

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, 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.

[§16,2 of 2005]

(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 management or of any offence involving moral turpitude;
- (e) that such person is not an undischarged insolvent nor has he been declared 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.

[§ 16, 2 of 2005.]

(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.

[§ 16, 2 of 2005.]

(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.

[§ 16, 2 of 2005.]

(6) A person aggrieved by the refusal of the Director of the Bank Supervision under the provision of sub section (5) to approve his proposed appointment, election or nomination as the case may be, as the 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 consideration of the reasons given by the Director of Bank Supervision in his notification and the objections of the aggrieved party, and such other matters which is 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 of Bank Supervision 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).

[§ 16, 2 of 2005.]

(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 of Bank Supervision 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.

[§ 16, 2 of 2005.]

(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.

[§ 16, 2 of 2005.]

(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.

[§ 16, 2 of 2005.]

(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.

[§ 16, 2 of 2005.]

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

Secretary of a
Licensed
Commercial bank.
[§ 24, 33 of 1995.]

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 sub section(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.

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—

(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.

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

Chief Executive
Officers and
executive officers
[§ 17, 2 of 2005.]

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.

PART VII

CONTROL OVER LICENSED COMMERCIAL BANKS

Power of the Director
of Bank Supervision
[§ 18, 2 of 2005.]

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,

[§ 18, 2 of 2005.]

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.