed commercial bank or of a licensed specialised bank established in accordance with the provisions of this Act or any directions given hereunder;
- (b) to any association of licensed commercial banks or licensed specialised banks formed for the protection of their interests;

- (c) to a trade union registered under the Trade Union 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 or of a licensed specialised bank;
- (d) to an agency, institution, person or body of persons which is a banking institution in terms of paragraph (b) or paragraph (d) of the definition of the expression “banking institution” in section 127 of the Monetary Law Act;
- (e) to the use of the words in the manner restricted under subsection (1) for the purpose of incorporating or changing the name of a company during the period of validity of a letter of Provisional Approval issued under section 3 or section 76B;
- (f) to the representative office of a commercial bank incorporated or established outside Sri Lanka.”.

10. Section 17A of the principal enactment is hereby amended in subsection (2) of that section as follows :—

Amendment of section 17A of the principal enactment.

- (1) in paragraph (d) of that section, by the substitution for the words “financial sectors.” of the words “financial sectors;”; and
- (2) by the insertion immediately after paragraph (d) of that section, of the following new paragraph :—

“(e) investments authorized by the Monetary Board.”.

Amendment of section 21 of the principal enactment.

11. Section 21 of the principal enactment is hereby amended in subsection (1) of that section, by the substitution for the words “and to the shareholders” wherever they occur in that subsection, of the words “and to the share holders, to the holders of non-redeemable debt instruments and its liabilities on repurchase agreements in relation to treasury bills or securities issued or guaranteed by the Government of Sri Lanka, or on such other assets as determined by the Monetary Board.”.

Amendment of section 23 of the principal enactment.

12. Section 23 of the principal enactment is hereby amended by the substitution for the words “No off-shore banking business” of the words “Unless authorized under section 76D, no off-shore banking business”.

Amendment of section 25 of the principal enactment.

13. Section 25 of the principal enactment is hereby amended by the repeal of paragraph (a) of that section, and substitution therefor of the following paragraph :—

“(a) accept savings, time and demand deposits from any non-resident in any designated foreign currency provided that, in the case of time deposits the value of such deposits shall not be less than ten thousand United States dollars or its equivalent in any other designated foreign currency or such higher amount as may be determined by the Monetary Board : and provided that funds in any account maintained in an off shore unit shall not be withdrawable by cheque;”.

Amendment of section 36 of the principal enactment.

14. Section 36 of the principal enactment is hereby amended in subsection (2) of that section, by the repeal of paragraph (f) thereof and substitution therefor of the following paragraph :—

“(f) cash flow statement;”.

15. Section 38 of the principal enactment is hereby repealed and the following section substituted therefor :—

Replacement of section 38 of the principal enactment.

“Publication of balance sheet and profit and loss account.

38. (1) Every licensed commercial bank incorporated or established within Sri Lanka by or under any written law shall transmit within five months after the close of its financial year to the Director of Bank Supervision, and publish at least once within that period in a Sinhala, Tamil and English daily newspaper circulating in Sri Lanka, 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 and outside Sri Lanka including its off-shore banking business and exhibit them in a conspicuous place at each of its places of business until the balance sheet and profit and loss account for the succeeding financial year are prepared and exhibited.

(2) Every licensed commercial bank incorporated outside Sri Lanka shall transmit to the Director of Bank Supervision, within five months after the close of its 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 including its off-shore banking business and shall publish such balance sheet and its profit and loss account at least once in a Sinhala, Tamil and English daily newspaper circulating in Sri Lanka within such time as may be required by the Director and shall exhibit them in a conspicuous place at each of its places of business until the balance sheet and profit and loss account for the succeeding financial year are prepared and exhibited.

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

(4) Every licensed commercial bank shall within six months of the date of closure of its financial year, exhibit in a conspicuous place in each of its places of business 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 subsidiary companies and associate companies until the consolidated balance sheet for the succeeding financial year is prepared and exhibited.

(5) The provisions of subsection (3) and subsection (4) of section 17 and the provisions of paragraph (c) of subsection (1) of section 46, as the case may be, shall apply in determining for the purpose of subsection (4) of this section, whether a company is a subsidiary company or an associate company of a licensed commercial bank.”.

Replacement
of section
42 of the
principal
enactment.

16. Section 42 of the principal enactment is hereby repealed and the following new section is substituted therefor :—

"Disqualifi-
cation for
appointment,
election &c.,
as director.

42. (1) No person shall be appointed, elected or nominated as a director of a licensed commercial bank or continue as a director of such bank unless that person is a fit and proper person to hold office as a director of such bank and if he is not prevented from doing so by any provision of this Act or of any other written law.

(2) In determining whether a person would, for the purposes of subsection (1) be considered to be a fit and proper person, the following matters shall be taken into consideration:—

- (a) that such person possesses academic or professional qualifications or effective experience in banking, finance, business or administration or of any other relevant discipline;
- (b) that there is no finding of any regulatory or supervisory authority, professional association, any Commission of Inquiry, tribunal or other body established by law in Sri Lanka or abroad, to the effect that such person has committed or has been connected with the commission of, any act which involves fraud, deceit, dishonesty or any other improper conduct;
- (c) that such person is not subject to an investigation or inquiry consequent upon being served with notice of a charge involving fraud, deceit, dishonesty or other similar criminal activity, by any regulatory authority, supervisory authority, professional association, Commission of Inquiry, tribunal or other body established by law, in Sri Lanka or abroad ;
- (d) that such person has not been convicted by any Court in Sri Lanka or abroad in respect of a crime committed in connection with financial managment or of any offence involving moral turpitude;
- (e) that such person is not an undischarged insolvent nor has he been declared a bankrupt in Sri Lanka or abroad;

- (f) that such person has not failed, to satisfy any judgement or order of any court whether in Sri Lanka or abroad, or to repay a debt;
- (g) that such person has not been declared by a court of competent jurisdiction in Sri Lanka or abroad, to be of unsound mind;
- (h) that such person has not been removed or suspended by an order of a regulatory or supervisory authority from serving as a director, Chief Executive Officer or other officer in any bank or financial institution or corporate body, in Sri Lanka or abroad;
- (i) that such person has not been a director, Chief Executive Officer or held any other position of authority in any bank or financial institution. —
 - (i) whose license has been suspended or cancelled; or
 - (ii) which has been wound up or is being wound up, or which is being compulsorily liquidated.

whether in Sri Lanka or abroad.

(3) (a) A director or an employee of a licensed commercial bank shall not be appointed, elected or nominated as a director of another licensed commercial bank or a licensed specialised bank except where such licensed commercial bank or such licensed specialised bank is a subsidiary company or an associate company of the first mentioned licensed commercial bank.

(b) An employee of a licensed commercial bank may be appointed, elected or nominated as a director of that bank subject to the following conditions :—

- (i) the number of employees appointed, elected or nominated as directors (hereinafter referred to as “executive directors”) shall not exceed one-third of the number of members of the Board of Directors of the bank;
- (ii) where employees are appointed, elected or nominated as executive directors one of them shall be the Chief Executive Officer of the bank and the others shall be such officers of the bank performing executive functions as may be determined for the purposes of section 44A;
- (iii) a meeting of the Board of Directors of the bank shall not be duly constituted although the number of Directors required to constitute the quorum at such meeting is present unless more than one half of the number of directors present at such meeting are directors who are non-executive directors.

(4) Every licensed commercial bank shall notify the Director of Bank Supervision in such form as may be determined by the Director, the name, address and occupation of —

- (a) each person proposed to be appointed, elected or nominated as a director of the bank, before such appointment, election or nomination as the case may be ;

- (b) each person appointed, elected or nominated as a director of the bank, within fifteen days after such appointment, election or nomination as the case may be ;
- (c) any director of the bank, if the bank is aware that such person is not a fit and proper person, or where such director becomes otherwise ineligible to hold office as such director, within fifteen days of its becoming aware of such facts.

(5) The Director of Bank Supervision may, having regard to the matters specified in subsections (1), (2) and (3), approve or refuse to approve the proposed appointment, election or nomination as the case may be as a director of the licensed commercial bank of the person referred to in paragraph (a) of subsection (4) and shall, within thirty days after submission of the name of such person under that subsection, notify the bank of such approval or refusal, giving reasons therefor. It shall be the duty of the bank to communicate such notification to the person to whom it relates.

(6) A person aggrieved by the refusal of the Director of Bank Supervision under the provisions of subsection (5) to approve his proposed appointment, election or nomination as the case may be, as a director of the relevant bank, may within fourteen days of the date of receipt of the communication sent by the bank under subsection (5) tender written objections against such refusal to the Monetary Board. Upon receipt of such objections, the Monetary Board shall after considering the reasons given by the Director of Bank Supervision in his notification and the objections of the aggrieved

party, and such other matters which in its opinion merit inquiry, decide either to confirm the refusal made by the Director of Bank Supervision or approve the proposed appointment, election or nomination as the case may be, of such person as a director of the bank.

(7) A licensed commercial bank shall not appoint, elect or nominate as a director of the bank, a person whose appointment, election or nomination as the case may be has not been approved under subsection (5) or subsection (6) :

Provided that a person whose name has been submitted to the Director of Bank Supervision for approval under subsection (5) may be appointed, elected or nominated as the case may be as a director of the bank at any time before the notification of the decision of the Director under that subsection. Where however the Director refuses to grant such approval under that subsection and notifies the bank accordingly and the bank notifies such person accordingly, the person shall on the receipt of the notification by the bank, cease forthwith to hold office as a director of the bank subject to any decision made by the Monetary Board under subsection (6).

(8) Where the Director of Bank Supervision, having regard to the matters specified in subsections (1), (2) and (3) is satisfied at any time that a person appointed, elected or nominated as the case may be as a director of a licensed commercial bank is not a fit and proper person or that he is otherwise ineligible for appointment, election or nomination as the case may be or that the election, appointment or nomination as the case may be of a person as a director of a licensed

commercial bank contravenes the provisions of subsection (3) or subsection (7) the Director shall submit a report to the Monetary Board. The Board may, if it is satisfied on consideration of the report and such other matters which in its opinion merit inquiry, that the person is not a fit and proper person or the election, appointment or nomination as the case may be of the person contravenes the provisions of subsection (3) or subsection (7) —

- (a) direct the bank in writing to remove such person from the office of director within such period as may be specified in such direction, giving the reasons for such direction; and
- (b) notify in writing the person whose removal is required under such direction, of such direction, a copy of which shall be annexed to such notification,

and the bank shall within the period specified in the direction remove such person from the office of the director and notify such person in writing of his removal from the office of director, and shall take such steps as are necessary to inform the shareholders of the bank and the Registrar of Companies of such removal. The removal of a director in accordance with the directions given under paragraph (a) shall take effect from the date of receipt by the director of the notification of removal given by the bank, notwithstanding the provisions of any other law or the Articles of Association of the bank.

(9) A licensed commercial bank which fails to comply with any direction given under paragraph (a) of subsection (8) within the period specified in such direction and a director

who has been served with a notice under paragraph (b) of section (8) who continues to function as a director, shall each be guilty of an offence and shall be liable on conviction after trial before a Magistrate to a fine of rupees five hundred thousand and shall —

- (a) be liable in the case of the bank, to a further fine of rupees one hundred thousand, in respect of each day the bank fails to comply with such direction after such conviction; and
- (b) be liable in the case of a director of the bank, to a further fine of rupees one hundred thousand in respect of each day such director continues as director after such conviction.

(10) Any person who is aggrieved by the removal of such person from the office of director of a licensed commercial bank under subsection (8), may appeal in writing against such removal to the Monetary Board and the Monetary Board shall after considering the appeal, either confirm such removal or issue new directions to the bank to reappoint him to his former office as a director of such bank.

(11) Where any written law, other than this Act, provides for the appointment of a person as a director of a licensed commercial bank by virtue of an office the person holds, the preceding provisions of this section shall not apply to the appointment of that person as a director of such bank.

(12) The responsibilities of the Board of Directors shall include the overseeing of the management of the affairs of the Bank.”.

Insertion of new section 44A in the principal enactment.

17. The following new section is hereby inserted immediately after section 44 of the principal enactment and shall have effect as section 44A of that enactment :—

“Chief Executive Officers and executive officers.

44A. (1) The Chief Executive Officer and such other officers of a licensed commercial bank performing executive functions as may be determined by the Monetary Board shall be fit and proper persons and the provisions of subsection (2) of section 42 shall, *mutatis mutandis*, apply in determining whether the Chief Executive Officer and such other officers performing executive functions are fit and proper persons.

(2) The provisions of subsections (5) (6), (8), (9) and (10) of section 42 shall apply to the Chief Executive Officer and officers performing executive functions referred to in subsection (1) of this section and to the licensed commercial bank of which such person is a Chief Executive Officer or an officer performing executive functions as they apply to a director of a licensed commercial bank and to the licensed commercial bank of which such person is a director.”.

Replacement of section 45 of the principal enactment.

18. Section 45 of the principal enactment is hereby repealed and the following section substituted therefor :—

“Powers of the Director of Bank Supervision.

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

(a) is engaged in unsafe and unsound practices in the carrying on of its business which is likely to jeopardise its obligations to its depositors or 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 this Act or of any regulation, direction, order or other requirement made or given under this Act or has contravened or failed to comply with any other written law which in the opinion of the Director of Bank Supervision relates to banking or finance,

the Director of Bank Supervision may, subject to subsection (2) issue an order directing the licensed commercial bank,—

- (i) to cease and desist from any such practice, contravention or failure;
- (ii) to comply with the provisions of this Act or of such other written law, or of any regulation, direction, order or other requirement made or given under this Act;
- (iii) to take necessary action to correct the conditions resulting from such practice, contravention or failure,

within such period as may be specified in the order.

(2) An order issued under subsection (1) shall —

- (a) specify the unsafe and unsound practice engaged in or the provisions of this Act or other written law or the regulation, direction, order or other requirement made or given under this Act that are contravened or not complied with;
- (b) be served personally on, or be sent by registered post to, the licensed commercial bank;

(c) take effect on the date of its service on the licensed commercial bank, notwithstanding an appeal made under subsection (3), unless the Monetary Board otherwise directs .

(3) Any licensed commercial bank aggrieved by an order issued under subsection (1) may, before the expiration of thirty days of the date of service of the order, appeal to the Monetary Board and the Monetary Board shall, within thirty days of the date of receipt of the appeal confirm, vary or revoke such order.

(4) Without prejudice to anything contained in section 9, and notwithstanding that an appeal has been tendered to the Monetary Board under subsection (3), a licensed commercial bank which fails to comply with an order under subsection (1) within the period specified in the order, shall be guilty of an offence under this Act and shall be liable on conviction upon trial by a Magistrate to a fine of one million rupees and to a further fine of one hundred thousand rupees for each day of non-compliance with the order after the conviction, provided that, where an appeal has been tendered under subsection (3), proceedings shall not be instituted before a Magistrate until the decision of the Monetary Board is conveyed to the licensed commercial bank.”.

Amendment of section 46 of the principal enactment.

19. Section 46 of the principal enactment is hereby amended as follows :—

(1) by the repeal of subsection (1) of that section and the substitution therefor of the following subsection :—

“(1) In order to ensure the soundness of the banking system, the Monetary Board may issue directions to licensed commercial banks or for reasons to be stated in writing to any one or more

of them regarding the manner in which any aspect of the business of such bank or banks is to be conducted and without prejudice to the foregoing, may, also issue directions 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 single company, public corporation, firm, association of persons or an individual; or

- (ii) in the aggregate to —

- (a) 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; or
- (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.

For the purposes of this Act 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) by the repeal of subsection (4) of that section.

20. Section 47 of the principal enactment is hereby amended as follows :—

- (1) by the repeal of subsections (2), (3), (4) and (5) of that section and substitution therefor of the following subsections :—

Amendment of section 47 of the principal enactment.

“(2) A licensed commercial bank shall not grant accommodation for the purchase of its own shares nor grant accommodation against the security of —

- (a) its own shares;
- (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 :

Provided that nothing in this section shall be taken to prohibit the provision by the licensed commercial bank, in accordance with any scheme for the time being in force, of money for the purchase of or subscription for fully paid shares in the licensed commercial bank being a purchase or subscription by Trustees of or for shares to be held by or for the benefit of employees of the licensed commercial bank:

Provided further that the amounts of money so provided and the aggregate principal amount of such accommodation outstanding at any one time, shall not exceed the equivalent of ten *percentum* of the total nominal amount of the subscribed and paid up share capital of the bank or ten *percentum* of the unimpaired capital funds of the bank, whichever is greater.

(3) A licensed commercial bank shall not grant any accommodation to any of its directors or to a close relation of such director unless such accommodation is sanctioned at a meeting of its Board of Directors with not less than two-thirds of the number of directors constituting the Board of Directors (other than the director concerned) voting in favour of such accommodation and, except where such accommodation is provided by the issue of a credit card, such accommodation is secured by such security as may from time to time be approved by the Monetary Board.

(4) Accommodation granted by a licensed commercial bank to a director or to a close relation of such director shall not exceed such limit as may be approved by the Monetary Board from time to time by Order published in the Gazette.

(5) A licensed commercial bank shall not grant any accommodation to a concern in which any director of the licensed commercial bank has a substantial interest, being an interest acquired either before or after the appointment as the 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 of the licensed commercial bank by the votes of not less than two thirds of the number of its directors other than the Director concerned.”.

- (2) by the repeal of subsections (11) and (11A) of that section and substitution therefor of the following subsections:—

“(11) No accommodation granted by a licensed commercial bank under subsection (3) or subsection (5) or any part of such accommodation or any interest due thereon 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 under subsection (3) or subsection (5) during the course of any financial year, such accommodation shall be disclosed in the accounts for that financial year and for each subsequent financial year till such accommodation has been repaid or settled in full.”.

21. Section 49 of the principal enactment is hereby amended by the substitution for the words “Monetary Board” of the words “Director of Bank Supervision”.

Amendment of section 49 of the principal enactment.

Amendment of section 58 of the principal enactment.

22. Section 58 of the principal enactment is hereby amended as follows :—

- (1) by the renumbering of that section as subsection (1) of that section ;
- (2) by the addition immediately after the renumbered subsection (1), of the following new subsection :—

“(2) The Director of Bank Supervision may, engage the services of any professionally qualified person to assist him in relation to the exercise of the functions of the liquidator in a compulsory winding up of a licensed commercial bank.”.

Amendment of section 66 of the principal enactment.

23. Section 66 of the principal enactment is hereby amended by the repeal of subsection (1) of that section and the substitution therefor of the following new subsection:—

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

- (a) necessary and reasonable expenses incurred by the liquidator in winding up ;
- (b) wages and salaries of officers and employees of the bank for the three month period immediately preceding the commencement of winding up proceedings ;
- (c) taxes, rates and deposits owed to the Government and local authorities by the licensed commercial bank ;
- (d) fees and assessments due to the Central Bank ;
- (e) funds deposited in any account with the licensed commercial bank with interest accrued thereon, up to a limit of rupees twenty thousand in respect of any account; and

- (f) other deposits with interest if any, accrued thereon.”.

24. Section 76A of the principal enactment is hereby amended in subsection (5) of that section, by the substitution for the words “of section 19 of this Act.” in the definition of ‘equity capital’ of the following words :—

Amendment of section 76A of the principal enactment.

“of section 19 of this Act and for that purpose, the reference in that subsection to a licensed commercial bank shall be deemed to be a reference to a licensed specialised bank.”.

25. Section 76B of the principal enactment is hereby repealed and the following section substituted therefor :—

Replacement of section 76B of the principal enactment.

“Application for licence.

76B. The provisions of section 3 shall, *mutatis mutandis*, apply in respect of an application made for a licence under this Part as they apply in respect of an application made under Part I and for that purpose any reference to “banking business” in that section shall be deemed to be a reference to the business of accepting deposits of money and investing and lending such money, and any reference to section 5 shall be deemed to be a reference to section 76c.”.

26. Section 76C of the principal enactment is hereby repealed and the following section substituted therefor:—

Replacement of section 76c of the principal enactment.

“Issue of licence.

76c. The provisions of section 5 shall, *mutatis mutandis*, apply to the issue of a licence under this Part as they apply to the issue of a licence under Part I and for that purpose any reference to “banking business” in that section shall be deemed to be a reference to the business of accepting deposits of money and investing and lending such money.”.

Replacement
of section 76D
of the
principal
enactment.

27. Section 76D of the principal enactment is hereby repealed and the following section substituted therefor:—

“Forms of
business to be
carried on by
a licensed
specialized
bank and
payment of
annual licence
fee.

76D. (1) Any company which has been issued with a licence under this Part shall be referred to as a "licensed specialised bank”.

(2) A licensed specialised bank may carry on such forms of business as are specified in Schedule IV of this Act subject to such restrictions expressly stipulated in the licence or as may be imposed by or under any written law.

(3) The Monetary Board may authorise a licensed specialised bank which satisfies the requirements prescribed by regulations made by the Minister under section 82 to carry on off shore banking business in accordance with such off shore banking scheme formulated for licensed specialised banks by the Monetary Board and where a licensed specialised bank is authorised to carry on offshore banking business the provisions of Part IV shall, *mutatis mutandis*, apply to such licensed specialised bank as they apply to a licensed commercial bank.

(4) A licensed specialised bank shall not carry on its business in any place other than that specified in the licence except with the prior written approval of the Monetary Board.

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

(6) Every licensed specialised bank shall pay to the Central Bank an annual licence fee as may be determined by the Monetary Board and the Monetary Board may determine different licence fees for different categories of licensed specialised banks."

28. Section 76F of the principal enactment is hereby repealed and the following new section substituted therefor:-

Replacement of section 76F of the principal enactment.

"Cancellation of licence of a licensed specialised bank.

76F. (1) The provisions of section 9 shall, *mutatis mutandis*, apply in respect of a licensed specialised bank as they apply in respect of a licensed commercial bank and for that purpose any reference therein to a licensed commercial bank shall be deemed to be a reference to a licensed specialised bank, and any reference therein to section 5 shall be deemed to be a reference to section 76C, and any reference therein to banking business shall be deemed to be a reference to the business of accepting deposits of money and investing and lending such money.

(2) Nothing contained in subsection (1) shall in any way affect the powers conferred on the Monetary Board or the Director of Bank Supervision by section 76M."

29. Section 76H of the principal enactment is hereby repealed and the following new section substituted therefor:-

Replacement of section 76H of the principal enactment.

"Part V and Part VI to apply to a licensed specialised bank.

76H. The provisions of Part V and Part VI of this Act shall, *mutatis mutandis*, apply to a licensed specialised bank as they apply to a licensed commercial bank."

Amendment of section 76J of the principal enactment.

30. Section 76J of the principal enactment is hereby amended in subsection (1) of that subsection, as follows :—

(1) by the insertion immediately after subclause (q)(ii)(b)(gg) thereof, of the following subclause :—

“(hh) companies in each of which an individual or a company as the case may be, has either directly or indirectly a substantial interest or a significant management interest.”;

(2) by the insertion, immediately after paragraph (t) thereof, of the following paragraph :—

“(u) the limit of foreign participation in the capital of a licensed specialised bank incorporated or established in Sri Lanka.”.

Replacement of section 76K of the principal enactment.

31. Section 76K of the principal enactment is hereby repealed and the following section substituted therefor :—

“Procedure where licensed specialized banks follow unsafe practices.

76K. The provisions of section 45 shall, *mutatis mutandis*, apply in respect of licensed specialised banks as they apply in respect of licensed commercial banks and for that purpose any reference therein to a licensed commercial bank shall be deemed to be a reference to a licensed specialised bank.”.

Amendment of section 76M of the principal enactment.

32. Section 76M of the principal enactment is hereby amended as follows :—

(1) in subsection (3) of that section—

(a) by the substitution for the words “period of sixty days” of the words “period of six months”;

(b) by the repeal of paragraph (b) thereof and the substitution therefor of the following paragraph:—

“(b) to cancel the licence issued to such licensed specialised bank and —

- (i) where the bank is incorporated or established within Sri Lanka by or under any written law, proceedings for the compulsory winding up of the bank shall commence and the provisions of Part VIII shall, *mutatis mutandis*, apply to such winding up;
- (ii) where the bank is incorporated outside Sri Lanka, the business of the bank authorised under the licence issued under section 76A shall be compulsorily closed down and its affairs shall be wound up and the provisions of Part VIII shall, *mutatis mutandis*, apply to such compulsory closure;”;

(2) by the repeal of subsection (4) of that section and the substitution therefor of the following subsections :—

“(4) A licensed specialised bank incorporated or established within Sri Lanka may be voluntarily wound up and the provisions of Part VIII shall, *mutatis mutandis*, apply to such voluntary winding up.

(5) A licensed specialised bank incorporated outside Sri Lanka may voluntarily close down its business authorised under the licence issued under section 76A and the provisions of Part VIII shall, *mutatis mutandis*, apply to such closure.”.

33. Section 76N of the principal enactment is hereby amended in subsection (1) of that section, by the substitution for all the words commencing from “where an order” and ending with “section 76M” of the following:—

Amendment of section 76N of the principal enactment.

“Where the business of a licensed specialised bank has been suspended under subsection (1) of section 76(M) ;”.

Replacement of section 77 of the principal enactment.

34. Section 77 of the principal enactment is hereby repealed and the following section substituted therefor:—

“Declaration of secrecy.

77. (1) Every director, manager, officer or other person employed in the business of any licensed commercial bank or licensed specialised bank shall 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 not reveal any such matter except—

- (a) when required to do so —
 - (i) by a court of law;
 - (ii) by the person to whom such matter relates;
- (b) in the performance of the duties of the director, manager, officer or other person; or
- (c) in order to comply with any of the provisions of this Act or any other written law.

(2) Every director, manager, officer or person employed in the business of a licensed commercial bank or licensed specialised bank shall before entering upon the duties, sign a declaration pledging himself to observe strict secrecy in accordance with subsection (1).

(3) The provisions of subsections (1) and (2) shall not prohibit a bank from providing in good faith to another bank on request an opinion or reference relating to a customer in accordance with customary banking practice.”.

Amendment of section 78 of the principal enactment.

35. Section 78 of the principal enactment is hereby amended by the substitution for the words, “against any member” of the words “against the Monetary Board or any member”.

36. Section 79 of the principal enactment is hereby repealed and the following section substituted therefor :—

Replacement of section 79 of the principal enactment.

“Offences.

79. (1) Any person who commits an offence under subsection (5) of section 2, subsection (11) of section 3, subsection (3) of section 14, subsection (3) of section 33, subsection (3) of section 41 or subsection (12) of section 47 of this Act, shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding one million rupees or imprisonment of either description for a term not exceeding three years or to both such fine and imprisonment.

(2) Any person who contravenes the provisions of subsections (1) and (2) of section 16, subsection (1) of section 17 or section 77 shall be guilty of an offence under this Act and shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding one million rupees or to imprisonment of either description for a term not exceeding three years or to both such fine and imprisonment.

(3) Any person who commits an offence under this Act other than an offence referred to in subsection (1) or subsection (2) above, shall be liable on conviction after summary trial before a Magistrate, unless where the punishment is otherwise provided for in this Act, to a fine not exceeding five hundred thousand rupees or to imprisonment of either description for a term not exceeding eighteen months or to both such fine and imprisonment.

(4) Any person who contravenes any provision of this Act or any order, direction, requirement, rule or regulation under this Act, other than those specified in subsection (2) or those that otherwise constitute an offence, shall be guilty of an offence under this Act, and shall

be liable on conviction after summary trial before a Magistrate to a fine not exceeding five hundred thousand rupees or to imprisonment of either description for a term not exceeding eighteen months or to both such fine and imprisonment.

(5) In any proceedings against any person under subsection (2) for contravention of the provisions of section 77, it shall be a defence to prove that such person acted in good faith, believing himself to be acting in the performance of his duties or under a requirement of law.

(6) In any proceedings against a director, manager, officer or an employee of a licensed commercial bank or a licensed specialised bank for an offence under this Act it shall be a defence for the director, manager, officer or employee to establish that the offence was committed without the knowledge of such director, manager, officer or employee or that such director, manager, officer or employee exercised all due diligence to avoid the commission of the offence.”.

Amendment of section 79A of the principal enactment.

37. Section 79A of the principal enactment is hereby amended in subsection (1) of that section by the substitution for the words “not exceeding two hundred and fifty thousand rupees” of the words “not exceeding one million rupees”.

Insertion of section 83C in the principal enactment.

38. The following new section is hereby inserted immediately after section 83B of the principal enactment and shall have effect as section 83C of that enactment:—

“Prohibition on conduct of certain Schemes.

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;
- (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 holder 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.”

Sinhala text to prevail in case of inconsistency.

39. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Amendment of section 86 of the principal enactment.

40. Section 86 of the principal enactment is hereby amended as follows :—

- (a) by the repeal of the definition of the expression “accommodation” and the substitution therefor of the following definition :—

“accommodation” means any loan, overdraft or advance or such other facility as may be determined by the Monetary Board or any commitment to grant any loan, overdraft or advance or such other facility as may be determined by the Monetary Board, including a commitment to accept a contingent liability;”

- (b) in the definition of the expression “capital funds” by the repeal of paragraph (b) thereof, and the substitution therefor of the following :—

“(b) in the case of a licensed specialised bank, the equity capital and the reserve fund maintained pursuant to directions under subsection (1) of section 76j and includes reserves other than funds reserved for specified purposes;”

- (c) by the repeal of the definition of the expression “company ” and the substitution therefor of the following definition :—

“company” means a company formed and registered under the Companies Act, No. 17 of 1982 and any other body incorporated within or outside Sri Lanka;”

- (d) by the insertion immediately after the definition of the expression "Director of Bank Supervision" of the following definition :—

“deposit” includes a sum of money accepted from any person as a business on terms under which it will be repaid with or without interest or a premium, and either on demand or at a future time or in circumstances agreed to by or on behalf of the person making the payment and the person accepting it, provided that the persons accepting the money is a person who in the usual course of business, lends money or makes available the use or the benefit of the money so accepted to third parties and, also includes any sum of money accepted as provided in paragraph (y) of Schedule II and paragraph (nn) of Schedule IV;”;

- (e) by the repeal of the definition of the expression “substantial interest” and substitution therefor of the following definition:—

“substantial interest” means—

- (a) in relation to a company, 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 ten *per centum* of the paid up capital of the company or the existence of a guarantee or indemnity for a sum not less than ten *per cent* of the paid up capital given by an individual or his close relation or by another company on behalf of such company;
- (b) in relation to a firm, 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 firm or the existence of a guarantee or indemnity for a sum not less than ten *per centum* of that capital given by an individual or the spouse, parent or child of the individual on behalf of such firm.”.

Amendment of Schedule II of the principal enactment.

41. Schedule II of the principal enactment is hereby amended by the insertion immediately after paragraph (x) thereof, of the following new paragraphs :—

- “(y) the acceptance of a sum of money in any manner or form from any person for a fixed period of time for investment in a business venture of the bank on the basis that profits or losses of the venture will be shared with the person from whom such money is accepted in a manner determined at the time the money is accepted;
- (z) the purchase of goods, to be sold immediately upon purchase to a buyer on deferred payment terms provided that the goods and their suppliers are specified by such buyer and the price at which such goods are sold to the buyer and the deferred payment terms are determined at the time the bank agrees with the buyer to purchase the said goods for sale to the buyer.”.

Amendment of Schedule IV of the principal enactment.

42. The Schedule IV of the principal enactment is hereby amended as follows :—

- (a) by the repeal of paragraph (*nn*) of that Schedule, and the substitution therefor of the following paragraph :—

“(*nn*) the acceptance of a sum of money in any manner or form from any person for a fixed period of time for investment in a business venture of the bank on the basis that profits or losses of the venture will be shared with

the person from whom such money is accepted in a manner determined at the time the money is accepted;” and;

(b) by the addition, at the end of that Schedule, of the following paragraphs :—

"(oo) the purchase of goods, to be sold immediately upon purchase to a buyer on deferred payment terms provided that the goods and their suppliers are specified by such buyer and the price at which such goods are sold to the buyer and the deferred payment terms are determined at the time the bank agrees with the buyer to purchase the said goods for sale to the buyer;

(pp) any other business which the Monetary Board may authorise a licensed specialised bank to engage in.”.

43. Notwithstanding a conflict between the provisions of the principal enactment as amended by Act, No. 33 of 1995 and this Act and the provisions of any written law by or under which any authority which is required to obtain a license 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, may be carried on and completed as if there had been no such amendment to the principal enactment.

Savings clause.

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