

(5) Any company, which carries on banking business in contravention of subsection (1), shall be guilty of an offence under this Act.

[§ 3, 33 of 1995.]

(6) For the purpose of this section “ company “ shall have the same meaning as in section 449 of the Companies Act No. 17 of 1982, and including a company duly incorporated outside Sri Lanka, or a body corporate formed in pursuance of any statute of any foreign country, Royal Charter or letters patent and a body corporate established by or under any written law and shall not include the Central Bank or a private company incorporated outside Sri Lanka except the banks specified in Schedule I to this Act.

Application for a
licence.

[§ 3, 2 of 2005]

3. (1) an application for a licence shall be made in writing to the Monetary Board in such manner as may be determined by the Monetary Board.

(2) Every application for a licence shall be accompanied by—

(a) in the case of a company to be formed for the purpose of carrying on banking business—

- (i) a copy of the draft Articles of Association of the company to be formed or the draft Constitution or any other document associated with the formation of such company and
- (ii) a statement containing the names, addresses, occupations and qualifications of the persons proposed as Directors, and if a Chief Executive Officer has been identified, of such officer;

(b) in the case of a company formed before the date of the application and which intends to commence banking business—

- (i) a copy of the Articles of Association of such company or the Constitution or any other document associated with the formation of such company, together with the proposed amendments, if any, to such documents; and
- (ii) a statement containing the names, addresses, occupations and qualifications of the Directors of the company and any Directors proposed to be nominated or appointed and of the Chief Executive Officer of such company;

(iii) a copy of the audited balance sheet and profit and loss account of the company for the preceding three years;

(c) in the case of an application by a company or body corporate incorporated outside Sri Lanka, such company shall in addition to the documents specified in paragraph (b) submit—

- (i) a written undertaking supported by a resolution of the Board of Directors of such company or body corporate, stating that such

company or body corporate, as the case may be, shall on demand by the Central Bank, provide such funds as may be necessary to meet all obligations incurred in or in connection with, its business in Sri Lanka; and

- (ii) a report containing such information as may be determined by the Monetary Board, from the regulatory authority of the country in which such company or body corporate is incorporated.

(3) On receipt of an application under subsection (1) by the Monetary Board, the Director of Bank Supervision may, where such Director considers it necessary, require the applicant to furnish to the Monetary Board such other documents, information or other particulars, in order to determine whether a licence shall be issued or not.

(4) Where on consideration of the documents, information and particulars submitted to the Monetary Board under subsections (1), (2) and (3) and on such further investigations as it may consider necessary, the Monetary Board is satisfied that the application may be approved in principle, it may issue a Letter of Provisional Approval to the applicant. On receipt of the Letter of Provisional Approval, the applicant shall take all preliminary measures as may be required in terms of such Letter, prior to the issue of a licence under section 5, and specified in such Letter.

(5) The Letter of Provisional Approval issued under subsection (4) shall be valid for the period stated in such Letter. Such period shall however not exceed twelve months from the date of issue of such Letter and the period of validity may only be extended by the Monetary Board in writing, in exceptional circumstances.

(6) The Monetary Board shall cause a copy of each Letter of Provisional Approval issued under subsection (4) and of any communication extending the period of validity of such Letter under subsection (5), or any withdrawal in terms of subsection (7), to be sent to the Registrar of Companies.

(7) The issue of Letter of Provisional Approval under subsection (4) shall not bind the Monetary Board to issue a licence under section 5 to the company or the company to be formed for the purpose of carrying on banking business (hereinafter referred to as a "proposed company"), in respect of which the Letter of Provisional Approval has been issued, and the Monetary Board may, on the basis of investigations carried out by it under subsection (10) withdraw such Letter or refrain from issuing a licence under section 5 on any one or more of the following grounds:—

- (a) that the Monetary Board is not satisfied with the suitability of the company or the proposed company to be issued with a licence;
- (b) that the company or proposed company has not complied with the conditions stipulated in the Letter of Provisional Approval;

- (c) that the company or proposed company has not complied with the requirements under this Act for the issue of a licence;
- (d) that any information contained in the application for a licence or any information submitted in connection therewith by the company or proposed company is found to be false or incorrect; or
- (e) that there has been, in the opinion of the Monetary Board, a sufficiently significant change in the economic and the banking environment of the country that warrants the suspension of the issue of licence under section 5:

Provided however, the Monetary Board shall before withdrawing a Letter of Provisional Approval in terms of the provisions of this subsection issued to an applicant in terms of subsection (4), or if a decision is taken by the Monetary Board under this subsection to refrain from issuing a licence, give sufficient notice in writing to the applicant stating the grounds for such withdrawal or decision to refrain from issuing a licence and shall afford him an opportunity of being heard.

- (8) A company or a proposed company in respect of which a Letter of Provisional Approval has been issued under subsection (4) shall not commence banking business before the issue of a licence under section 5. Every advertisement, prospectus, notice or other publication issued by the company or proposed company before the issue of the licence shall be required to specify that it has not been issued a licence to carry on banking business under this Act.

- (9) A licence shall not be issued under section 5 to a company formed and incorporated under the Companies Act No. 17 of 1982 unless

- (a) the company is a public company;
- (b) the Memorandum of Association of the company sets out; as its primary object, the carrying on of banking business as defined in this Act; and
- (c) the Memorandum of Association of the company restricts the other forms of business the company may carry on, if any, to any or all of the forms of business specified in Schedule II to this Act.

- (10) (a) The Monetary Board may, at any time prior to the issue of a licence under section 5, conduct such investigations as it may deem necessary to satisfy itself as to the suitability of the company or proposed company to be issued with a licence, having regard to the interests of the national economy, including the banking needs of Sri Lanka.
- (b) At an investigation conducted under paragraph (a) the Monetary Board may require the applicant to satisfy the Board on any matter relevant

to the suitability of the company or the proposed company and in particular —

- (i) the validity and acceptability of the documents and particulars submitted by the applicant;
- (ii) the financial status and history of the company or the proposed company;
- (iii) the financial standing, experience and suitability of the Directors, Chief Executive Officer and such other officers of the company performing executive functions as may be determined by the Monetary Board or the persons proposed to be appointed to such positions in the proposed company, as the case may be;
- (iv) of the adequacy of the capital of the company or based on the information furnished by the applicant on behalf of the proposed company, the ability of the proposed company to raise adequate capital;
- (v) of the ability of the company or the proposed company to cover all obligations and liabilities incurred in the conduct of business in Sri Lanka and to comply with the provisions of the Act;
- (vi) the applicant's compliance with the provisions of the Act or any directions given under the Act in relation to the application for a licence under the Act.

(11) Any person who submits information or particulars in an application for a licence or in any other document submitted in connection therewith or in the course of any inquiry or investigation conducted to ascertain the suitability of the company or the proposed company to be issued with a licence under this Act, which to the knowledge of the person is false or misleading in any material particular, shall be guilty of an offence under this Act.

4 (1) The Monetary Board may require any company or body corporate incorporated outside Sri Lanka, which has applied for a licence under section 3, to undertake to remit to Sri Lanka, prior to the commencement of their business in Sri Lanka, a sum of money, determined with the approval of the Minister, in United States Dollars, or its equivalent in any designated foreign currency. The amount so remitted may form part of the assigned capital of such company or incorporated body and shall be kept as a deposit with the Central Bank or in such other manner as may be determined from time to time by the Monetary Board.

(2) The Monetary Board may, where such Board considers it necessary or expedient to do so in the interest of national economy, from time to time, make further determinations as regards the remittance of money after the expiry of a period of six months from the date of the last of such determinations.