

authority, which have in terms of the aforesaid provisions vested in an acquiring bank, shall be liabilities to the government.

For the purposes of subsections (3A) and (3B) “relevant date” means the date on which the defaulting bank is vested in the acquiring bank in terms of sub Paragraph (i)(B) of Paragraph (b) of subsection (3).

[ § 32 , 2 of 2005.]

(4) A licensed specialised bank incorporated or established within Sri Lanka may be voluntarily wound up and the provisions of Part VIII shall, *mutatis mutandis*, apply to such voluntary winding up.

[ § 32 , 2 of 2005.]

(5) A licensed specialised bank incorporated outside Sri Lanka may voluntarily close down its business authorised under the license issued under section 76A and the provisions of Part VIII shall, *mutatis mutandis*, apply to such closure.

Power of Director of Bank Supervision to issue directions in respect of Connected matters.

[ § 31, 33 of 1995.]

[ § 33 , 2 of 2005.]

**76N.** (1) Notwithstanding the provisions of this Act or of any other written law to the contrary or the Articles of Association of a licensed specialised bank, the Monetary Board may, where the business of a licensed specialised bank has been suspended under subsection (1) of section 76(M);

- (a) make such arrangements as it considers necessary for the amalgamation of the licensed specialised bank with another licensed specialised bank or any other institution, with the consent of such other licensed specialised bank or institution;
- (b) re-organise such licensed specialised bank by increasing its capital and arranging for new shareholders and by reconstituting its board of directors; or
- (c) re-construct the licensed specialised bank in any such manner as it considers to be in the interest of depositors, including the closing down of unviable sections of the business and re-organising the management;
- (d) direct any shareholder of any licensed specialised bank to divest or transfer the ownership of the shares owned by him, to a person nominated by the Monetary Board, on payment by such person of compensation determined as follows:—
  - (i) where such shares are quoted, at the market value thereof; or
  - (ii) where such shares are not quoted, at a price to be determined by a valuer nominated by the Monetary Board.

(2) A shareholder who fails to comply with a direction given to him under paragraph (d) of subsection (1) shall be guilty of an offence.

## **PART X GENERAL**

Declaration of  
secrecy  
[§34,2 of 2005]

**77. (1)** Every director, manager, officer or other person employed in the business of any licensed commercial bank or licensed specialised bank shall observe strict secrecy in respect of all transactions of the bank, its customers and the state of accounts of any person and all matters relating thereto and shall not reveal any such matter except—

(a) when required to do so—

(i) by a court of law;

(ii) by the person to whom such matter relates;

(b) in the performance of the duties of the director, manager, officer or other person; or

(c) in order to comply with any of the provisions of this Act or any other written law.

(2) Every director, manager, officer or person employed in the business of a licensed commercial bank or licensed specialised bank shall before entering upon the duties, sign a declaration pledging himself to observe strict secrecy in accordance with subsection (1).

(3) The provisions of subsections (1) and (2) shall not prohibit a bank from providing in good faith to another bank on request an opinion or reference relating to a customer in accordance with customary banking practice.

Protection for action  
taken under this act or on  
the directions of the  
Monetary Board.  
[ § 33, 33 of 1995.]  
[ § 35 , 2 of 2005.]

**78.** No suit or prosecution shall lie against the Monetary Board or any member of the Monetary Board or any officer or servant of the Central Bank for any act which in good faith is done or purported to be done by the Monetary Board or by any officer or servant of the Central Bank under this Act; or against any director, officer or employee of any licensed commercial bank or licensed specialised bank for any act which in good faith is done or purported to be done by him under this Act or on the direction of the Monetary Board.

Offences  
[ § 36 , 2 of 2005.]

**79. (1)** Any person who commits an offence under subsection (5) of section 2, subsection (11) of section 3, subsection (3) of section 14, subsection (3) of section 33, subsection (3) of section 41 or subsection (12) of section 47 of this Act, shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding one million rupees or imprisonment of either description for a term not exceeding three years or to both such fine and imprisonment.

(2) Any person who contravenes the provisions of subsections (1) and (2) of section 16, subsection (1) of section 17 or section 77 shall be guilty of an offence under this Act and shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding one million rupees or to imprisonment of

either description for a term not exceeding three years or to both such fine and imprisonment.

(3) Any person who commits an offence under this Act other than an offence referred to in subsection (1) or subsection (2) above, shall be liable on conviction after summary trial before a Magistrate, unless where the punishment is otherwise provided for in this Act, to a fine not exceeding five hundred thousand rupees or to imprisonment of either description for a term not exceeding eighteen months or to both such fine and imprisonment.

(4) Any person who contravenes any provision of this Act or any order, direction, requirement, rule or regulation under this Act, other than those specified in subsection (2) or those that otherwise constitute an offence, shall be guilty of an offence under this Act, and shall be liable on conviction after summary trial before a Magistrate to a fine not exceeding five hundred thousand rupees or to imprisonment of either description for a term not exceeding eighteen months or to both such fine and imprisonment.

(5) In any proceedings against any person under subsection (2) for contravention of the provisions of section 77, it shall be a defence to prove that such person acted in good faith, believing himself to be acting in the performance of his duties or under a requirement of law.

(6) In any proceedings against a director, manager, officer or an employee of a licensed commercial bank or a licensed specialised bank for an offence under this Act it shall be a defence for the director, manager, officer or employee to establish that the offence was committed without the knowledge of such director, manager, officer or employee or that such director, manager, officer or employee exercised all due diligence to avoid the commission of the offence

Compounding  
offences  
[ § 37 , 2 of 2005.]

79A. The Director of Bank Supervision may with the approval of the Monetary Board and having regard to the circumstances in which an offence under this Act was committed, compound such offence for a sum of money not exceeding one million rupees.

(2) The compounding of any offence under this section shall have the effect of an acquittal of the accused.

Persons who fail to  
take reasonable steps  
&c. under the Act to  
be guilty of an  
offence.  
[ § 35 , 33 of 1995.]

**80.** (1) Any person who, being a director, manager, officer or employee of a licensed commercial bank or licensed specialised bank, as the case may be —

(a) fails to take all reasonable steps to secure compliance by the licensed commercial bank or licensed specialised bank, as the case may be, with the requirements of that Act; or

(b) fails to comply with any direction issued by the Monetary Board under the provisions of this Act;

- (c) fails to take all reasonable steps to secure the correctness of any statement submitted under the provisions of this Act;
- (d) willfully makes a false entry or causes such an entry to be made in any book or record or in any report, slip, document, or statement of the business, affairs, transactions, conditions, assets or liabilities or accounts of such licensed commercial bank or licensed specialised bank, as the case may be; or
- (e) willfully omits to make an entry in any book or record or in any report, slip, document, or statement of the business, affairs, transactions, conditions, assets or liabilities or accounts of such licensed commercial bank or licensed specialised bank, as the case may be, or willfully causes any such entry to be omitted; or
- (f) willfully alters, abstracts, conceals or destroys an entry in any book or record or in any report, slip, document, or statement of the business, affairs, transactions, conditions, assets or liabilities or accounts of such licensed commercial bank or licensed specialised bank, as the case may be, or willfully causes any such entry to be altered, abstracted, concealed or destroyed,

shall be guilty of an offence under this Act, and shall, on conviction after summary trial by a magistrate be liable to a term of imprisonment for a term not exceeding eighteen months or to a fine not exceeding one thousand rupees or to both such imprisonment and fine.

(2) In any proceedings against a person under subsection (1) it shall be a defence to prove that he had reasonable grounds to believe that another person was charged with the duty of securing compliance with the requirements of this Act or with the duty of ensuring that these statements were accurate and that such person was competent and in a position to discharge that duty.

Offence by a body  
corporate

**81.** Where an offence under this Act is committed by a body corporate, every person, who at the time of the commission of the offence was a director or an officer of the body corporate, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge, or that he exercised all due diligence to avoid the commission of such offence.

Schedules II and IV to be  
amended by resolution.  
[ § 36, 33 of 1995.]

**1A.** Parliament shall have power by resolution passed in that behalf to mend Schedules II and IV to this Act.

**82.** (1) The Minister may make regulations in respect of matters required by this Act to be prescribed or in respect of which regulations are authorised to be made.

(2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation

(3) Every regulation made by the Minister shall, as soon as is convenient, after its publication in the *Gazette*, be brought before Parliament for approval.

(4). Every regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder. Notification of the date on which any regulation is deemed to be rescinded shall be published in the *Gazette*.

This Act prevails  
over other laws.  
[ § 37, 33 of 1995.

**82A.** In the event of any conflict or inconsistency between the provisions of this Act and the provisions of any other written law, the provisions of this Act shall prevail.

Licensed commercial  
bank deemed to be an  
approved credit agency.

**83.** A licensed commercial bank which is granted a license in terms of section 5 shall be deemed to be—

- (i) an approved credit agency for purposes of the Trust Receipt Ordinance (Chapter 85) and the Mortgage Act (Chapter 89).
- (ii) an “ approved bank ” for purposes of the Finance Act No. 65 of 1961.

Pawn brokers  
ordinance not to  
apply  
[§ 38,33 of 1995]

**83A.** The provisions of the pawn brokers ordinance (Chapter 99) shall not apply to licensed commercial banks and licensed specialized banks that are permitted to carry on the business of pawn broking and such banks may carry on the business of pawn brokers subject to such conditions as may be determined by the Monetary board.

Commercial bank  
deemed to be a  
exempted company.  
[§ 38,33 of 1995]

**83B.** A company incorporated out side Sri Lanka which has been issued license under section 5 of this Act as a licensed commercial bank, shall with effect from the date of issue of such license, be deemed as a exempted company for the purposes of Companies (Special Provisions) Law No.19 of 1974 and the Companies Act No. 17 1982.

Prohibition on conduct of  
certain Schemes  
[§ 38,02 of 2005]

**83C.** (1) No person shall directly or indirectly initiate, offer, promote, advertise, conduct, finance, manage or direct a Scheme where a participant is required to contribute or pay money or monetary value and the benefits earned by the participant are largely dependent on—

- (a) increase in the number of participants in the Scheme; or
- (b) increase in the contributions made by the participants in the Scheme.

For the purpose of this subsection —

"money" means a monetary unit or a medium of exchange that is issued, established, authorized or adopted by Sri Lanka or a foreign government; and

"monetary value" means a medium of exchange whether or not redeemable in money, including in the form of stored value, payment instrument or credit to account and shall also include gold coin and gold bullion.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction after summary trial before a Magistrate to imprisonment of either description for a term not exceeding three years or to a fine not exceeding rupees one million or to both such imprisonment and fine. Where the offence is committed wilfully or knowingly, or with knowledge that the act will cause damage or harm to any other person, to rigorous imprisonment for a term not less than three years and not more than five years and to a fine of rupees two million or twice the aggregate amount in Sri Lanka currency revealed or divulged to have been received from the participants in the Scheme, whichever is higher.

(3) An officer of the Central Bank authorized in that behalf by the Governor, may, where information has been received that there has been or is likely to be a contravention of the provisions of subsection (1), conduct an investigation into such matter. In carrying out his duties under this section the authorised officer may,—

- (a) enter and search any premises where he has reason to believe that any acts relating to the commission of the offence specified in subsection (1) are being committed or any books or other records or documents relating to such acts are kept or maintained at such place;
- (b) call for further information or documents;
- (c) examine any documents, books or records, including records maintained in electronic form or computer generated transcripts;
- (d) obtain copies of any documents, books or records or computer generated transcripts or any part thereof,

for the purpose of ascertaining whether any person has contravened or is likely to contravene the provisions of subsection (1).

(4) Any person who obstructs or resists the authorised officer in the exercise of his powers under this section, shall be guilty of an offence under this Act.

(5) Any person who fails to furnish any information within his knowledge, or any book or other record or documents or computer generated transcripts relating to such acts which are in his custody or possession, shall be guilty of an offence under this Act.

(6) In any prosecution for an offence under this section, the extracts from any books or other record or documents or computer generated transcripts relating to such acts shall be admissible in evidence and shall be *prima facie* evidence of the facts stated therein.

(7) The Central Bank shall provide any information, documents, books, records or computer generated transcripts obtained in the course of an investigation conducted under subsection (3) to the law enforcement authorities and shall co-operate with such authorities in the prosecution of a person for violation of the provisions of subsection (1).

(8) Upon an application made to it by an officer of the Police above the rank of an Inspector of Police and upon satisfying itself that a *prima facie* case exists against a person for the violation of the provisions of subsection (1), the High Court of the Western Province established under Article 154P of the Constitution holdern in Colombo shall issue an *exparte* Order against the offender prohibiting him from engaging in any act specified in subsection (1).

(9) The High Court may, upon application made in that behalf by the person on whom an order under subsection (8) has been made or by any other person adversely affected by such order, and upon hearing all parties as it may consider necessary, make order revoking the order made by it under subsection (8), or permit any act prohibited under subsection (8) conditionally or unconditionally, if it is satisfied that such revocation or permission is necessary to avoid undue damage to legitimate business or the legitimate interests of the applicant.

## **PART XII REPEAL**

Amendments to  
Monetary Law act  
cap.133.

**84.** The Monetary Law Act (Chapter 422) is hereby amended by the repeal of sections 116A, 121A and 121B of that Act.

**85.** The companies Act No. 17 of 1982 is hereby amended by the repeal of Part XIV of that Act.

## **PART XIII INTERPRETATION**

Interpretation.

**86.** In this Act, unless the context otherwise requires—

“accommodation” means any loan, overdraft or advance or such other facility as may be determined by the Monetary Board or any commitment to grant any loan, overdraft or advance or such other facility as may be determined by the Monetary Board, including a commitment to accept a contingent liability;

“ banking business ” means the business of receiving funds from the public through the acceptance of money deposits payable upon demand by cheque, draft, order or otherwise, and the use of such funds either in whole or in part for advances, investments or any other operation either authorised by law or by customary banking practices;

[ § 39, 33 of 1995.]

“ capital funds ” means