

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

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

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

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

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

PART IV OFF-SHORE BANKING BUSINESS

License to engage in off shore banking business
[§ 12, 2 of 2005.] **23.** Unless authorized under section 76D, no off-shore banking business shall be carried on except by a commercial bank licensed to carry on off-shore banking and such bank shall carry on its business in accordance with such off-shore banking scheme formulated by the Monetary Board:

Provided that the banks specified in Schedule I, which on the appointed date are carrying on off-shore banking business under the “Foreign Currency Banking Scheme” established by the Monetary Board shall be issued a licence in terms of section 5 enabling such banks to carry on off-shore banking business under this Part.

Parts III, V and VI not to apply to off-shore banking in certain circumstances.
[§ 15, 33 of 1995.] **24.** (1) All off-shore operation of a licensed commercial bank under this Part, shall be carried on by its off-shore unit, and subject to the provisions of subsection (2), Parts III, V and VI of this Act, shall not apply in respect of such off-shore banking business.

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

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

[§ 13, 2 of 2005.]

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

- (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;
- (b) borrow any sum in a designated foreign currency from any non-resident;
- (c) extend accommodation to any non-resident in any designated foreign currency;
- (d) engage in any transaction in any designate foreign currency with any other off-shore unit; and
- (e) engage in any other transaction authorised by the Monetary Board with the approval of the Minister, in any designated foreign currency.

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

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

Off-shore units to *prepare income statements*

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

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

Monetary Board to specify form of balance sheet and income statement.

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

Part III, VI, VII of chap.V of the Monetary Law Act not to apply in certain circumstances.

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

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

Preparation of
annual report

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

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

Monetary Board to
causes examination
consequent to
auditors report

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

Maintenance of
books and
records& c.

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

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

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

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

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

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

Power of
Monetary Board
to call for
information.

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

Secrecy
2,39 of 1990
19, 33 of 1995

34B. (1) Every officer of a licensed commercial bank operating Numbered account on behalf of a customer and every person, who by reason of his capacity or office, has any access to the records, registers, correspondence or any other material of such bank relating to such numbered account shall keep absolute secrecy with regard to the contents thereof, in the interests of the customer to whom the account relates.

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

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

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

(4) Notwithstanding the repeal of Part IVA by the Banking (Amendment) Act, No. 33 of 1995, the holder of a numbered account shall, within a period of two years commencing from such date as may be determined by the Monetary Board by Notification published in the Gazette, close such account and until the close of the account be entitled to operate that account: Provided however no funds shall be credited to any such numbered account, save and except any sum that may be payable as interest on the moneys deposited in such account. Where the owner of a numbered account fails to close such account within the period specified, such account shall, from and after the date of expiry of that period, cease to enjoy the facilities granted to it by virtue of it being a numbered account.

PART V

ACCOUNTS, AUDIT, INFORMATION AND INSPECTION.

Preparation of
balance sheet
and profit and
loss account.

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

(a) balance sheet as at the last working day of such financial year;

(b) a profit and loss account in respect of such year;

Balance sheet

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

(2) There shall be shown in the balance sheet or in any statement annexed thereto and shall present as a minimum of the following —

(a) capitalized expenses not represented by tangible assets under separate headings, so far as they are not written off;

(b) the market value of investments;

(c) the method adopted to value fixed assets if there had been any valuation of such assets during the financial year;

(d) the aggregate amounts of advances after the provisions for bad and doubtful debts;

(e) any increase or decrease in the provision for depreciation, renewals or diminution in the value of fixed assets;

(f) cash flow statement.