

(10) The dissolution of a company under subsection (8) shall not affect the liability under this Act or any other written law of any director, chief executive officer, other officer or owner of the company, and such liability shall continue and may be enforced as if the company had not been dissolved.

89. (1) Every person, being a director or an officer of a licensed bank subject to winding up, whether present or past, who-

Offences by
directors or
officers of the
licensed bank

- (a) fails to disclose to the liquidator, to the best of his knowledge and belief, information relating to all the movable and immovable property of such licensed bank, including how, to whom and for what consideration such property or part thereof have been disposed of, except such property or part as has been disposed of in the ordinary course of the business of the licensed bank;
- (b) fails to deliver up to the liquidator, or as the liquidator directs –
 - (i) all the movable and immovable property of such licensed bank in the custody of such director or officer, or under the control of such director or officer; or
 - (ii) all the books, records, registers and documents belonging to such licensed bank, in the custody of such director or officer, or under the control of such director or officer;
- (c) within twelve months immediately preceding the commencement of the winding up of such licensed bank, or at any time thereafter –

- (i) has concealed any part of the property of the licensed bank to the value of rupees ten thousand or more, or has concealed any debt due to, or due from, such licensed bank;
- (ii) has fraudulently removed any part of the property of such licensed bank to the value of rupees ten thousand or more;
- (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book, register, record or document affecting or relating to the property or affairs of such licensed bank;
- (iv) has made or has been privy to the making of any false entry in any book, register, record, or document affecting or relating to the property or affairs of such licensed bank;
- (v) has fraudulently parted with, altered, or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any book, register, record or document affecting or relating to the property or affairs of such licensed bank;
- (vi) by any false representation or other fraud, has obtained any property for, or on behalf of, the licensed bank on credit which such licensed bank has not subsequently paid for;
- (vii) has obtained on credit, for or on behalf of such licensed bank, under the false pretense that the licensed bank is carrying on its business, any property which such licensed bank has not subsequently paid for; or

- (viii) has pawned, pledged or disposed of any property of such licensed bank which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing was in the ordinary course of the business of the licensed bank;
- (d) makes any material omission in any statement relating to the affairs of such licensed bank;
- (e) knowing or having reasons to believe that a false debt has been proved by any person, fails for a period of one month to inform the liquidator of such fact;
- (f) prevents the production of any book, register, record or document affecting or relating to the property or affairs of such licensed bank;
- (g) within twelve months immediately preceding the commencement of the winding up, or at any time thereafter, has attempted to account for any part of the property of such licensed bank by fictitious losses or expenses; or
- (h) within twelve months immediately preceding the commencement of the winding up or at any time thereafter, has been found to have made any false representation or committed or involved in the commission of any other fraudulent activity for the purpose of obtaining the consent of the creditors of the licensed bank or any one of them to an agreement with reference to the affairs of the licensed bank or to the winding up,

commits an offence under this Act.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subsection (1), every person who takes in pawns or pledge,

or otherwise receives the property knowing it to be pawned, pledged, or disposed of in those circumstances, commits an offence under this Act.

(3) Every director, officer, employee, or servant of any licensed bank subject to winding up who destroys, mutilates, alters, or falsifies any book, register, record, document or security, or makes or is privy to the making of any false or fraudulent entry in any book, register, record, document or account belonging to the licensed bank with intent to defraud or deceive any person, commits an offence under this Act.

Offences by
body corporates

90. Where a person convicted of an offence under this Act is a body corporate, every person who, at the time of the commission of the offence was a director, or an officer performing executive functions, or secretary of the body corporate, shall be deemed to be guilty of that offence, unless such director, officer or secretary proves to the satisfaction of the court that the offence was committed without his knowledge or such director, officer or secretary exercised all due diligence to prevent the commission of such offence.

Penalties

91. Every person who is found guilty of an offence by reason of the contravention of, or failure to comply with, any regulation, rule, order or direction or requirement made or issued under this Act, shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding five million rupees or to imprisonment of either description for a term not exceeding three years, or to both such fine and imprisonment.

Central Bank to
issue directions
on any aspects
of its resolution
authority

92. Without prejudice to any other provisions of this Act or any other written law, the Central Bank may issue directions to a licensed bank regarding the manner in which any aspect of resolution of such licensed bank shall be conducted.

93. In this Act, unless the context otherwise requires— Interpretation

"abandoned property" means the property as defined in Part IX of the Banking Act and dormant deposits as specified in section 23 of the Finance Business Act;

"Bank of Ceylon Ordinance" means the Bank of Ceylon Ordinance (Chapter 397);

"Banking Act" means the Banking Act, No. 30 of 1988;

"bridge bank" means an institution established by the Central Bank to take over and continue operations of certain critical functions and viable operations or to transfer shares, any one or more of the assets, liabilities, legal rights and obligations or other property instruments owned or issued by a licensed bank subject to resolution, which, in the opinion of the Central Bank, is having systemic importance or impact;

"Central Bank" means the Central Bank of Sri Lanka established by the Central Bank of Sri Lanka Act, No. 16 of 2023;

"close-out netting" means a contractual provision, including a provision in a collateral arrangement, or, in the absence of any such provision, any statutory rule, on the basis of which, upon the occurrence of a predefined event in relation to a party to the contract, the obligations owed by the parties to the contract to each other that are covered by the provision, whether or not they are at that time due and payable, are automatically or at the election of one of the parties to be immediately due, reduced to or replaced by a single net obligation, whether by way of novation,

termination, set-off or otherwise, representing the aggregate value of the combined obligations, which is thereupon due and payable by one party to the other;

"Companies Act" means the Companies Act, No. 07 of 2007;

"court" means the High Court established under Article 154P of the Constitution for a Province, empowered with civil jurisdiction by Order published in the *Gazette* under section 2 of the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996, within the Province for which such High Court is established, or where any such High Court vested with such civil jurisdiction is not established for any Province, the High Court established for the Western Province;

"crisis times" means a period of time in which the financial system is unable to perform its key functions including intermediation of financial funds, management of risks, and settling of payments efficiently, and non-crisis times shall be construed accordingly;

"critical functions" means activities performed by a licensed bank for and on behalf of third parties other than the licensed bank, where the failure to perform any such activities would lead to a disruption of banking services which are essential for the functioning of the real economy or for ensuring financial system stability, due to the size or the market share of such licensed bank, external and internal interconnectedness, complexity or cross-border activities of such licensed bank;

"critical shared services" means activities performed by a licensed bank itself or outsourced to be performed by any third party service provider, where the failure

to perform any such activities would lead to an inability on the part of the licensed bank to perform critical functions and, thereby disrupting services which are essential for the functioning of the real economy or for ensuring financial system stability;

"extraordinary public financial support" means infusion of capital for a licensed bank having a systemic importance or impact, through funds other than the funds of the Central Bank;

"Finance Business Act" means the Finance Business Act, No. 42 of 2011;

"financial sector" means a subsector of the economy which comprises institutions that manage funds on behalf of customers, either corporate or retail, or provide financial intermediary services to transfer and allocate funds in an economy;

"Housing Development Finance Corporation Bank of Sri Lanka Act" means the Housing Development Finance Corporation Bank of Sri Lanka Act, No. 7 of 1997;

"insolvency" means a situation where the liabilities of a licensed bank are higher than the assets of such licensed bank as reflected in its balance sheet;

"insured deposits" means all eligible deposits, subject to the maximum compensation payable to a depositor under section 44;

"insured depositors" means holders of eligible deposits, subject to the maximum compensation payable to a depositor under section 44;

"international financial institutions" includes the Asian Development Bank, the International Bank for Reconstruction and Development, the International Development Association, the International Monetary Fund or similar institutions;

"key management personnel" means the employees of a licensed bank who are primarily responsible for the overall management and operation of such licensed bank, including the heads of the functions of credit, finance, treasury, operations, compliance, audit, risk management, company secretariat, information technology, information security and such other function as may be determined by the Central Bank, from time to time;

"licensed bank" means a commercial bank or a specialised bank licensed by the Monetary Board of the Central Bank under the Banking Act, and includes a branch of a foreign bank incorporated outside Sri Lanka;

"licensed exchange" means an exchange, licensed under the provisions of the Securities and Exchange Commission of Sri Lanka Act, No.19 of 2021;

"Minister" means the Minister assigned the subject of Finance in terms of Article 44 or 45 of the Constitution;

"Monetary Board" means the Monetary Board established by the Monetary Law Act (Chapter 422);

"National Savings Bank Act" means the National Savings Bank Act, No. 30 of 1971;

"netting" means determination of net claims or obligations after setting-off or adjusting all the claims or obligations based on or arising from mutual dealings between the parties to a contract;

"non-bank financial institutions" means finance companies licensed by the Monetary Board under the Finance Business Act;

"People's Bank Act" means the People's Bank Act, No. 29 of 1961;

"Pradeshia Sanwardhana Bank Act" means the Pradeshia Sanwardhana Bank Act, No. 41 of 2008;

"recovery plan" means a plan which provides for measures to be taken by a licensed bank in the event of a deterioration of its financial position prior to the Central Bank taking resolution action on such licensed bank;

"Registrar-General of Companies" means the Registrar-General of Companies or other officer performing the duty of registration of companies under the Companies Act;

"resolution" means, restructuring of a licensed bank by the Central Bank through the exercise of resolution powers of the Central Bank in order to safeguard the public interest, including the continuity of the critical functions of such licensed bank, securing financial stability and ensuring minimal costs to taxpayers;

"resolution plan" means a plan designed by the Central Bank for each licensed bank having systemic importance or impact, in accordance with the international standards and best practices available for resolution of banks;

"State Mortgage and Investment Bank Law" means the State Mortgage and Investment Bank Law, No. 13 of 1975;

"subordinated debt holder" means a holder of debt having a claim against the issuer's assets which are of lower ranking, or junior to all other obligations of a licensed bank and is paid after claims of holders of senior securities are paid;

"temporary financial assistance" means the financial assistance to contribute to the funding of the resolution of a licensed bank, or to a bridge bank by the Government for a temporary period;

"wind-down" means gradually reducing or closing down of business; and

"write-down" means reducing the value of an asset to offset a loss or an expense.

Protection from
action

94. The officers of the Central Bank and the Administrator appointed under section 18, shall not be liable for any damage, or act or omission done pursuant to and in the course of the exercise, performance and discharge of the powers, duties and functions under this Act, unless it has been proved that such damage, act or omission has been done without good faith or has constituted intentional wrongful misconduct or willful default.

Provisions for
appeals

95. (1) Subject to the provisions of subsections (2) and (3), any person aggrieved by a decision of the Central Bank including the decision under subsection (1) of section 13, any regulation, order, rule, direction, or any determination issued, request made or requirement imposed by the Central Bank under this Act, or who apprehends that he would be affected by any such decision, regulation, order, rule, direction, determination, request or requirement imposed or proposed to be taken, as the case may be, shall not be entitled to a permanent or interim injunction, an enjoining order, a stay order or any other order having the effect of staying, restraining, or impeding the Central Bank from giving effect to such order.

(2) (a) The jurisdiction conferred on the Court of Appeal by Article 140 of the Constitution shall, in relation to a decision, regulation, order, rule, direction, determination, request or requirement referred to in subsection (1), be exercised by the Supreme Court and not by the Court of Appeal.

(b) Every application invoking the jurisdiction referred to in paragraph (a) shall be made within one month of the date of commission of the act in respect of which or in relation to which such application is made and the Supreme Court shall hear and finally dispose of such application within two months of the filing of such application.

(3) Nothing contained in subsection (1) shall affect the powers which the Supreme Court may otherwise lawfully exercise in respect of any application made under Article 126 of the Constitution or in the exercise of the jurisdiction referred to in subsection (2).

(4) No application under paragraph (b) of subsection (2) shall be made without giving seven days' prior notice to the Central Bank of such application.

96. (1) In the event of any inconsistency between the provisions of this Act and any other written law for the time being in force, the provisions of this Act shall prevail.

This Act to
prevail over
other written
laws

(2) Nothing contained in the provisions of the Bank of Ceylon Ordinance, the People's Bank Act, the National Savings Bank Act, the State Mortgage and Investment Bank Act, the Housing Development Finance Corporation Bank of Sri Lanka Act, the Pradeshiya Sanwardhana Bank Act or any other Statute under which a state-owned commercial bank or a specialised bank will be established, shall be construed as a waiver or restriction of the resolution authority of the Central Bank under this Act.

Savings

97. (1) The Sri Lanka Deposit Insurance and Liquidity Support Scheme established by the Monetary Board by virtue of the regulations issued under the Monetary Law Act and subsisting on the day immediately preceding the appointed date shall, with effect from the appointed date, be deemed to be the Deposit Insurance Scheme of the Central Bank under this Act.

(2) The Sri Lanka Deposit Insurance and Liquidity Support Fund established by the Monetary Board by virtue of the regulations issued under the Monetary Law Act and subsisting on the day immediately preceding the appointed date shall, with effect from the appointed date, be deemed to be the Deposit Insurance Fund of the Central Bank under this Act.

(3) The amount lying to the credit of the Sri Lanka Deposit Insurance and Liquidity Support Fund established by the Monetary Board by virtue of the regulations issued under the Monetary Law Act and subsisting on the day immediately preceding the appointed date shall, with effect from the appointed date, be deemed to be the amount lying to the credit of the Deposit Insurance Fund under this Act.

(4) All rights, obligations, assets, properties, liabilities, powers, privileges and authorities attributed to the Sri Lanka Deposit Insurance and Liquidity Support Scheme established by the Monetary Board by virtue of the regulations issued under the Monetary Law Act, and interests arising in or out of such rights, assets, properties and such liabilities of the said Scheme and subsisting on the day immediately preceding the appointed date, shall, with effect from the appointed date, be deemed to be rights, obligations, assets, properties, liabilities, powers, privileges, authorities and interests of the Deposit Insurance Scheme under this Act.

- (5) (a) all premia or additional premia collected from member institutions;
- (b) all penalties imposed on member institutions;
- (c) all payments of compensation paid and to be paid to depositors of member institutions whose licences have been cancelled by the Monetary Board;
- (d) all the secured loans or advances granted to any member institutions and any recovery thereof, and all collaterals pledged against such loans or advances, as the case may be;
- (e) all the investments made and any return received thereon;
- (f) all or any books, accounts and records relating or appertaining to, any other property maintained; and
- (g) all or part of the taxes, duties, levies or any other charges of similar nature paid,

by the Sri Lanka Deposit Insurance and Liquidity Support Scheme established by the Monetary Board by virtue of the regulations issued under the Monetary Law Act, subsisting on the day immediately preceding the appointed date shall, with effect from the appointed date, be deemed to be premia or additional premia collected, penalties imposed, payment of compensation paid or to be paid, secured loans or advances granted, and collaterals pledged, investments made and returns received, books, accounts and records maintained, and taxes, duties, levies or charges paid by the Deposit Insurance Scheme under this Act.

(6) With effect from the appointed date, every reference to the Sri Lanka Deposit Insurance and Liquidity Support Scheme established by the Monetary Board under the Monetary Law Act in any regulation, notification, contract, instrument, record, share certificate, document, deed, bond, agreement, guarantee, power of attorney, grant of legal representation and other instruments of whatever nature shall be deemed to be a reference to the Sri Lanka Deposit Insurance Scheme under this Act to give effect to the provisions thereof.

(7) Any agreement, memorandum of understanding or contract entered into by the Monetary Board with any other regulatory, supervisory or state authority, whether in or outside Sri Lanka, in respect of the exercise of resolution authority and cross-border cooperation and subsisting on the day immediately preceding the appointed date shall, with effect from the appointed date, be deemed to be an agreement, memorandum of understanding or contract entered into by the Central Bank under this Act.

(8) Notwithstanding the operation of this Act, any resolution measure or early intervention measure taken by the Monetary Board or any other officer of the Central Bank authorized in that behalf by the Monetary Board under the Monetary Law Act, the Banking Act or the Finance Business Act, as the case may be, and continuing on the day immediately preceding the appointed date shall be deemed to be a resolution measure or an early intervention measure taken under this Act and shall be continued under the said Acts for such period as the Monetary Board may determine.

Sinhala text to
prevail in case
of inconsistency

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

Banking (Special Provisions) 107
Act, No. 17 of 2023

SCHEDULE

[section 6]

1. Banking Act, No. 30 of 1988.
2. Finance Business Act, No. 42 of 2011.
3. Companies Act, No. 07 of 2007.
4. Securities and Exchange Commission of Sri Lanka
Act, No. 19 of 2021.

