

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.

Section 30 of the Monetary Law Act to be applicable. (§ 8, 33 of 1995)

11A. Nothing contained in sections 9, 10 and 11 of this Act, shall in any way affect the powers conferred on the Monetary Board by section 30 of the Monetary Law Act.

12 (1) The written approval of the Monetary Board given with the concurrence of the Minister, shall be required—

- (a) for a licensed commercial bank to open or close a branch, agency or office of such bank, in any part of Sri Lanka or to effect a change in the location of any existing place of business;
- (b) for a licensed commercial bank incorporated or established within Sri Lanka by or under any written law to open or close a branch, agency, or office in any place outside Sri Lanka;
- (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 a licensed specialised bank;
- (d) for banks incorporated or established outside Sri Lanka to open a representative office or such other place of business within Sri Lanka.
- (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 or a branch thereof.

(1A) An 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;
- (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—

- (i) "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.
- (ii) "material interest" means the holding of over ten *per centum* of the issued capital of a licensed commercial bank carrying voting rights.

(2) The approval under this section may be granted subject to such terms and conditions as may be specified by the Monetary Board with the concurrence of the Minister

13 (1) The Monetary Board may, with the approval of the Minister, on a report by the Director of Bank Supervision, by order made in writing, withdraw the approval or vary the terms and conditions of an approval granted under section 12, including the closure of a branch, agency or office of a licensed commercial bank. Notice of

the decision of the Monetary Board shall be communicated by the Director of Bank Supervision to such bank, which shall carry out all the obligations and meet all the liabilities of the branch, agency or office.

(2) Any licensed commercial bank to whom notice has been issued under subsection (1) may within thirty days of the date of such order, tender objections in writing to the Monetary Board giving reasons why such approval shall not be withdrawn or the terms and conditions varied.

(3) After the expiration of sixty days from the date of the notice and after considering the objections placed before the Board under subsection (2), the Monetary Board shall, with the approval of the Minister_

(a) by order made in writing, cancel the notice of withdrawal or the variation unconditionally; or

(b) by order made in writing and published in the *Gazette*, confirm the withdrawal or variation with or without modification.

(4) Where the order for the closure has been made under subsection (1), the Monetary Board shall direct the Director of Bank Supervision to take all steps as may appear necessary in the circumstances, to satisfy himself that all persons who have deposited moneys in that branch, agency or office are given the opportunity to withdraw such moneys expeditiously and to ensure that such measures as would safeguard the interest of such depositors are taken. It shall be lawful for the Director of Bank Supervision to take such steps accordingly.

Mobile Banking Units

13A (1) Notwithstanding the provisions contained in paragraph (a) of subsection (1) of section 12, the Deputy Governor may on, guidelines issued by the Monetary Board for such purpose, grant approval for the establishment of mobile banking units, subject to such terms and conditions as he may determine, from time to time.

(2) The Deputy Governor may on a report of Director of Bank Supervision, by order made in writing withdraw the approval granted under subsection (1) or vary the terms and conditions of such approval, and notice of the decision shall be communicated to the relevant licensed commercial bank.

Compliance of persons
& banks suspected of
carrying on banking
business.
[§ 8, 2 of 2005.]

14 (1) Where the Governor of the Central Bank has reasonable grounds to believe that any person 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.

(2) The Director of Bank Supervision or such other officer so authorised by the Governor in terms of subsection (1) may require such person to furnish to him such information or to produce for inspection any books, minutes, accounts, cash, securities, vouchers, other documents and records as he may consider necessary to obtain for the purpose of such examination, and it shall be the duty of

such person or bank to furnish such information and to submit to such officer for examination such books, minutes, accounts, cash, securities, vouchers, other documents and records, as the case may be, when so required.

(3) Any person who fails to furnish such information or to produce any books, minutes, accounts, cash, securities, vouchers, other documents and records when required to do so under subsection (2) shall be guilty of an offence under this Act.

(4) Any refusal by any person to furnish such information or to submit such books, minutes, accounts, cash, securities, vouchers, other documents and records in contravention of the provisions of subsection (2) shall be *prima facie* evidence of such person carrying on banking business without a license.

Articles to be altered
with approval
[§ 10, 33 of
1995.]

4A. A licensed commercial bank which is a company as defined in section 449 of the Companies Act, No. 17 of 1982, shall not alter its Memorandum of Association and the Articles of Association, without the prior written approval of the Monetary Board.

15. The provisions of this Part shall not be construed to mean that a license under section 5, or approval under section 12, shall be required for the Monetary Board or the Central Bank to exercise, perform or discharge the powers, duties or functions, in respect of banking business conferred on, or imposed on, or assigned to, the Monetary Board under the Monetary Law Act or any written law.

PART II

BANKING NAMES AND DESCRIPTIONS

Restriction on the use of
certain names and
descriptions.
[§ 9, 2 of 2005]

16 (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 specialised 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;

[§ 11, 33 of 1995]

(2) No firm, individual or group of individuals, shall, except with the prior written approval of the Monetary Board, for the purpose of carrying on any business, use as part of its or his name or description any of the words “ bank ”, “ banker ” or “ banking ” or any of its derivatives, or its transliterations, or their equivalent in any other language.

[§ 9, 33 of 1995]

(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.
- (d) to the representative office of a licensed commercial bank or licensed specialised bank incorporated or established outside Sri Lanka.

A licensed commercial bank not to have as its subsidiary a company which is not a

17 (1) A licensed commercial bank incorporated or established in Sri Lanka shall not have as its subsidiary a company which is not a licensed commercial bank

Provided however, such bank may, with the written permission of the Monetary Board, have a subsidiary which carries on any one or more of the following businesses:—

- (a) carries on the business of providing training in any one of the subjects relating to banking, accountancy, valuation, project appraisal and credit appraisal;
- (b) carries on the business of engaging in hire purchase transactions;
- (c) carries on the business of providing medium and long term credit for development;
- (d) carries on the business of factory leasing and warehousing;
- (e) carries on the business of providing management consultancy services;
- (f) becomes the subsidiary only by reason of a licensed commercial bank having to acquire the share of a company consequent to such licensed commercial bank capitalising the capital and the interest accrued thereon and which is

unpaid by the company to the bank, on loans granted by the licensed commercial bank;

- (g) carries on any form of business which in the opinion of the Monetary Board is not inconsistent with the business of banking and the provision of finance:

Provided, further that the provisions of this subsection shall not apply to a subsidiary formed before the appointed date by any licensed commercial bank incorporated or established in Sri Lanka.

(2) A licensed commercial bank shall not accord to any of its subsidiary companies, treatment which is more favourable than the treatment accorded to other constituents of the bank, carrying on the same business as any such subsidiary company.

(3) For the purposes of this Act a company shall, subject to the provisions of subsection (4) of this section, be deemed to be a subsidiary of another if, and only if—

- i. that other company holds more than half in nominal value of its equity share capital; or
- ii. that other company is a shareholder of it and controls the composition of its board of directors; or
- iii. the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

(4) In determining whether one company is a subsidiary of another—

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to the provisions of paragraphs (c) and (d), any shares held or power exercisable—
 - (i) by any person as a nominee for that other except where that other is concerned only in a fiduciary capacity; or
 - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other;

- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first mentioned company or of a trust deed for securing the issue of such debentures shall be disregarded;

- (d) any shares held or power exercisable by, or by a nominee of, that other or its subsidiary (not being held or exercisable as referred to in paragraph (c)) shall be treated as not held or exercisable by that other, if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money, and the shares are held or power is exercisable as aforesaid by way of security, only for the purposes of a transaction entered into in the ordinary course of that business.

(5) For the purposes of this Act, a company shall be deemed to be another's holding company if, and only if, that other is its subsidiary.

(6) In this Part the expression "equity share capital" in relation to a company, means its issued share capital excluding any part thereof which, neither in respect of dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

Purchase of shares
fifty per cent or
less by a licensed
commercial bank
[§ 9, 33 of 1995]

17A. (1) Subject to the provisions of subsection (2), a licensed commercial bank shall not acquire or hold shares in any company other than a listed public company, and—

- (a) any share holding acquired by such bank shall not be in excess of such percentage of its capital funds as the Monetary Board may determine from time to time; and
- (b) the aggregate amount invested in the shares of listed public companies (excluding companies which are subsidiaries of the bank) shall not exceed, such percentage of its capital funds as may be determined from time to time by the Monetary Board

Provided however, a licensed commercial bank may, without exceeding the limits specified above, acquire shares in a public company other than a listed company, if such acquisition becomes necessary for the purpose of rehabilitating such company to make it financially viable.

(2) The provisions of subsection (1), shall not apply to—

- (a) investment in a subsidiary company of such bank which is a licensed commercial bank;
- (b) investments in any other subsidiary company of the bank acquired with the approval of the Monetary Board;
- (c) any shareholding which the bank might acquire in the course of the satisfaction of any debt due to such bank, or as a consequence of the underwriting of a share issue:

Provided that where as a result of the acquisition of these shares, the total investment of the bank exceeds the percentage of capital funds as determined by the Monetary

Board under subsection (1), the bank shall dispose of such excess shares within two years or such longer period as may be determined by the Monetary Board, of the date of such acquisition;

- (d) Any acquisition or holding of shares in any company which in the opinion of the Monetary Board is established for the advancement and promotion of human resources development and technological development in the banking and financial sectors;
- (e) Investments authorized by the Monetary Board.

(3) For the purpose of this section “listed public company” means any public company which has its securities listed or quoted in a stock exchange licensed under the Securities and Exchange Commission Act, No. 37 of 1987.

PART III

CAPITAL REQUIREMENTS, RESERVE FUNDS AND MAINTENANCE OF LIQUID ASSETS

Compliance With provisions of this Part essential.

18. Notwithstanding anything contained in any other written law, no licensed commercial bank shall on or after the appointed date, commence or carry on business in Sri Lanka unless it complies with all the requirements specified in this Part.

19. (1) Subject to the provisions of subsection (3), every licensed commercial bank—

- (a) which has been issued with a license prior to the date of commencement of this section, shall at all times maintain an equity capital in an amount not less than twenty-five million rupees;
- (b) which has been issued with a license after the date of commencement of this subsection, shall at all times maintain an equity capital in an amount not less than one hundred million rupees or such other amount as the Monetary Board may, having regard to the viability and stability of the banking system and the interest of the national economy and with the concurrence of the Minister, determine from time to time.

(2) “equity capital” shall mean—

- (a) paid up capital if it is a licensed commercial bank incorporated or established in Sri Lanka by or under any written law .
- (b) the amount assigned to such bank by the head office, if it is a licensed commercial bank incorporated or established outside Sri Lanka.