

(4) The payments to be made to the valuer under subsections (1) and (2) shall be borne by the licensed bank in accordance with such terms and conditions as may be determined by the Central Bank.

(5) The Central Bank shall have the authority to appoint and publish a list of professional valuers for the purposes of this section.

(6) The Central Bank may issue directions, from time to time, for the purpose of giving effect to the provisions of this section.

17. (1) Where the Central Bank has, in the interests of the depositors of a licensed bank, prohibited such licensed bank from carrying on all or part of its business for the purposes of implementing resolution measures under this Act, an officer authorized in that behalf by the Central Bank may make an application to the court for an order to prevent the continuance of any proceedings of a civil nature against the licensed bank with respect to any of its businesses.

Order staying
court
proceedings
against the
licensed bank

(2) The court may, upon hearing *ex parte*, an application made under subsection (1), make an order staying for a period not exceeding three months the continuance of any proceedings of a civil nature against the licensed bank with respect to any of its businesses.

(3) Where a court makes an order under subsection (2), the Central Bank shall, as soon as practicable, publish a notice of such order in the *Gazette* and at least in three Sinhala, Tamil and English daily newspapers circulating in Sri Lanka.

PART II

RESOLUTION MEASURES

18. (1) The Central Bank may, for the purpose of resolution of a licensed bank, by Order published in the *Gazette* and at least in three Sinhala, Tamil and English

Appointment of
an Administrator

daily newspapers circulating in Sri Lanka, appoint a fit and proper person as provided for in subsection (2), as the Administrator to such licensed bank.

(2) In determining whether a person is a fit and proper person to be appointed as the Administrator under subsection (1), the criteria used to determine the fitness and propriety of directors of a licensed bank under any law for the time being in force shall *mutatis mutandis* apply to such person.

(3) The Administrator shall be an independent person who shall not have any interest, direct or indirect, financial or otherwise, in the affairs of the licensed bank subject to resolution. Any person appointed as the Administrator of a licensed bank under this Part of this Act, who acquires any interest, direct or indirect, financial or otherwise, in the affairs of such bank after such appointment, shall forthwith inform such fact to the Central Bank and immediately thereafter cease to act as the Administrator.

(4) An Administrator shall be appointed for a term of six months from the date of appointment. Such term may be extended, from time to time, for further periods of six months at a time by the Central Bank, if required to do so, by an Order published in the *Gazette* and at least in three Sinhala, Tamil and English daily newspapers circulating in Sri Lanka.

(5) The Order of the Central Bank appointing an Administrator or extending the term of an Administrator shall be notified to the licensed bank in writing, specifying the reasons for such appointment or extending the term, as the case may be.

(6) Where an Administrator becomes subject to any disqualification pursuant to the provisions of subsection (2) or (3), the Central Bank shall appoint any other person as the Administrator, having regard to the provisions of subsection (2).

(7) Subject to the provisions of subsection (9), an Administrator shall be paid such remuneration as may be determined by the Central Bank.

(8) The Administrator shall be deemed to be a public servant within the meaning and for the purposes of Part IX of the Penal Code (Chapter 19), and where the Administrator is a body corporate or a firm, its directors or managing partners, as the case may be, shall be considered as public servants for such purposes.

(9) All costs incurred by the Central Bank on account of the Administratorship, including the payment of remuneration of the Administrator, shall be borne by, and charged to, the licensed bank subject to resolution, in accordance with such terms and conditions as may be determined by the Central Bank. Any cost so payable shall constitute a debt due to the Central Bank from such licensed bank, until the same is paid in full to the Central Bank.

19. (1) The Administrator appointed under section 18 shall assume control of all the assets, rights, business and affairs of the licensed bank subject to resolution, and carry on the business and affairs of that licensed bank in the name and on behalf of the licensed bank, until the expiry of the period of time specified in the Order referred to in subsection (1) or subsection (4) of that section or until such time any such Order is revoked.

Effect of taking
control by the
Administrator

(2) Upon the appointment of an Administrator, it shall be the duty of all the directors and employees of the licensed bank subject to resolution, to submit the details of all property, business and affairs of such licensed bank to the Administrator and assign the control of such property, business and affairs to the Administrator.

(3) Without prejudice to the provisions of paragraph (b) of subsection (4), the directors and employees of a licensed bank subject to resolution, shall provide the Administrator with all such facilities as may be required to carry on the business and affairs of such licensed bank.

(4) During the period within which an Order made by the Central Bank in respect of a licensed bank under section 18 is in force-

- (a) all the duties and functions of such licensed bank, its directors, and shareholders under any written law for the time being in force and the respective constituent documents of such licensed bank, shall be vested with the Administrator;
- (b) any director, key management personnel or an employee of such licensed bank shall not, either directly or indirectly, engage in any activity in relation to, or for and on behalf of, the licensed bank, except as may be required or authorized by the Administrator; and
- (c) any remuneration of whatever nature shall not accrue or be payable to any director, key management personnel or an employee of such licensed bank, except with the prior written approval of the Administrator.

Administrator to
prepare an
inventory of
assets and
liabilities

20. The Administrator shall, within thirty days from the date of his appointment or such other date as may be specified by the Central Bank, prepare and submit to the Central Bank an inventory of all assets and liabilities of the licensed bank under his control.

Administrator to
prepare a report
on the viable
resolution
options

21. (1) The Administrator shall, not later than sixty days from the date of his appointment, prepare and submit to the Central Bank, a detailed report on the licensed bank under his control containing his recommendations as to the most viable resolution options to be implemented in respect of such licensed bank.

(2) The Central Bank may, having considered the report and the recommendations made by the Administrator under subsection (1), approve or issue one or more directions to

the Administrator, the licensed bank, directors or key management personnel, as the case may be, as to the most viable resolution option to be implemented.

(3) The Administrator may, in the report referred to in subsection (1), recommend that the licensed bank under the control of such Administrator -

- (a) be sold as a going concern;
- (b) be resolved through transfer of selected assets and liabilities, or the establishment of a bridge bank under section 30;
- (c) be resolved through any other resolution power as may be determined by the Central Bank considering the financial position and risk profile of such licensed bank; or
- (d) be wound up.

(4) The Administrator shall prepare and submit to the Central Bank such regular reports as may be specified by the Central Bank in the Order referred to in section 18 on the financial conditions of the licensed bank subject to resolution, and information relating to the exercise, performance and discharge of the powers, duties and functions of the Administrator in the implementation of the resolution measures.

(5) The Administrator shall be responsible for the organization and maintenance of files, information and documents of the licensed bank subject to resolution, and shall maintain a register containing information relating to all decisions or actions taken on such licensed bank during the period of his administratorship.

Termination of
administratorship

22. (1) An Administrator appointed for the purpose of resolution of a licensed bank shall cease to function as such Administrator in the following situations, whichever occurs first: -

- (a) on completion of the term specified in the Order referred to in subsection (1) or (4) of section 18, as the case may be; or
- (b) where the Central Bank determines to terminate the term of such Administrator.

(2) The Administrator shall, within twenty working days of the termination of the appointment under subsection (1), prepare and submit to the Central Bank a final report on activities of his administratorship.

Capital increase
by existing
shareholders

23. (1) The Central Bank, or the Administrator with the approval of the Central Bank, may take following actions to increase the capital of the licensed bank subject to resolution through the issuance of new shares: -

- (a) to determine the extent of losses and prepare the financial statements of such licensed bank covering the amount of such losses from and out of the profits, reserves and, if necessary, the capital of such licensed bank; and
- (b) to determine the amount of additional capital required to be invested in the shares of such licensed bank in order to comply with all capital requirements made under the Banking Act and to request in writing, the existing shareholders of the licensed bank to subscribe and purchase additional shares, by submitting binding commitments equal to the full amount of additional capital needed, or any part thereof, within the time specified in such request:

Provided however, prior to the request referred to in this paragraph, the Central Bank may, if it considers necessary, examine and identify shareholders who may have acted as shadow directors and contributed directly or indirectly to the failure of such licensed bank and shall not allow such shareholders to participate in the increase of the capital under this section:

Provided further, if shareholders subscribe or purchase additional shares under this section, such shareholders may be exempted from the application of directions issued by the Monetary Board under the Banking Act on share ownership limits of licensed banks for a period as may be determined by the Central Bank.

(2) Notwithstanding anything to the contrary in any other written law, or the articles of Association or any other constituent document of the licensed bank, the existing shareholders of a licensed bank subject to resolution shall have no pre-emptive or any other rights to purchase additional shares issued except as provided for in subsection (1).

(3) Subject to the provisions of subsection (1), the Central Bank shall have the power to recognize losses to be allocated to shareholders and subordinated debt holders in the performance of its duties under this section.

24. (1) Without prejudice to the provisions of section 23 and for the purposes of recapitalization of a licensed bank by new shareholders, the Central Bank-

Recapitalization
by new
shareholders

- (a) shall, if not already determined in accordance with the provisions of paragraph (a) of subsection (1) of section 23, determine the extent of losses and prepare the financial statements of such licensed bank covering the amount of such losses from and

out of the profits, reserves and, if necessary, the capital and subordinated debt and any other instrument issued for the purpose of loss absorbency of such licensed bank;

- (b) may cause revaluation of the stated capital to reflect losses, notwithstanding anything to the contrary in any other written law;
- (c) may determine the amount and type of funding needed to bring such licensed bank into compliance with all capital requirements made under this Act;
- (d) may cause such licensed bank to issue additional capital in any form as may be determined by the Central Bank in order to comply with the capital requirements applicable for licensed banks imposed by the law for the time being in force.

(2) Notwithstanding anything to the contrary in any other written law, the Central Bank may, in relation to regulation of the securities market and other disclosures to be made by issuers of securities, cause such licensed bank to issue shares under the provisions of this section.

(3) The Central Bank shall have the power to recognize losses to be allocated to shareholders and subordinated debt holders in the performance of its duties under this section.

Transfer of
shares and
effecting a
merger

25. (1) Notwithstanding anything to the contrary in any other written law, the Central Bank may, in whole or part, transfer the shares of, any licensed bank subject to resolution to any other financial institution or effect a merger of such licensed bank with any other financial institution.

For the purposes of this section, “financial institution” means a bank licensed under the Banking Act or a finance company licensed under the Finance Business Act or any other institution as may be specified by the Central Bank.

(2) Subject to the provisions of subsection (1) of section 5, the Central Bank shall ensure that at the time of transferring shares or effecting a merger under subsection (1), transferee of such shares is solvent, and complies with applicable requirements under the Banking Act or any regulation, direction, determination or Order made thereunder, including fitness and propriety of the shareholders, directors and key management personnel who shall have sufficient expertise, capacity and resources to effectively hold the shares so transferred and to achieve the objectives of resolution.

(3) The transfer of shares or effect of a merger under subsection (1) shall be conducted by the Central Bank based on a prudent and realistic valuation of the assets and liabilities of such licensed bank, carried out by an independent professional valuer possessing such qualifications and experience referred to in subsection (1) of section 16.

(4) The Central Bank may, by way of directions issued, from time to time, specify the procedure for transferring of shares under subsection (1).

(5) The Central Bank shall have the power to recognize losses to be allocated to shareholders and subordinated debt holders in the performance of its duties under this section.

26. (1) Subject to the provisions of subsection (5), the Central Bank may, after giving a prior notification to the licensed bank subject to resolution (in this Part of this Act referred to as the “transferor bank”), transfer all or part of the assets or liabilities, or both such assets and liabilities of such transferor bank prevailing as at a specific date (in this Part of this Act referred to as the “relevant date”), to any third party (in this Part of this Act referred as the “transferee”):

Transfer of
selected assets
and liabilities to
a third party

Provided however, where such liabilities or part thereof consist of deposit liabilities, such deposit liabilities shall not be transferred to any entity which is not permitted by law to accept deposits.

(2) The transferee referred to in subsection (1) shall be solvent, and shall comply with applicable requirements under the Banking Act or any regulation, direction, determination, or Order made or issued thereunder, including the requirements relating to the suitability of qualifying shareholders, directors and key management personnel, and shall have sufficient expertise, capacity and resources to effectively hold the assets or liabilities or both such assets and liabilities so transferred to achieve the objectives of resolution.

(3) The transfer of assets and liabilities under subsection (1) shall be conducted by the Central Bank based on a prudent and realistic valuation of the selected assets and liabilities of such licensed bank, carried out by an independent professional valuer possessing such qualifications and experience referred to in subsection (1) of section 16.

(4) The Central Bank may, by way of directions issued from time to time, specify the criteria for the selection of assets and liabilities to be transferred under subsection (1), having regard to the interests of depositors, creditors, and shareholders of such licensed bank.

(5) For the purpose of subsection (1), “assets and liabilities of a transferor bank” includes,-

- (a) all or part of the immovable and movable property owned by the transferor bank on the day immediately preceding the relevant date (including loans, cash balances, reserve funds, investments and deposits);
- (b) all or part of the rights, powers, privileges, authorities, and interests arising in, or out of, any property, movable or immovable, owned by the transferor bank on the day immediately preceding the relevant date;

- (c) any legal rights or obligations of the transferor bank subsisting on the day immediately preceding the relevant date;
- (d) subject to the provisions of paragraph (e) of section 28, all or part of the liabilities including legal rights and obligations of the transferor bank subsisting on the day immediately preceding the relevant date; and
- (e) all books, accounts and documents relating, or appertaining, to such transferor bank in Sri Lanka.

(6) The transferee referred to in subsection (1) shall-

- (a) not be controlled, directly or indirectly, by related parties of the transferor bank;
- (b) only be liable to the shareholders or other creditors of the transferor bank for those liabilities expressly transferred, or in accordance with any other terms or conditions expressly agreed to by the transferee, to the exclusion of any other responsibilities including liabilities related to taxes and liabilities related to the labour;
- (c) be responsible for compensating the Central Bank or the Deposit Insurance Scheme established under section 39 for any losses caused due to the transferee's failure to comply with the terms and conditions of the transfer of assets and liabilities in resolution.

27. A transfer of assets and liabilities under section 26 shall not be made by the Central Bank unless –

- (a) the Central Bank is satisfied that the transferee is solvent and complies with applicable regulatory requirements, and capable of carrying out in a

Requirements to
fulfill for the
transfer of assets
and liabilities

competent manner the business of the transferor bank proposed to be transferred, and meeting liabilities of the transferor bank to its depositors and creditors pertaining or relating to the business proposed to be transferred;

- (b) the transferee agrees in writing to comply with such terms and conditions as may be specified by the Central Bank relating to the manner in which-
 - (i) any existing assets of the transferor bank pertaining or relating to the business proposed to be transferred, are to be used and any existing liabilities of the transferor bank pertaining or relating to the business proposed to be transferred are to be met; and
 - (ii) any payments due to the Government from the transferor bank are to be made; and
- (c) the transferee agrees to comply with such other directions as the Central Bank may, from time to time, issue to such transferee under this Act.

Effect of the
transfer of assets
and liabilities

28. Unless the Central Bank otherwise decides, where the assets and liabilities of the transferor bank have been transferred to a transferee under section 26, with effect from the relevant date-

- (a) the transferee shall have the control and possession of the transferred assets and liabilities of the transferor bank:

Provided however, upon a request made by the transferee, the Central Bank may transfer any assets or liabilities back to the transferor bank, within a period as may be specified at the time of such transfer, where such assets or liabilities do not meet the criteria applicable for the transfer:

Provided further, that the shareholders, depositors and creditors whose interests and rights remain in the transferor bank, shall have no rights or claims in respect of the assets and liabilities transferred to the transferee;

- (b) the licence issued by the Monetary Board under the relevant laws to the transferor bank to carry on business, shall be modified or cancelled, as the case may be, to the extent as is necessary to enable the transferor bank to carry on any remaining part of its business which has not been transferred to the transferee;
- (c) all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature pertaining, or relating to the transferred assets and liabilities of the transferor bank and subsisting, or having effect on the day immediately preceding the relevant date, and to which the transferor bank is a party or which are in favour of the transferor bank, shall, with effect from the relevant date, be deemed to be contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation or other instruments entered into or granted, as the case may be, by the transferee;
- (d) all actions and proceedings of whatever nature instituted by or against the transferor bank pertaining or relating to the transferred assets and liabilities and pending on the day immediately preceding the relevant date, shall, with effect from the relevant date, be deemed to be actions and proceedings instituted by or against the transferee, and may be continued and disposed of accordingly;
- (e) all such officers and other employees of the transferor bank as are connected with such part of

the business of the transferor bank as was transferred to the transferee, or all the officers and other employees of the transferor bank, where the entirety of the business of the transferor bank is transferred to the transferee, as the case may be, who are in employment in the transferor bank on the day immediately preceding the relevant date and who are not offered employment by the transferee, shall be entitled to the payment of compensation:

Provided however, where any officer or other employee of the transferor bank is entitled to a payment of compensation, the transferee shall determine the amount of compensation that shall be paid to such officer or employee in consultation with the Commissioner-General of Labour. Such determination shall not affect the right of such officer or employee to claim any other compensation under any other written law.

Extent of the liability of the transferee in respect of foreign currency depositors

29. Notwithstanding anything to the contrary in this Act or any other written law, where the foreign currency deposits of the transferor bank is not made available to the transferee, the liability of the transferee to meet the demands of any foreign currency depositors of the transferor bank shall be limited only in respect of such depositors who agree to accept the terms and conditions of any scheme for the grant of relief to such depositors, as may be formulated by the Central Bank, upon a review of the business of the transferor bank, and only to the extent as set out in such scheme:

Provided however, in the event of such foreign currency deposits being made available to the transferee, or the transferee recovering such foreign currency deposits or other assets abroad, of the transferor bank, the Central Bank shall have the power to give directions to the transferee with regard to the payment to such foreign currency depositors of the foreign currency deposits so made available or foreign

currency deposits and other assets so recovered, and the transferee shall comply with such directions.

30. (1) Notwithstanding anything to the contrary in any other written law, where the Central Bank, having regard to the relevant circumstances, is of the opinion that the failure of a licensed bank subject to resolution under this Act can have systemic importance or impact, the Central Bank may decide to establish one or more institutions (in this Act referred to as “bridge bank”), subject to the terms and conditions specified in subsection (6) of section 31 and with the approval of the Minister, for the purpose of-

Establishment of
a bridge bank

- (a) continuing operations of all or part of the critical functions and viable operations of such licensed bank; or
- (b) transferring shares, any one or more of the assets, liabilities, legal rights and obligations or other property instruments owned or issued by such licensed bank:

Provided however, the amount of liabilities transferred to a bridge bank shall not, in any manner, exceed the amount of the transferred assets and other resources provided by the Deposit Insurance Scheme provided for in Part III of this Act, or the Government, as the case may be.

(2) The Central Bank shall publish the decision taken under subsection (1) in the *Gazette* and at least in three Sinhala, Tamil and English daily newspapers circulating in Sri Lanka, within five days from the date of establishment of the bridge bank.

(3) The Central Bank shall issue a licence to the bridge bank to carry on the banking business in Sri Lanka subject to such terms and conditions as the Central Bank may consider necessary.

(4) The Central Bank shall ensure that the bridge bank is established in an expeditious manner, and the period of such establishment shall not exceed two days from the decision of the Central Bank referred to in subsection (1).

(5) The establishment of the bridge bank shall be based on primary constituent documents of the licensed bank subject to resolution, and the other relevant documents pertaining to its establishment shall be submitted to the relevant authorities within thirty days from the date of the establishment.

(6) The operations of the bridge bank shall be commenced from the first working day following the date of issuance of licence under subsection (3).

Management of
the affairs of the
bridge bank

31. (1) The bridge bank established under section 30 shall be a body corporate and may sue or be sued by its corporate name.

(2) (a) The management and administration of the affairs of the bridge bank shall be vested in a governing body of the bridge bank which shall consist of such number of members as may be determined by the Central Bank.

(b) The members of the governing body of the bridge bank shall be fit and proper persons and shall be appointed by the Central Bank. The Central Bank shall, based on the criteria referred to in paragraph (f) of subsection (11), assess the fitness and propriety of persons to be appointed as members of the governing body prior to their appointment.

(3) The key management personnel of the bridge bank shall, subject to the provisions of paragraph (f) of subsection (11), be appointed by the governing body of the bridge bank, subject to the approval of the Central Bank.

(4) Notwithstanding anything to the contrary in any other written law, any officer of the Central Bank shall not be

appointed as a member of the governing body or as a key management personnel of the bridge bank.

(5) The capital of the bridge bank shall be fully provided by the Government subject to appropriation of necessary funds in terms of any applicable written law. The Government shall have the right to decide on the issuance of Government guarantees and Government securities in connection with the financing of the bridge bank:

Provided however, nothing contained in this section shall be construed as preventing the Central Bank from extending emergency liquidity assistance, conventional market liquidity injecting mechanisms or loans to the bridge bank:

Provided further, provision of capital to a bridge bank by the Government under this section shall not prevent the Central Bank from exercising control over such bridge bank. The Central Bank shall ensure that the bridge bank shall be subject to standard prudential rules in line with the international standards and best practices.

(6) The terms and conditions for the establishment and operation of a bridge bank shall include –

- (a) the provision of capital;
- (b) operational financing and liquidity support;
- (c) any temporary changes to prudential and other supervisory and regulatory requirements that apply to the bridge bank, for a period up to six months;
- (d) the requirement of setting out governance framework; and
- (e) the board of directors and the management of the bridge bank.

(7) For the purpose of this section, the Central Bank shall have the power to -

- (a) transfer to the bridge bank, from time to time, shares, assets, liabilities or other instruments of ownership, as the case may be, issued by the licensed bank subject to resolution;
- (b) subject to the provisions of subsection (8), reverse the transfer of all or part of the assets and liabilities from the bridge bank to the licensed bank subject to resolution;
- (c) transfer shares, assets and liabilities, legal rights and obligations, from the bridge bank to any other person subject to an eligibility criteria determined by the Central Bank by directions, for such purpose; and
- (d) facilitate the closure and orderly winding up of the bridge bank.

(8) The reversal of transfer of shares, assets and liabilities, legal rights and obligations and any other instruments of ownership under subsection (7), to the licensed bank subject to resolution shall be performed in one of the following circumstances: -

- (a) where the possibility of such reversal is expressly provided for in the decision to establish a bridge bank referred to in subsection (1) of section 30;
- (b) where the shares, assets and liabilities, legal rights and obligations and any other instrument of ownership transferred to the bridge bank from the licensed bank subject to resolution do not meet the conditions of such transfer or do not fall into the categories of shares, assets and liabilities, legal rights and obligations and any other instruments of ownership specified in the decision to establish the bridge bank; or