

may be, on the day immediately preceding the relevant date, who are not offered employment with the acquiring bank, shall be entitled to the payment of compensation.

Payment of compensation
[§ 30, 33 of 1995.]

49H. Where any officer or servant of the defaulting bank is entitled to be paid compensation, the acquiring bank shall determine the amount of compensation that shall be paid in consultation with the Commissioner of Labour and such determination shall be deemed not to affect the right such officer or servant may have under any other written law.

Offences
[§ 30, 33 of 1995.]

49J. Any person who contravenes or fails to comply with any provision of this Part or term or condition imposed there under shall be guilty of an offence under this Act.

Section 12(1)(c) not to
apply in respect of
defaulting bank.
[§ 30, 33 of 1995.]

49K. Nothing contained in the provisions of paragraph (c) of subsection (1) of section 12 shall apply, in relation to the vesting of banking business of a defaulting bank or part thereof, to an acquiring bank.

Interpretation
[§ 30, 33 of
1995.]

49L. In this Part of this Act unless the context otherwise requires—

“ value of the vested business ” means the value of the assets of the defaulting bank vested in the acquiring bank by virtue of an Order made under section 49B (excluding unrecoverable assets as determined by the auditor nominated under section 49F) less the value of the liabilities of the defaulting bank vested in the acquiring bank, by virtue of such Order;

“ vested business ” in relation to an acquiring bank or a defaulting bank, means the banking business of the defaulting bank or part thereof, which is vested in such acquiring bank by an Order under section 49B.

PART VIII

LIQUIDATION OF LICENSED COMMERCIAL BANKS INCORPORATED WITHIN SRI LANKA AND CLOSURE OF BRANCHES OF LICENSED COMMERCIAL BANKS INCORPORATED OUTSIDE SRI LANKA

Liquidator.

50. The Director of Bank Supervision shall be appointed as the liquidator for the purposes of this Part.

Liquidation.

51. No voluntary liquidation of a licensed commercial bank incorporated or established in Sri Lanka by or under any written law shall be effected without the prior authorisation of the Monetary Board obtained in writing. The authorisation shall be granted only if it appears to the Monetary Board that—

- (a) the licensed commercial bank is solvent and has sufficient liquid assets to repay its depositors and other creditors without delay; and

- (b) the liquidation has been approved by the affirmative vote of the shareholders of at least three-fourths of the outstanding shares entitled to vote at a meeting called expressly for this purpose:

Provided that if the liquidation is to be effected in whole or in part through the sale of any of the assets of the licensed commercial bank to, and the assumption of its deposit liabilities by, another licensed commercial bank, the Monetary Board may, upon a finding of imminent danger of insolvency, waive the requirement for shareholder approval:

Provided further, that the provisions of paragraph (c) of subsection (1) of section 12 shall not apply to such assumption of liabilities.

52. Where a licensed commercial bank has received the authorization of the Monetary Board to liquidate, such bank shall-

- (a) immediately cease to carry on business, exercising only such powers as are necessary to effect an orderly liquidation;
- (b) repay sums of money due to its depositors and other creditors;
- (c) wind up all operations undertaken prior to the receipt of the authorisation

53. Any licensed commercial bank which is subject to voluntary liquidation shall, within thirty days of the receipt of the authorization referred to in section 51 cause a notice of voluntary liquidation, to be sent by registered post to all depositors, to the creditors, and persons otherwise entitled to the funds or property held by such licensed commercial bank as a fiduciary, lessor of a safe deposit box or bailee. The Monetary Board shall specify the information to be included in the notice. The Monetary Board may, where it considers it expedient so to do, exempt the posting of such notice to specified persons upon a showing of reasonable cause therefor by such licensed commercial bank. The notice shall be kept displayed in a conspicuous place within the place of business of the licensed commercial bank, and shall be given such other publicity as the Monetary Board may direct.

54. The authorisation to go into voluntary liquidation shall not prejudice the rights of a depositor or other creditor or owner to payment in full of his claim, and the rights on an owner of funds or other property held by the licensed commercial bank. All lawful claims shall be paid promptly and all funds and other property held by the licensed commercial bank shall be returned to their rightful owners within such maximum period as the Monetary Board may determine.

55. Where the Monetary Board is of the opinion that any licensed commercial bank has discharged all its obligations as referred to in section 54 the name of such bank shall be removed from the list of licensed commercial banks and the outstanding assets shall be distributed among its rightful owners in proportion to their respective rights. No distributions shall be made until—

- (a) all claims of depositors or other creditors or owners have been paid and, in the case of disputed claims, before the licensed commercial bank has transmitted to the Central Bank sufficient funds to meet any liability that may arise after a judicial decision;
- (b) any funds payable to depositors, other creditors and owners who have not claimed them, have been transmitted to the Central Bank;
- (c) any other funds or property held by the licensed commercial bank which could not be returned to the rightful owner in accordance with the provisions of this section, have been dealt with in accordance with section 72.

Compulsory
liquidation

56. Where the Monetary Board is of the opinion that—

- (a) the assets of licensed commercial bank whose voluntary liquidation, it has authorised, will not be sufficient for the full discharge of all its obligations; or
- (b) the completion of voluntary liquidation is unduly delayed,

it shall forthwith take steps to revoke the license issued to such bank and commence proceedings for the compulsory liquidation of such bank in conformity with the procedures set out hereunder.

Director to take
charge of all books
,records and assets

57. When the cancellation of the license of a licensed commercial bank incorporated or established in Sri Lanka has become final in terms of subsection (3) of section 9, the licensed commercial bank shall forthwith suspend its business within and outside Sri Lanka, and the Director of Bank Supervision shall direct that liquidation proceedings in accordance with the provisions of this Act be taken. As soon as possible after initiating the liquidation proceedings an inventory of the assets and contingent liabilities of the licensed commercial bank shall be made and a copy thereof transmitted to the Monetary Board, which copy shall be available at the office of the Monetary Board for examination by the parties having an interest in the business of such bank.

Director of Bank
Supervision to
have full
management
and control for the
purpose of
liquidation.
[§ 22, 2 of 2005.]

58. (1) The Director of Bank Supervision shall be vested with the full and exclusive power of management and control of the affairs of any licensed commercial bank for the purpose of compulsory liquidation and shall have the power—

- (a) to wind up its operations by the institution of liquidation proceedings in courts;
- (b) to stop or limit the payments of its obligations;
- (c) to execute any instrument in the name of the licensed commercial bank; and

(d) to initiate, defend and conduct in its name any action or proceedings to which the licensed commercial bank may be a party.

[§ 22, 2 of 2005.]

(2) The Director of Bank Supervision may, engage the services of any professionally qualified person to assist him in relation to the exercise of the functions of the liquidator in a compulsory winding up of a licensed commercial bank.

Claims &c., to be extended. Where liquidation proceedings have been instituted

59. Under liquidation proceedings—

- (a) any term, statutory, contractual or otherwise, on the expiration of which a claim or right of the licensed commercial bank would expire or be extinguished, shall by the operation of this section, be extended by six months from the date of the commencement of the proceedings;
- (b) any attachment or lien, except a lien existing six months prior to the date as specified in paragraph (a), shall be vacated, and no attachment or lien, except a lien created by the Director of Bank Supervision, in the application of the provisions of this Part, shall attach to, any property or assets of the licensed commercial bank in liquidation;
- (c) any transfer of any assets of the licensed commercial bank made after or in contemplation of its insolvency shall be void.

Power of Director of Bank Supervision to terminate contracts &c.

60. (1) Within a period of six months from the date on which the cancellation of a license becomes final, the Director of Bank Supervision may, subject to the provisions of any other law for the time being in force, terminate—

- (a) any contract of employment entered into with such bank;
- (b) any contract for services to which such licensed commercial bank was a party; or
- (c) any obligation of the licensed commercial banks including its obligations, if any, as a lessee.

(2) A lessor who shall have received ninety days notice that the Director of Bank Supervision is exercising discretionary powers to terminate the lease shall have no claim for rent other than rent accrued on the date of termination of the lease, nor for damages by reason of such termination.

Termination of fiduciary functions.

61. As soon as possible after the cancellation of a license becomes final, the Director of Bank Supervision shall make a final distribution by taking such steps as are necessary to terminate all functions performed in a fiduciary capacity by the licensed commercial bank and return all assets and property held by the licensed commercial bank as a fiduciary to the owners thereof, and settle its fiduciary accounts.

Director of Bank Supervision to issue statement to depositors &c.

62. As soon as possible after the cancellation of a license becomes final, the Director of Bank Supervision shall dispatch by registered post to all depositors,

owners, other creditors, safe deposit box lessees, and the bailors of property held by the licensed commercial bank, a statement of the nature and amount for which their claim is shown in the licensed commercial bank's books. The statement shall specify that any objections if any must be filed with the Director of Bank Supervision before a specified date not later than sixty days from the issue thereof, and shall invite safe deposit box lessees and bailors to withdraw their property in person. The Director of Bank Supervision may, subject to confirmation by the Monetary Board, obtained prior to the commencement of the sixty day period, exempt the dispatch of the statements by post to specified persons upon the licensed commercial bank showing reasonable cause therefor.

Safe deposit boxes.

63. (1) Any safe deposit box, the contents of which have not been withdrawn before the date specified, shall be opened in the manner prescribed by the Director of Bank Supervision. The contents and any unclaimed property shall be held by the licensed commercial bank as bailee, and—

- (a) all monies shall, upon direction by the Monetary Board, be transferred to a special account in the Central Bank;
- (b) any article other than money shall, upon direction by the Monetary Board, be referred to the Minister for a direction as to the method of disposal of the same.

(2) The money referred to in paragraph (a) and articles referred to in paragraph (b) shall be deemed to be abandoned property in terms of the provisions of Part IX, if the owner thereof, has, over a period of ten years from the date of deposit of such money or articles, as the case may be, not evidenced an interest in the same. The provisions of section 72 shall apply in respect of such items as from the date of their transfer.

Functions of Director of Bank Supervision in relation to liquidation proceedings of a licensed commercial bank.

64. Within three months after the date specified in the notice for filing of objections or such longer period as may be determined by Monetary Board, the Director of Bank Supervision shall—

- (a) reject any claim if he doubts the validity thereof;
- (b) determine the amount, if any, owing to each identifiable depositor or other creditor and the priority attaching to his claim under the provisions of this Act;
- (c) prepare a Schedule of the scheme of work he proposes to take;
- (d) notify each person whose claim has not been allowed in full, and publish once a week for three consecutive weeks, a notice in three daily newspapers in the Sinhala, Tamil and English languages, which contains an intimation of the date and place, where the Schedule of the scheme of work he proposes to take, will be available for inspection. The date so intimated, shall be a date not sooner than thirty days from the date of the third publication in the newspaper, upon which the Director of Bank Supervision will file the Schedule in Court.

Objection to
Schedule.

65. Within twenty one days after filing of the schedule referred to in paragraph (c) of section 64, any depositor, creditor, shareholder or other interested person may file objections to any step proposed to be taken. Any objections so filed shall be considered by the Court upon such notice to the Director of Bank Supervision and interested parties as the Court may specify. If an objection is sustained, the Court shall direct that an appropriate modification be made to the Schedule. After filing the Schedule the Director of Bank Supervision may, from time to time, make partial distribution to the holders of claims which are undisputed or which have been allowed by the Court, on condition that a proper reserve is established for the payment of disputed claims. As soon as possible after all objections have been decided upon, the Director of Bank Supervision shall make the final distribution.

Priority of claims.
[§ 23, 2 of 2005.]

66. (1) The claims set out hereunder shall have priority as against the general assets of the licensed commercial bank in the order indicated below:—

- (a) necessary and reasonable expenses incurred by the liquidator in winding up;
- (b) wages and salaries of officers and employees of the bank for the three month period immediately preceding the commencement of winding up proceedings;
- (c) taxes, rates and deposits owed to the Government and local authorities by the licensed commercial bank;
- (d) fees and assessments due to the Central Bank;
- (e) funds deposited in any account with the licensed commercial bank with interest accrued thereon, upto a limit of twenty thousand in respect of any account;
- (f) other deposits with interest if any, accrued thereon.

(2) After payment of all other claims filed, with interest thereon calculated at a rate to be fixed by the Director of Bank Supervision, with the approval of the Court, any remaining claims which were not filed within the prescribed time shall be paid.

(3) If the amount available in respect of a particular category of claims is insufficient to provide payment in full, the said amount shall be distributed pro-rata among the parties of that claim.

Distribution of assets

67. Any assets remaining after all claims have been paid shall be distributed among all the shareholders in proportion to their participation.

Unclaimed assets

68. Funds remaining unclaimed after the final distribution referred to in section 61 is made, which are not subject to the other provisions under this Act, shall upon direction by the Monetary Board, be transferred to a special account in

the Central Bank. The Monetary Board may utilise such funds for such purposes as may be determined by Monetary Board after consultation with the Minister. The funds shall be abandoned property, in terms of Part IX of this Act, if the owner has not, within the ten years immediately preceding the date of the final distribution under section 61, evidenced any interest in the funds. Section 72 shall apply in respect of such funds as from the time of their transfer under this section.

Audited accounts shall be submitted to the courts.

69. Once all assets have been distributed in accordance with the provisions of this Act, the Director of Bank Supervision shall render an audited account to Court. Upon approval of the account by Court, and where the Court makes an order to terminate the liquidation, the Monetary Board shall be relieved of any liability in connection with the liquidation. The Director of Bank Supervision shall proceed to terminate the judicial existence of the licensed commercial bank concerned, in accordance with such provisions of the Companies Act, No. 17 of 1982, and applicable thereto, which are not inconsistent with the provisions of this Act.

Closure of Licensed commercial banks outside Sri Lanka

70. (1) When a licensed commercial bank incorporated outside Sri Lanka wishes to close down its business in Sri Lanka the approval of the Monetary Board for the closure shall be granted, subject to such terms and conditions as the Board may specify. Where approval is granted by the Board, the affairs of the licensed commercial bank in Sri Lanka shall be wound up in accordance with the procedures set out in subsection (4).

(2) When a cancellation of the license of a licensed commercial bank incorporated outside Sri Lanka has been made final under subsection (3) of section 9, the licensed commercial bank shall terminate its business in Sri Lanka and its affairs shall be wound up in accordance with the provisions of subsection (4).

(3) When liquidation proceedings in respect of a licensed commercial bank incorporated outside Sri Lanka are started at the place where the head office is located, the Monetary Board shall order the closure of the licensed commercial bank in Sri Lanka.

(4) When the business of the licensed commercial bank is closed down under subsection (1) or (2) or (3), the licensed commercial bank which is the subject of liquidation, shall retain only such powers as are necessary to wind up its affairs within Sri Lanka, which shall be done expeditiously and in an orderly manner. The Director of Bank Supervision shall supervise the winding up under subsection (1) or (2) or (3) of this section, in accordance with the provisions of subsections (1) and (3) of section 11, take all measures necessary to ensure that no assets owned by the licensed commercial bank, which is the subject of liquidation are removed from Sri Lanka until all obligations and liabilities incurred by such bank, to which the undertaking referred to in paragraph (c) of subsection 2 of section 3 relates, have been met in accordance with the undertaking. The provisions of section 63 and 68 shall apply to the winding up of the affairs under this section.

(5) Where the Monetary Board is of the opinion that the licensed commercial bank has discharged all the obligations referred to in the preceding provisions of this section, the name of such bank shall be removed from the list of licensed commercial banks.

This Part to prevail
over any other law

71. In the event of conflict or inconsistency between the provisions of this Part of this Act and the provisions of the Monetary Law Act (Chapter 422) or the Companies Act, No. 17 of 1982, the provisions of this Part shall prevail.

PART IX ABANDONED PROPERTY

72. (1) In addition to the articles referred to in sections 63 and 68 the articles enumerated in subsection (2) of this section, held by a licensed commercial bank other than such articles so held by an offshore unit of a licensed commercial bank, shall be presumed to be abandoned if the owner has, within a period of ten years immediately after the date of deposit, or payment of funds towards the purchase of shares or other interests, or issuing of instruments, or the date upon which funds held in a fiduciary capacity became payable, or capable of being distributed, or the expiration of the period for which the safe deposit box was rented, as the case may be—

- (a) not increased or decreased the amount of the deposit or funds or presented the pass book or other record for the crediting of interest or dividends in respect of the articles enumerated in paragraphs (a) and (b) of subsection (2) of this section;
- (b) not increased or decreased the principal or accepted payment of principal or income in respect of funds held in a fiduciary capacity;
- (c) not had any correspondence with the licensed commercial bank concerning such articles;
- (d) not otherwise indicated an interest in the articles as evidenced by a memorandum concerning them by the licensed commercial bank.

(2) The following shall be the articles referred to in subsection (1):—

- (a) any general deposit (demand, savings or matured time deposit) made in Sri Lanka with that licensed commercial bank together with any interest or dividend thereon excluding any lawful charges;
- (b) any funds paid in Sri Lanka towards the purchase of shares or other interests in a licensed commercial bank together with any interest or dividend, excluding any lawful charges;
- (c) any sum payable on cheques or on written instruments, on which the licensed commercial bank is directly liable;

- (d) any intangible personal property and any income or interest thereon held in a fiduciary capacity for the benefit of another person;
- (e) any contents of a safe deposit box upon which the rental period has expired and concerning which notice has been sent by registered post to the last known address of the lessee and to which the lessee has failed to respond within three years.

Abandoned property to be transferred to a special account.

73. (1) Any licensed commercial bank holding any abandoned property referred to in section 72, shall make a report to the Monetary Board in such form as the Monetary Board may determine stating the nature of the articles held and in the case of money, the amount of money.

(2) Notwithstanding anything in any other law, all monies included in the report shall, if the Monetary Board directs, be transferred by the licensed commercial bank to a special account in the Central Bank and may be utilised by the Monetary Board for such purposes as may be determined by the Monetary Board after consultation with the Minister.

(3) The articles included in the report that do not fall under subsection (2) shall be referred by the Monetary Board to the Minister for such action as he shall prescribe.

Publication of notice regarding abandoned property.

74. Within thirty days from the submission of the report required by subsection (1) of section 73, the licensed commercial bank shall publish a notice in the Sinhala, Tamil and English daily newspapers stating the name of the owner and particulars concerning the property and shall dispatch, by registered post a notice to the owner to his last known address containing particulars concerning the property, provided that the Monetary Board may exempt the licensed commercial bank from the mailing of such notice upon the licensed commercial bank showing reasonable cause therefor.

Repayment by the Central Bank

75. (1) Where any person furnishes proof to the satisfaction of the Monetary Board that moneys lying to the credit of an account which was in his name or in the name of a person from whom he derives title, have been transferred to a special account in the Central Bank under section 73, shall, subject to such terms, conditions or restrictions as are imposed in respect of such money by or under any written law, be entitled to the repayment of such moneys by the Central Bank together with the interest payable on such moneys up to the date of such repayment, in accordance with such rates and conditions as are applicable to the account to the credit of which such money were lying before they were transferred to the special account in the Central Bank.

Failure to deliver property presumed to be assumed to be abandoned to be an offence.

76. Any licensed commercial bank which fails to file the report or to pay or deliver property presumed to be abandoned as required by section 74 shall be guilty of an offence under this Act.