

(5) where a commercial bank incorporated outside Sri Lanka is operating as a branch in Sri Lanka immediately preceding the appointed date, the Central Bank may direct such bank to establish a subsidiary of a parent company or principal body corporate of such commercial bank to carry on banking business in Sri Lanka, having regard to the soundness of the financial position, risk management, governance structure, capital adequacy and availability of liquidity subject to such terms and conditions as may be specified in such direction.”.

Amendment of  
section 5 of the  
principal  
enactment

**6.** Section 5 of the principal enactment is hereby amended by the repeal of paragraph (a) of subsection (2) thereof and the substitution therefor of the following:-

“(a) whether such company is authorized to carry on banking business;”.

Amendment of  
section 8 of the  
principal  
enactment

**7.** Section 8 of the principal enactment is hereby amended in subsection (2) thereof by the substitution for the words and figure “(2) The Monetary Board” of the words and figure “(2) The Director of Bank Supervision”.

Amendment of  
section 9 of the  
principal  
enactment

**8.** Section 9 of the principal enactment is hereby amended in subsection (1) thereof by the repeal of paragraph (c) thereof and the substitution therefor of the following: -

“(c) become insolvent and winding up proceedings have been instituted under any other written law for the time being in force, whether in or outside Sri Lanka and a liquidator or receiver has been appointed for such bank in the interest of its depositors and creditors; or”.

**9.** Section 11 of the principal enactment is hereby amended as follows: -

Amendment of  
section 11 of the  
principal  
enactment

- (1) in subsection (2) thereof, by the substitution for the words “shall commence in accordance with the provisions of Part VIII of this Act.” of the words “shall commence in accordance with the provisions of any other written law for the time being in force which specifically provides for the winding up of any licenced commercial bank in Sri Lanka.”;
- (2) in subsection (3) thereof, by the substitution for the words “close down the business of such bank in and with respect to Sri Lanka, in accordance with the provisions of Part VIII of this Act.” of the words “close down the business of such bank in accordance with the provisions of any other written law for the time being in force which specifically provides for the winding up of any licensed commercial bank in Sri Lanka.”;
- (3) in subsection (4) thereof-
  - (a) by the substitution, in paragraph (g), for the words “such measures;” of the words “such measures; and”;
  - (b) by the substitution in paragraph (h), for the words “such amalgamation; and” of the words “such amalgamation:”; and
  - (c) by the repeal of all the words commencing from “(i) vesting the business of the licensed commercial bank” and ending with the words “an acquiring bank:”.

Amendment of  
section 12 of the  
principal  
enactment

**10.** Section 12 of the principal enactment is hereby amended as follows:-

(1) in subsection (1) thereof,-

(a) by the substitution for the words “written approval of the Monetary Board given with the concurrence of the Minister,” of the words “written approval of the Central Bank,”;

(b) in paragraph (b) thereof, by the substitution for the words “(b) for a licensed commercial bank” of the words “(b) in consultation with the Minister, for a licensed commercial bank”;

(c) by the repeal of paragraph (c) thereof, and the substitution therefor of the following: -

“(c) for a licensed commercial bank to acquire the business or part of the business of another licensed commercial bank, licensed specialised bank or a licensed finance company, or a branch of such licensed commercial bank, licensed specialised bank or licensed finance company, as the case may be, or to sell all or part of its business;”;

(d) in paragraph (d) thereof, by the substitution for the words “within Sri Lanka:” of the words “within Sri Lanka subject to an application fee as may be determined by the Central Bank, from time time;”;

- (e) in paragraph (e) thereof, by the substitution for the words “licensed commercial bank or a licensed specialised bank.” of the words “licensed commercial bank, a licensed specialised bank or a licensed finance company;”;
  - (f) by the addition, immediately after paragraph (e) thereof, of the following:-
    - “(f) for a licensed commercial bank or a licensed specialised bank to acquire the business or part of the business of another financial institution which is subject to the regulation or supervision of the Central Bank.”;
- (2) by the repeal of subsection (1B) thereof, and the substitution therefor of the following:-
- “(1B) An approval under paragraphs (c), (e) or (f) of subsection (1) or subsection (1c) shall not be granted, unless the Central Bank 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 body corporate, the Central Bank shall, in determining whether such individual or the directors of such body corporate, as the case may be, are fit and proper persons, have regard to the criteria set out in subsection (2) of section 42 in addition to the following matters:-
- (a) track record of the individual or the directors of the body corporate;

- (b) soundness and feasibility of the business plans of the individual or body corporate;
  - (c) the nature and sufficiency of the financial resources of the individual or body corporate as a source of continuing financial support to the licensed commercial bank and the legitimacy of such sources of funding;
  - (d) the business record and experience of the body corporate for the preceding three years; and
  - (e) transparency in ownership structure and the beneficial ownership.”;
- (3) by the repeal of subsection (1c) thereof, and the substitution therefor of the following:-

“(1c) (a) An individual, partnership or body corporate shall not, either directly or indirectly or through a nominee or acting in concert with any other individual, partnership or body corporate, 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 Central Bank.

(b) Without prejudice to the generality of subsection (2), approval under paragraph (a) of this subsection may be granted subject to terms and conditions as the Central Bank may deem fit.

(c) Without prejudice to the provisions of subsection (3), the secretary of a licensed

commercial bank shall not enter in the share register, the index of shareholders or in any other register maintained to keep records of shareholders of such licensed commercial bank, the name of an individual, an entity (whether corporate or unincorporate) or a nominee of such individual or entity who has acquired the material interest in contravention of paragraph (a) and such person shall not be recognized as a shareholder or a person to be deemed as a shareholder of such licensed commercial bank.

(d) Without prejudice to the provisions of subsection (3), where the contravention of subsection (1c) has been committed by an existing shareholder of the licensed commercial bank, it shall be lawful for the Central Bank to direct such licensed commercial bank to remove the name of such shareholder from the share register, index of shareholders or any other register maintained to keep records of shareholders of such licensed commercial bank, as the case may be, within the period of time as may be specified in such directions. It shall be the duty of such licensed commercial bank to comply with such direction with effect from the date of such direction for removal, and the said shareholder shall not be considered or deemed as a shareholder of such licensed commercial bank until such shareholder complies with the provisions of subsection (1c).

(e) For the purposes of this subsection,-

“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 the control of that licensed commercial bank;

“material interest” means the holding of over ten *per centum* of the issued capital of a licensed commercial bank carrying voting rights or, if the Central Bank determines that there exists a significant influence over the licensed commercial bank to nominate, appoint or remove a director, chief executive officer or an officer performing executive functions of the licensed commercial bank or to exercise control over the policies of such bank pursuant to a contract or otherwise.”;

- (4) in subsection (2) thereof, by the substitution for the words “by the Monetary Board with the concurrence of the Minister.” of the words “by the Central Bank.”; and
- (5) by the addition, immediately after subsection (2) thereof, of the following:-

“(3) Notwithstanding anything to the contrary in the provisions in this Act or any other written law, where the Central Bank is satisfied based on the information submitted by the licensed commercial bank or on its own findings that any individual, partnership or body corporate

specified in subsection (1c) has acquired the material interest of such bank in contravention of subsection (1c) or any terms or conditions of the approval granted thereunder, it shall be lawful for the Central Bank to direct such licensed commercial bank or such individual, partnership or body corporate, as the case may be, to dispose of such material interest subject to such terms and conditions as the Central Bank may consider necessary and after giving such bank or individual, partnership or body corporate an opportunity of being heard.

(4) Until the disposal is effected under subsection (3), the Central Bank may direct the licensed commercial bank whose material interest has been acquired or the individual, partnership or body corporate who has contravened the provisions of this section, or both such bank and the individual, partnership and the body corporate, as the case may be, to give effect to, one or more of the following:-

- (a) suspend the exercise of voting rights entitled to such shareholding or part thereof;
- (b) notwithstanding to the contrary in any other written law, prohibit such licensed commercial bank accruing any distribution rights pertaining to such shareholding or part thereof;
- (c) prohibit the licensed commercial bank issuing further shares to or pursue any offer made by the individual, partnership or body corporate who has contravened the provisions of subsection (1c);
- (d) except in a liquidation, prohibit the licensed commercial bank paying any sums due,



including any form of distribution, to such individual, partnership or body corporate who has contravened the provisions of subsection (1c);

(e) provide further details of such shareholding acquired in contravention of subsection (1c) to the Central Bank, in such manner as the Central Bank may determine; or

(f) request a licensed stock exchange or Central Depository System to impose a restriction on trading of shares held in excess of material interest, by any shareholder as a locked balance of his share account, until further instructions to that effect is issued by the Central Bank.”.

Amendment of section 13 of the principal enactment

**11.** Section 13 of the principal enactment is hereby amended as follows:-

- (1) in subsection (1) thereof, by the substitution for the words and figure “(1) The Monetary Board may, with the approval of the Minister,” of the words and figure “(1) The Central Bank may,”; and
- (2) in subsection (3) thereof, by the substitution for the words “before the Board under subsection (2), the Monetary Board shall, with the approval of the Minister -” of the words “before the Central Bank under subsection (2), the Central Bank shall, -”.

Amendment of section 17 of the principal enactment

**12.** Section 17 of the principal enactment is hereby amended by the insertion of the following, immediately after subsection (4) thereof:-

“(4A) Any licensed commercial bank having a non-financial subsidiary that does not provide services to such licensed commercial bank or its banking group as

at the appointed date, shall divest its ownership in the equity share capital of such subsidiary within a period of five years from the appointed date, after notifying the Central Bank of such decision and the manner in which such bank will discontinue the business carried out by such subsidiary.”.

**13.** Section 19 of the principal enactment is hereby amended as follows:-

Amendment of  
section 19 of the  
principal  
enactment

- (1) in paragraph (b) of subsection (1) thereof, by the substitution for the words “and with the concurrence of the Minister, determine, from time to time.” of the words “determine, from time to time.”;
- (2) by the repeal of paragraph (d) of subsection (3) thereof, and the substitution therefor of the following:-

“(d) Where any licensed commercial bank is required by such variation to augment its equity capital, it shall upon application to the Central Bank, be afforded a period of twelve months, or such other period as may be granted by the Central Bank, in which to comply with that requirement.”;

- (3) by the repeal of paragraph (b) of subsection (7) thereof, and the substitution therefor of the following:-

“(b) Any variation in the capital adequacy ratio referred to in paragraph (a) shall be communicated to every licensed commercial bank by the Central Bank in writing, provided that every licensed commercial bank which is required by such variation to augment its capital, shall be afforded a period of twelve months or such other period as may be granted by the Central Bank, in which to comply with such requirement.”;