

- (c) where it is necessary to rectify the valuation errors that took place at the time of transfer of shares, assets and liabilities, legal rights and obligations and other instruments of ownership.

(9) The transfer of shares, assets and liabilities, legal rights and obligations and other instruments of ownership to and from the bridge bank shall be based on a valuation carried out by an independent professional valuer possessing such qualifications and experience referred to in subsection (1) of section 16.

(10) Any shareholder or creditor of a licensed bank subject to resolution and other third party whose shares, assets and liabilities, legal rights and obligations and other instruments of ownership are not transferred to the bridge bank shall not have any right over the shares, assets and liabilities, legal rights and obligations and other instruments of ownership transferred to the bridge bank, its governing body, or the Central Bank.

(11) The Central Bank may, from time to time, having regard to the interests of depositors, creditors and shareholders, issue to the bridge bank, directions, guidelines, and operating instructions, as the case may be, specifying-

- (a) the manner in which the remaining assets and liabilities of the licensed bank subject to resolution need to be liquidated;
- (b) the manner in which the operations of the bridge bank shall be carried out;
- (c) the exemptions granted to the bridge bank:
- (d) minimum capital and liquidity requirements to be met by the bridge bank;

- (e) principles of corporate governance to be applicable to the bridge bank;
- (f) the criteria applicable for the assessment of fitness and propriety of the members of the governing body and the key management personnel of the bridge bank;
- (g) criteria for acceptability of the valuations of assets and liabilities to be transferred to the bridge bank;
- (h) modes of consideration to be passed when transferring assets and liabilities, legal rights and obligations and instruments of ownership; or
- (i) the manner and the circumstances of reversals of assets and liabilities and other instruments of ownership initially transferred to the bridge bank.

Term of a
bridge bank

32. (1) Subject to the provisions of subsections (3) and (4), the term of the bridge bank shall not exceed a period of two years from the last date of transfer of shares, assets and liabilities and instruments of ownership of the licensed bank subject to resolution.

(2) The Central Bank shall terminate the bridge bank as soon as practicable, according to its own assessment, having regard to the objectives of resolution, completion of the tasks assigned to the bridge bank and such other matters on its merit, upon the completion of the period of two years referred to in subsection (1).

(3) Subject to the provisions of subsection (4), where the Central Bank is satisfied that the bridge bank no longer serves the objectives of resolution, the Central Bank may, after informing the Minister-

- (a) merge the bridge bank with another entity;

- (b) sell in whole or part, the assets, rights, and obligations of the bridge bank to a third party; or
- (c) liquidate the assets of the bridge bank and pay its obligations in full.

(4) The term of the bridge bank may be extended by the Central Bank for a further period of one year at a time:

Provided however, the term of a bridge bank shall not, in the aggregate, exceed five years.

(5) (a) All the decisions of the Central Bank under subsections (2), (3) and (4) shall be based on an assessment of the circumstances and market conditions that justify such decisions.

(b) The Central Bank shall submit a report to the Minister within one month from the date of such decisions. In the case of an extension granted under subsection (4), the Central Bank shall also publish a reasoned explanation as to why such an extension is necessary.

(6) Where the term of the bridge bank is terminated under subsection (2), the Central Bank shall-

- (a) cancel the licence issued to such bridge bank; and
- (b) wind up such bridge bank under Part V of this Act.

(7) Subject to the provisions of subsection (3) of section 51, all receipts resulting from the cessation of the operation of the bridge bank under this section shall be transferred to the Government.

33. (1) Subject to the provisions of subsection (2), the Government may, having considered the report submitted by the Central Bank to the Minister in that behalf, provide temporary financial assistance to contribute to the funding of the resolution of a licensed bank, or to a bridge bank, as the case may be.

Providing
temporary
financial
assistance by the
Government

(2) The temporary financial assistance referred to in subsection (1) shall be provided by the Government only if the following conditions are satisfied: -

- (a) such financial assistance is necessary to avoid a risk of disturbance to the stability of the financial system;
- (b) alternative funding through Deposit Insurance Fund established under section 49 as permitted under subsection (3) of section 51 or private sources has been depleted or such sources are not sufficient or available within a reasonable time frame;
- (c) losses of the licensed bank are allocated at least to shareholders and subordinated debt holders; and
- (d) the Central Bank is of the opinion that the licensed bank subject to resolution or the bridge bank will become viable with the implementation of a resolution or restructuring plan.

(3) The temporary financial assistance under this section may be provided by the Government to –

- (a) extend financial assistance for a licensed bank subject to resolution or for a bridge bank established under section 30;
- (b) pay compensation to shareholders and creditors under section 36; or
- (c) take such other measure as is incidental or connected to the purposes referred to in paragraph (a) or (b).

(4) (a) Where the Government becomes the holder of a controlling interest in a licensed bank subject to resolution or the bridge bank, as a result of providing temporary financial

assistance under this section, such licensed bank or the bridge bank shall be managed on a commercial and professional basis and shall be subject to enhanced supervision by the Central Bank.

(b) The licensed bank or the bridge bank, as the case may be, referred to in paragraph (a) shall develop a plan, to the satisfaction of the Central Bank, for its exit from Government control, within a reasonable timeframe. The Minister shall, on the recommendation of the Central Bank, prescribe the procedures for the utilization of exit options in a fair and transparent manner, having regard to the timing, and market conditions and confidentiality requirements.

(5) Any temporary financial assistance provided under this section and related costs and net of expected recoveries, may be recovered from all banks under subsection (4) of section 15.

(6) The Minister may, on the recommendation of the Central Bank, prescribe the rules for the provision of temporary financial assistance and the recoupment of such funds under this Act.

34. (1) Without prejudice to the provisions of section 30, where the Government is of the opinion that the failure of a licensed bank can have systemic importance or impact, it shall have the authority to resolve such licensed bank.

Capitalization of
a licensed bank
having systemic
impact

(2) In resolving a licensed bank under subsection (1), the Government may infuse capital for such licensed bank through –

- (a) participation of the Government in the recapitalization of such licensed bank; or
- (b) taking over such licensed bank into temporary public ownership.

(3) The conditions set out in subsection (2) of section 33 shall *mutatis mutandis* apply to a licensed bank subject to resolution under this section.

Central Bank to
notify the
exercising of
resolution
powers

35. (1) The Central Bank may, where appropriate, notify the Minister and other relevant authorities including any foreign supervisory or resolution authorities, of the exercise by the Central Bank of its resolution powers under this Act.

(2) The Central Bank shall publish a notice in three Sinhala, Tamil and English daily newspapers circulating in Sri Lanka with respect to the exercise of resolution powers on any licensed bank under this Part of this Act.

Compensating
shareholders and
creditors

36. (1) Notwithstanding anything to the contrary in any other written law, where the Central Bank, in the exercise, performance or discharge of its powers, duties or functions under this Act, considers that it is necessary-

- (a) to mitigate any impact of the failure of a licensed bank in the economy and avoid contagion risk of such failure across the financial system; or
- (b) to maximize the value for the benefit of all depositors and creditors of a licensed bank,

it shall be lawful for the Central Bank to apply different treatments to a class or classes of persons among the creditors of a licensed bank subject to resolution having considered the impact of losses to be attributable to such class or classes of creditors as a whole, the interests of the depositors and creditors of such licensed bank, and the financial system stability of Sri Lanka.

(2) (a) A shareholder or creditor who incurs higher losses than what he would have incurred if the licensed bank subject to resolution had been liquidated through winding up, may be compensated for the difference.

(b) The difference to be compensated under paragraph (a) shall be determined based on a valuation, carried out after completion of the resolution, by an independent professional valuer possessing such qualifications and experience referred to in subsection (1) of section 16.

(3) The valuation referred to in subsection (2), shall be carried out on the basis that such licensed bank would be wound up immediately before the initiation of such resolution by the Central Bank and shall be based on the value that could be given at the time of winding up:

Provided however, any value created or preserved in such licensed bank as a result of any public financial support or emergency liquidity assistance provided by the Central Bank or the Government, as the case may be, shall be deducted in the calculation of difference.

(4) The compensation referred to in subsection (2) may be provided by the Government through temporary financial assistance as provided for in section 33.

(5) The Central Bank may give effect to the provisions of this section by issuing directions, from time to time.

37. (1) Notwithstanding anything contained in this Act or any other written law for the time being in force, the Central Bank and the Ministry of Finance shall exchange information in respect of planning, preparation and implementation of resolution measures related to any licensed bank which requires funding by the Government under this Act.

Central Bank
and the Ministry
to exchange
information

(2) The Minister, Secretary, Director General, any director, officer or any other person engaged or employed in the functions or affairs of the Ministry of the Minister shall maintain strict confidentiality in respect of all information

exchanged under subsection (1) and shall not reveal any such information except-

- (a) as required by a court of law;
- (b) in the performance of their duties under this Act; or
- (c) in order to comply with any of the provisions of this Act or any other written law.

Cross-border
cooperation

38. (1) Notwithstanding anything contained in this Act or in any other written law for the time being in force, the Central Bank shall have authority to enter into agreements, memoranda of understanding and arrangements for the coordination, cooperation and the exchange of information with relevant authorities established outside Sri Lanka, including supervisory or regulatory authorities of banks in other jurisdictions outside Sri Lanka:

Provided however, if the Central Bank is of the opinion that any confidential information, if exchanged with any such authority cannot be secured due to the unavailability of duty to preserve confidentiality in such authority, the Central Bank shall not exchange such information with any such authority outside Sri Lanka.

(2) The agreements, memoranda of understanding and arrangements with the relevant authorities outside Sri Lanka referred to in subsection (1), shall include the following: -

- (a) procedures for the timely exchange of information on matters agreed between the parties including consultations, prior notifications, regulatory or supervisory concerns, recovery plans, resolvability assessments, resolution plans, early intervention measures and resolution actions;
- (b) procedures for the coordination of resolution measures;

- (c) procedures for the recognition and facilitation of resolution measures taken by foreign regulatory authorities and the Central Bank;
- (d) restrictions on the use of information for purposes other than those for which the information is shared;
- (e) stipulation that the information be treated in a confidential manner and not be further disclosed without the express consent of the Central Bank; and
- (f) any other matter which the parties may consider necessary for the effective implementation of resolution measures under this Act.

(3) The Central Bank may, on the request of a foreign resolution authority, make an Order that the effects of a resolution measure of such foreign authority be fully or partially applicable in Sri Lanka:

Provided however, the Central Bank shall not make such Order where the Central Bank is of the opinion that -

- (a) in terms of its objective and anticipated results, the foreign resolution measure is not comparable to the exercise of resolution powers under this Act;
- (b) the relevant laws of the foreign resolution authority's jurisdiction do not allow for the recognition of the Central Bank's resolution measures on request;
- (c) recognizing a foreign resolution measure would not contribute to the achievement of resolution objectives under this Act;
- (d) creditors of the licensed bank in Sri Lanka would not be treated equitably under the foreign resolution proceedings;

- (e) such recognition would have material adverse fiscal implications in Sri Lanka; or
- (f) such recognition would contravene the public policy of Sri Lanka.

PART III

SRI LANKA DEPOSIT INSURANCE SCHEME

Establishment of
a deposit
insurance
scheme

39. The Central Bank shall, in order to uphold the public confidence in the financial system and to promote, and contribute to, the stability of the financial system in Sri Lanka, establish a scheme called Sri Lanka Deposit Insurance Scheme (hereinafter referred to as the “Scheme”) under this Act, for the purposes of-

- (a) insuring the deposits made by the depositors in an institution which is a member of the Scheme (in this Part of this Act referred to as a “member institution”) in order to compensate such depositors up to any maximum amount as may be determined by the Central Bank, from time to time, subject to subsection (9) of section 44, in the event the licence issued to such member institution is cancelled by the Central Bank; and
- (b) establishing a system for providing appropriate financial assistance to facilitate transfer of assets and liabilities of a member institution as a resolution measure, subject to safeguards.

Administration
and management
of the Scheme

40. (1) The Central Bank shall be responsible for the administration and management of the Scheme and shall exercise, perform, and discharge all the powers, duties and functions conferred or imposed on, or assigned to it under this Act for the effective implementation of the Scheme.

(2) In relation to the administration and management of the Scheme under this Act or any other written law, the Central Bank may-

- (a) formulate policies in relation to the general administration of the Scheme;
- (b) set out the organizational arrangements relating to the exercise, performance and discharge of the powers, duties and functions in relation to the Scheme in order to prevent a conflict of interest or possible conflict of interest between the functions of the Scheme and other functions of the Central Bank;
- (c) make rules setting out the procedure for repaying the insured deposits by utilizing the moneys available in the Fund; and
- (d) make any other arrangement which the Central Bank considers necessary to ensure the effective administration and management of the Scheme.

(3) The Central Bank may delegate any power, duty and function relating to the day-to-day administration and management of the Scheme to any officer of the Central Bank.

41. (1) The Head of the Department established under section 4 or any other officer authorized by the Central Bank shall publish a list of all institutions who are members of the Scheme annually, at least in one Sinhala, Tamil, and English daily newspapers circulating in Sri Lanka.

Members of the
Scheme

(2) The Central Bank shall, by way of a direction, notify the member institutions of the membership in the Scheme.

For the purposes of this Part of this Act, a “member institution” means, a licensed commercial bank, a licensed specialized bank within the meaning of the Banking Act or a licensed finance company within the meaning of the Finance Business Act or any other institution as the Central Bank may determine, from time to time, as a member institution under this Act.

Cessation of
membership in
the Scheme

42. (1) A member institution shall cease to be a member of the Scheme upon the cancellation of the licence issued to such institution to carry on banking business or finance business by the Central Bank, or the commencement of winding up, as the case may be.

(2) The Central Bank shall, upon the cancellation of licence as referred to in subsection (1), give notice to the public under the Banking Act or the Finance Business Act that such institution ceases to be a member of the Scheme upon such cancellation.

Member
institutions to
insure deposits
under the
Scheme

43. (1) Subject to the provisions of subsection (3), the member institutions shall insure all eligible deposits under the Scheme.

(2) The eligible deposits to be insured under the Scheme shall include demand, time and savings deposit liabilities of member institutions other than the deposit liabilities specified in subsection (3) and debt instruments including any promissory notes, hybrid equity and such other debt instruments as may be determined by the Central Bank.

(3) The following deposit liabilities shall not be considered as eligible deposits: -

- (a) deposit liabilities to other member institutions;
- (b) deposit liabilities maintained individually or jointly with any other party, by directors and key

management personnel of a member institution, close relations of such directors and key management personnel, a subsidiary company or an associate company of a member institution, and any concern in which any of the directors and key management personnel of a member institution or close relations of such directors and key management personnel have any interest;

- (c) deposit liabilities of former directors or key management personnel of a member institution where –
- (i) such directors or key management personnel have been removed from such position on the direction by the Central Bank due to such directors or key management personnel being involved in or connected with any unsound, improper, dishonest, deceitful or fraudulent financial practice detrimental to the interests of the depositors and other creditors of such member institution, in carrying out business operations or management of such member institution;
 - (ii) such directors or key management personnel have been determined by the Central Bank, to be not fit and proper to hold such office in a member institution under any written law for the time being in force;
 - (iii) the Central Bank determines *ex mero motu*, upon being satisfied based on the material available, and after granting such directors or key management personnel, as the case may be, an opportunity of being heard, that such directors or key management personnel are not entitled to receive any benefit under the Scheme, due to such directors or key management personnel engaging in, or having engaged in, or being involved in, or

being responsible for, carrying on the business operations or management of such member institution through any unsound, improper, dishonest, deceitful or fraudulent financial practices detrimental to the interests of its depositors and other creditors;

- (d) deposits falling within the meaning of abandoned property under the Banking Act and dormant deposits under the Finance Business Act, as the case may be, which have been transferred to the Central Bank, in terms of the directions issued by the Central Bank, from time to time;
- (e) deposits held by any Government institution, including a Ministry, Department, Provincial Council or local authority; and
- (f) any other deposit liability of a member institution as may be determined by the Central Bank as not eligible under the Scheme.

(4) The Central Bank may, from time to time, issue operating instructions to member institutions regarding the implementation and operation of the Scheme.

Compensation to
depositors

44. (1) Compensation shall be paid to depositors on insured deposits as per the directions issued by the Central Bank, from time to time, or as hereinafter provided.

(2) Payment of compensation on insured deposits of a member institution shall be initiated within thirty days from the date of cancellation of the licence issued to such member institution.

(3) A depositor of insured deposits shall be entitled to receive compensation under subsection (1) in so far as such depositor submits a duly completed claim for compensation within six years from the date of the cancellation of the licence issued to the member institution.

(4) For the purpose of making compensation under subsection (1), the Deposit Insurance Fund established under section 49 shall automatically subrogate to the rights of depositors against such member institution in an amount equal to the amount of the insured deposits owed by the member institution, regardless of the date on which such amounts are actually paid to its insured depositors:

Provided however, the depositors of insured deposits of member institutions whose licences have been cancelled or suspended prior to August 6, 2021 shall submit their claims not later than four years from the date of the cancellation or suspension of the licences issued to such institutions.

(5) For the purposes of this Part of this Act, a member institution shall maintain records of all depositors of such institution with a unique identification number for each such depositor and submit the details of all depositors to the Central Bank periodically, in such form and manner as may be determined by the Central Bank.

(6) In the event a licence issued to a member institution is cancelled by the Central Bank, such member institution shall, within fourteen days from the date of such cancellation, submit a list of depositors of such institution in the form and manner specified in subsection (5) to the Central Bank for the purpose of payment of compensation to the depositors under the Scheme.

(7) The list of depositors referred to in subsection (6) shall be certified by the respective heads of the supervisory departments of the Central Bank. For the purpose of certification of the list of depositors, the respective heads of the supervisory departments may obtain the service of an external auditor, if necessary.

(8) The compensation payable in respect of insured deposits of a member institution shall be computed aggregating all insured deposit liabilities for each depositor

inclusive of any interest accrued thereon as at the date of cancellation of licence of such member institution, and any interest shall not be paid for the succeeding period.

(9) The maximum amount of compensation payable to a depositor under subsection (8) shall be determined by the Central Bank, from time to time, considering the protection of the interests of the majority of insured depositors under the Scheme, the soundness of the banking and financial system and the monies available in the Deposit Insurance Fund.

(10) When determining the compensation payable under subsection (8), the Central Bank shall take into consideration the type of currency of the insured deposits. If such deposits are in foreign currency, an amount equivalent to such amount of money in Sri Lanka Rupees determined by the Central Bank under subsection (9) shall be paid to such depositor.

(11) The payment of compensation shall not in any event incur a liability of the Central Bank and the Central Bank shall not be held liable for any liability that exceeds the total amount of moneys lying to the credit of the Deposit Insurance Fund.

(12) Where the amount of money lying to the credit of the Deposit Insurance Fund falls short of its liabilities to depositors, additional funding may be raised through borrowings from the Government or from other sources, and for such purpose, the Scheme and the Ministry of Finance shall maintain at all times a memorandum of understanding setting out the terms, conditions and procedures to facilitate such borrowings.

(13) The Head of the Department established under section 4 or any officer authorized by the Central Bank may issue instructions to member institutions relating to the maintaining of records of depositors or any other matter, from time to time.

45. (1) Upon the payment of compensation under section 44, the Scheme shall be subrogated to all the rights of the insured depositors against the member institution whose licence has been cancelled, to the extent of total insured deposit value.

Subrogation of the Scheme to the rights of depositors

(2) The subrogation to the rights of depositors set forth in this section shall not affect a depositor's claims against the member institution for amounts that are not covered by the Deposit Insurance Fund.

46. The Central Bank may make payments of compensation to depositors under the Scheme directly or through any other licensed bank as may be determined by the Central Bank which consents to act as a payment bank.

Compensation may be paid through another licensed bank

47. The Central Bank shall, within seven working days prior to the date of implementation of the payment of compensation under the Scheme, publish a notice on the implementation of such payment in at least three Sinhala, Tamil and English daily newspapers circulating in Sri Lanka, containing-

Notice of payment of compensation

- (a) the details of the payment bank;
- (b) particulars to be submitted by the depositors to receive compensation;
- (c) maximum amount of compensation that shall be paid per depositor; and
- (d) such other instructions to depositors as to how they shall submit their claims for the payment of compensation.

Reporting by
member
institutions

48. Every member institution shall provide to the Central Bank or to any officer authorized by the Central Bank, the information as may be required by the Central Bank, from time to time, in such manner as the Central Bank may specify, from time to time.

Deposit
Insurance Fund

49. (1) The Central Bank shall, as part of the operation of the Scheme, establish a Deposit Insurance Fund, which shall be managed separately from other assets of the Central Bank and the assets managed by the Central Bank.

(2) The Central Bank may sue or be sued in the name of the Deposit Insurance Fund.

Powers, duties
and functions of
the Central Bank
relating to the
Deposit
Insurance Fund

50. (1) The Central Bank shall manage, administer, and supervise the affairs of the Deposit Insurance Fund subject to the provisions of this Act.

(2) In managing, administering and supervising the affairs of the Deposit Insurance Fund, the Central Bank shall exercise, perform and discharge the following powers, duties and functions:-

- (a) to formulate policies in relation to the general administration of the Deposit Insurance Fund and such other matters relating thereto;
- (b) to enter into agreements with any international financial institution in the name of the Deposit Insurance Fund to ensure the effective administration and management of the Deposit Insurance Fund;
- (c) to accept from the Government or any international financial institution, any grant or aid, or borrowing in the name of the Deposit Insurance Fund, as it may consider necessary;
- (d) to formulate procedures for repaying insured deposits by utilizing the moneys available in the Deposit Insurance Fund;

- (e) to make investments and enter into any transaction or agreement as may be necessary or desirable for the financial management of the Deposit Insurance Fund;
- (f) to settle or compromise any claim authorized by the Central Bank by or against the Deposit Insurance Fund;
- (g) to determine the period within which the compensation shall be paid to depositors under section 44; or
- (h) to do such other things which the Central Bank considers necessary to ensure the effective administration and management of the Deposit Insurance Fund.

51. (1) There shall be credited to the Deposit Insurance Fund –

Sources of funds
of the Deposit
Insurance Fund

- (a) the monies lying to the credit of the Deposit Insurance Fund under the Sri Lanka Deposit Insurance and Liquidity Support Scheme established under the laws for the time being in force, as at the appointed date;
- (b) the premia and penalties paid by member institutions;
- (c) the investment income and gains derived from the investments of the moneys in the Deposit Insurance Fund;
- (d) recoveries of secured advances or loans granted to any member institutions under the Sri Lanka Deposit Insurance and Liquidity Support Scheme established under the laws for the time being in force;