

## PART I

### RESOLUTION AUTHORITY OF THE CENTRAL BANK

Resolution  
authority of the  
Central Bank

**3.** The Central Bank shall be responsible for the exercise of resolution authority in respect of licensed banks under this Act.

Establishment of  
a department for  
the purpose of  
resolution of  
licensed banks

**4.** (1) For the purposes of this Act, the Central Bank shall establish a Department under the Central Bank, for the proper and efficient exercise, performance and discharge of its powers, duties and functions relating to the resolution authority under this Act.

(2) The Department established under subsection (1) shall not carry out regulatory and supervisory functions over licensed banks under any written law.

Exercise,  
performance  
and discharge of  
resolution  
authority by the  
Central Bank

**5.** (1) In the exercise, performance and discharge of the powers, duties and functions relating to its resolution authority, the Central Bank shall take into consideration, the structure, scale, complexity, interconnectedness with other institutions, and the risk profile of the licensed bank subject to resolution.

(2) The Central Bank shall have the power to require any person to provide any information necessary for the Central Bank to decide upon and formulate resolution measures, including updates and supplements of information relating to the resolution plan, and information collected through on-site examinations.

(3) Any licensed bank, regulatory or supervisory authority, or such other person on whom any Order, regulation, direction, determination, guideline or instruction has been issued or a request has been made by the Central Bank under this Act, shall comply with such Order, regulation, direction, determination, guideline or instruction or request forthwith or not later than the time period specified therein.

(4) Every regulatory and supervisory department of the Central Bank shall extend cooperation to the Department established under section 4 to expeditiously facilitate the relevant regulatory or supervisory approvals required to implement the resolution measures prepared under this Act.

**6.** (1) The provisions of any one or more enactments specified in the Schedule to this Act or any part of such provisions relating to resolution, winding up or deposit insurance shall have no application in the exercise, performance and discharge of the powers, duties and functions of the Central Bank on a licensed bank subject to resolution under this Act in securing compliance with the provisions of this Act and any other regulation, Order, direction, determination, guideline or instruction issued or made thereunder by the Central Bank.

Exclusion of the application of certain other enactments

(2) Notwithstanding the Central Bank exercising the resolution authority under this Act, the regulatory requirements applicable to any licensed bank under the Banking Act or any regulation, Order, direction, determination, guideline or instruction issued or made thereunder, shall continue to apply in respect of such licensed bank subject to resolution.

**7.** (1) Where the Central Bank is satisfied that a holding company of a licensed bank, a subsidiary or associate company of a licensed bank or any entity within a financial group or conglomerate of such licensed bank, as the case may be, which is not regulated or supervised by the Central Bank—

Provisions of this Part of this Act to apply to a holding company, &c. of a licensed bank

- (a) provides any service or performs any duty for or on behalf of such licensed bank subject to resolution, which are or are deemed to be significant to perform critical functions of such licensed bank; or
- (b) the suspension or discontinuation of such service or duty by such entities is or is likely to be

detrimental to the interests of the depositors and creditors of such bank, or jeopardize the stability of the financial system of Sri Lanka, and

in the event, there are no alternatives available for such licensed bank to ensure the continuity of such service or duty which is significant to perform critical functions, it shall be lawful for the Central Bank to apply the provisions of this Part of this Act to a company or entity specified in this subsection in the same manner as they apply to a licensed bank subject to resolution.

(2) In the event of any company or entity specified in subsection (1) is regulated by a financial sector regulator other than the Central Bank, the Central Bank shall prior to taking any measures to resolve such company or entity under this Act, consult such regulator and give due notice to such regulator in respect of such measures.

Objectives of  
resolution

**8.** The Central Bank shall, in the exercise, performance and discharge of its powers, duties and functions relating to the resolution authority under this Act, on a licensed bank, endeavour to ensure-

- (a) the stability of the financial system, including the payment, clearing and settlement systems;
- (b) the continuity of critical functions of such licensed bank;
- (c) the protection of public funds by minimizing public financial support;
- (d) the protection of depositors of such licensed bank; and
- (e) avoiding destruction of the value of assets and minimizing losses to creditors and minimizing overall costs of resolution of such licensed bank.

**9.** (1) Every licensed bank shall prepare a recovery plan as part of its risk management process, which shall provide for measures to be taken by such licensed bank in the event of deterioration of its financial position.

Licensed banks  
to prepare a  
recovery plan

(2) In the preparation of a recovery plan, a licensed bank shall take into consideration, financial and macroeconomic crisis scenarios relevant to the specific characteristics of the licensed bank, systemic events, crisis scenarios specific to such licensed bank and other individual entities of the banking group, as a whole.

(3) In the preparation of a recovery plan, a licensed bank shall not rely on in any manner, the access to any extraordinary public financial support.

(4) Every licensed bank shall update its recovery plan at least annually, or at the request of the Central Bank in the event of any change in the organizational structure or legal structure of the licensed bank, business activities or financial situation of the licensed bank, which may cause a significant impact on the recovery plan or where it requires modification.

(5) The recovery plan prepared under subsection (1) shall include –

- (a) a presentation of the general recovery capacity of the licensed bank;
- (b) the scope of the recovery plan, considering the nature, scale, structure, complexity, and interconnectedness to other institutions of the licensed bank;
- (c) the details of other entities within the banking group covered under the recovery framework;
- (d) the details of communication planning on recovery options;

- (e) an identification of critical functions and critical shared services of the licensed bank that are organized in a manner ensuring the continuous availability of such functions or services to the entire licensed bank under possible recovery or resolution processes;
- (f) an identification of recovery indicators, triggers, and procedures to ensure the timely implementation of recovery actions;
- (g) the range of recovery options available to deal with shocks, to capital, liquidity and all other aspects that may arise from entity specific stresses or market wide stresses, or both of such stresses, as the case may be;
- (h) the time and resources required to implement recovery options;
- (i) significant deficiencies of resources that may hinder the effective and timely implementation of the recovery plan;
- (j) the actions to be taken to remedy the impediments including the availability of business continuity planning;
- (k) the details on costs of implementation;
- (l) a detailed description of how the recovery plan is integrated into the licensed bank's management;
- (m) the persons who are responsible for the development and implementation of the recovery plan within the licensed bank;
- (n) the policies and procedures for approving the recovery plan;

- (o) the mechanisms and measures for-
  - (i) the conservation or reconstitution of the funds of the licensed bank;
  - (ii) ensuring that the licensed bank has access to emergency financing sources, including potential sources of liquidity, assessment of available collateral and assessment of the possibility of transferring liquidity between entities within the group and between the businesses;
  - (iii) ensuring that the licensed bank may continue its activities and fulfill its obligations when they become due;
  - (iv) reducing leverage risk and effect;
  - (v) restructuring debts;
  - (vi) maintaining continuous access to financial market infrastructures;
  - (vii) facilitating the sale of assets or businesses within an appropriate period of time in order to restore financial soundness; and
  - (viii) facilitating the implementation of the recovery plan, including necessary measures to allow its timely recapitalization;
- (p) other management actions or strategies aimed at restoring the financial soundness and the anticipated financial effect of those actions or strategies;
- (q) an analysis of the situations in which the licensed bank may seek access to the financial facilities offered by the Central Bank and identify the assets that can be qualified as collateral;

- (r) the preparatory measures that the licensed bank has adopted or intends to adopt; and
- (s) such other requirements or information, as the Central Bank may, from time to time, specify or require, to be included in a recovery plan.

(6) The Central Bank may, if it considers necessary, direct all or selected licensed banks to submit recovery plans prepared under subsection (1) for its approval, within one month from the expiration of each calendar year.

(7) Where the Central Bank considers that a recovery plan submitted by a licensed bank has major deficiencies or that there are obstacles in the implementation of the recovery plan, the Central Bank shall notify such deficiencies or the obstacles to such licensed bank and direct such licensed bank to submit a revised recovery plan, containing adequate solutions to overcome the deficiencies or obstacles, within one month from the date of such notification.

(8) The Central Bank may, at the request of the licensed bank, extend the period specified in subsection (7), to a period which shall not exceed fourteen days from the date of expiry of the period of one month specified in subsection (7).

(9) Where the Central Bank is of the opinion that-

- (a) a licensed bank has not identified the changes that are required to be introduced to its economic activity; or
- (b) the actions proposed by the licensed bank to address the deficiencies or obstacles of such recovery plan are not adequate,

the Central Bank shall direct such licensed bank to take one or more of the measures specified in subsection (10) or any

other measure as it may consider necessary and proportionate, taking into consideration the seriousness of the deficiencies and the effect of the respective measures on the continuity of the business of the licensed bank.

(10) The measures referred to in subsection (9) shall include the following: -

- (a) to reduce the risk profile of the licensed bank, including reducing the liquidity risk;
- (b) to apply prompt recapitalization measures;
- (c) to review the strategy and structure of the licensed bank;
- (d) to modify the financing strategy, in order to improve the shock resistance of the critical functions; or
- (e) to modify the administration structure of the licensed bank.

**10.** (1) The Central Bank may, from time to time, issue directions to any licensed bank on preparation of recovery plans for such licensed bank.

Central Bank to issue directions on the preparation of recovery plans

(2) The regulatory or supervisory departments of the Central Bank shall promptly notify the Department established under section 4, any changes that would require a reassessment or updating of the recovery plans of licensed banks.

**11.** (1) The Central Bank shall design a resolution plan for each licensed bank having a systemic importance or impact in keeping with the international standards and best practices applicable to resolution of banks.

Central Bank to design a resolution plan



For the purpose of this subsection, a licensed bank shall be deemed to have systemic importance or impact, where failure of such bank may cause or likely to cause a severe impact on the financial system stability due to the size, interconnectedness, lack of substitutability, complexity, and such other similar criteria as may be determined by the Central Bank.

(2) The Central Bank shall evaluate and update periodically, or immediately after any material changes in the organizational structure of such licensed bank, its business, or its financial condition, the resolution plan designed under subsection (1).

(3) The Central Bank shall provide for in the resolution plan, options for the implementation of resolution measures and the exercise of its resolution authority under this Act.

(4) At the request of the Central Bank, a licensed bank shall provide assistance to the Central Bank in elaborating and updating the resolution plan by the Central Bank.

(5) A licensed bank shall immediately inform the Central Bank, of any changes that may require an evaluation or updating of the resolution plan designed by the Central Bank.

(6) At the request of the Central Bank, a licensed bank shall provide to the Central Bank all information necessary for the effective implementation of the resolution plan, including the details of –

- (a) the critical functions of such licensed bank, including the significant holdings of assets and liabilities relating to the respective functions and activities;
- (b) the description of the class or classes of debt obligations of the licensed bank and of all the legal entities under its control;

- (c) the off-balance sheet exposures of the licensed bank and of the other legal entities within the banking group;
- (d) the main operations of hedging the risks of the licensed bank and of the other legal entities within the banking group;
- (e) the main contracting counterparties of the licensed bank or of the critical functions;
- (f) an analysis of the impact of the distressed financial condition of the licensed bank on the main contracting counterparties;
- (g) each system in which the licensed bank carries out significant transactions in terms of the number or value, including the identification of their correspondence with legal entities and critical functions;
- (h) each payment, clearing or settlement system in which the licensed bank is a participant, directly or indirectly, including the establishment of their correspondence with legal entities and critical functions;
- (i) the inventory, and the main information management systems on risk management, accounting, and financial and statutory reporting used by the licensed bank, including the establishment of their correspondence with legal entities and critical functions;
- (j) the agreements executed on provision of services-related information management systems, information technology systems or licences, including the establishment of their correspondence with legal entities and critical functions;

- (k) the interconnectedness and interdependencies between the licensed bank and other stakeholders including the staff, shared facilities and systems or capital financing or liquidity mechanisms, existing or contingent credit exposures, cross-border guarantee agreements, cross-default collateral agreements, and cross-settlement agreements between affiliates, risk transfer arrangements and back-to-back trading arrangements or service provision agreements;
- (l) the key management personnel of the licensed bank, who are responsible for providing the information necessary for the elaboration of the licensed bank's resolution plan;
- (m) the mechanisms that the licensed bank has put in place to ensure that the Central Bank will receive all necessary information for the purpose of resolution plan;
- (n) termination of any agreements by the licensed bank and any other legal entity within the banking group with third parties which may be triggered by a decision of the authorities to apply one or more resolution measures and whether the consequences caused by the termination may affect the implementation of such resolution measures; and
- (o) possible sources of liquidity in support of the resolution.

(7) All regulatory and supervisory departments of the Central Bank and any other authority regulating the financial sector, other than the Central Bank shall extend cooperation to the Department established under section 4, to implement the resolution function and, for that purpose, to ensure that the information referred to in subsection (6) is available with such supervisory and regulatory departments

and other authorities regulating the financial sector other than the Central Bank. Where such information is available, such departments and authorities shall transmit such information to the Department established under section 4.

(8) The Central Bank may, if it considers necessary, design simplified resolution plans for a licensed bank or banks which are not considered as having systemic importance or impact.

**12.** (1) The Central Bank shall, having regard to the systemic importance or impact of any licensed bank in respect of which a resolution plan has been prepared under subsection (1) of section 11, assess whether such licensed bank is resolvable and develop such resolution measures as it may consider appropriate and feasible for each such licensed bank, in a manner that allows for credible strategies to resolve the licensed bank without using—

Resolvability  
assessment

- (a) extraordinary public financial support, except for the financing mechanisms established under this Act; and
- (b) liquidity assistance in emergency situations from the Central Bank, whether guaranteed or otherwise.

(2) Without prejudice to the provisions of subsections (3) and (4), the Central Bank shall, in determining the resolvability of such licensed bank, take such measures as may be necessary to direct a licensed bank including any one or more of the following:—

- (a) to revise and conclude an intra-group financial support agreement with other entities pertaining to the financial group of the licensed bank;
- (b) to enter into a service agreement with third parties, or to include clauses in existing agreements aiming at ensuring that such agreements will not be affected in the case the Central Bank places the licensed bank under resolution;

- (c) to limit its exposure to a single entity or to a group of related entities;
- (d) to dispose of specific assets;
- (e) to limit or cease the performance or development of specific activities, or commencing new activities;
- (f) to introduce appropriate legal and organizational changes to the licensed bank, ensuring that critical functions may be separated from other functions in the resolution procedure;
- (g) to establish mechanisms, including insurance mechanisms, to cover specific losses; and
- (h) to take any measures that are necessary to meet the minimum requirements for capital and liabilities, including loss-absorbing liabilities.

(3) The Central Bank may, from time to time, issue directions to ensure resolvability of any licensed bank, specifying key elements, standards, and criteria to be used to conduct an assessment on resolvability of such licensed bank.

(4) The Central Bank shall, during the assessment of resolvability under subsection (3), grant the licensed bank an opportunity of being heard.

(5) The Central Bank may, if it deems necessary, take into consideration the group-wide exposure of a licensed bank in assessing the resolvability of such licensed bank.

Conditions for  
resolution

**13.** (1) Notwithstanding anything to the contrary in any other provisions of this Act or any other written law, where the Central Bank is satisfied that a licensed bank is, or is likely to be, no longer viable, and has no reasonable prospects of becoming viable under the circumstances set out in subsection (2), the Central Bank may decide to resolve such licensed bank under this Act.

(2) A licensed bank is deemed to be, or is deemed likely to be, no longer viable, and has no reasonable prospects of becoming viable in any one or more of the following circumstances: -

- (a) where the Central Bank is of the opinion that a licensed bank has failed, or is likely to fail to comply with the provisions of the Banking Act, or any regulation, direction, determination, Order, or any requirement made, issued or imposed thereunder, including the regulatory, capital and liquidity requirements, in a manner that would compel the Central Bank to cancel the licence issued to such licensed bank;
- (b) where the Central Bank is of the opinion that a licensed bank is, or is likely to become, insolvent; or
- (c) where a licensed bank is unable to meet its obligations to its depositors or other creditors, or the Central Bank is of the opinion that such licensed bank is likely to be unable to meet its obligations to its depositors or other creditors as they fall due.

(3) The implementation of any early intervention measures or any other supervisory measures on a licensed bank shall not be deemed as a pre-condition for the Central Bank to exercise its resolution authority under this Act.

(4) Where the Central Bank decides to resolve a licensed bank, it shall notify its decision in writing to such licensed bank and commence implementation of resolution measures under this Act.

(5) Where the Central Bank decides to resolve a licensed bank under subsection (1), the Central Bank may exercise any one or more of the resolution powers set out in section 14:

Provided however, the Central Bank shall exercise at least one such resolution power within a period not exceeding thirty days from the date of notification referred to in subsection (4).

(6) A licensed bank subject to resolution shall, after the commencement of the resolution measures under this Act, carry on its business under the control of the Central Bank.

Resolution  
powers of the  
Central Bank

**14.** (1) For the purpose of resolution of a licensed bank, the Central Bank shall have the power to -

- (a) appoint an Administrator to such licensed bank;
- (b) effect a transfer of shares of such licensed bank;
- (c) transfer all or any selected assets and liabilities of such licensed bank;
- (d) cause a capital increase through the existing shareholders and new shareholders;
- (e) request the Minister to provide capital to establish a bridge bank; or
- (f) request the Minister to provide temporary financial assistance for the resolution of such licensed bank, based on reports submitted by the Central Bank to that effect.

(2) For the purpose of resolution of a licensed bank under this Act, the Central Bank shall, in addition to the powers set out in subsection (1), have the following powers which it may exercise singly or jointly with, directly or through the appointment of, an Administrator: -

- (a) to remove or replace the directors, chief executive officer or the key management personnel or any other employee of such licensed bank;

- (b) to recover or claw-back of variable remuneration paid by such licensed bank to any person referred to in paragraph (a);
- (c) to override the rights of shareholders of such licensed bank in any transaction;
- (d) to terminate, continue or assign contracts, purchase or sell assets, write-down debts and take any other action necessary to restructure or wind-down the operations of the licensed bank;
- (e) to ensure continuity of essential services and critical functions by-
  - (i) the licensed bank to its successor or any acquiring company for a temporary period;
  - (ii) procuring necessary services from unaffiliated third parties on behalf of the licensed bank;
  - (iii) requiring any service provider to continue provision of such services as are necessary for the continuity of critical functions of the licensed bank to a transferee including the bridge bank under the terms and conditions existing prior to the resolution;
- (f) to suspend, restrict, or prohibit all or part of the business of the licensed bank for a period not exceeding six months as may be determined by the Central Bank;
- (g) to suspend, for a period of no longer than two working days-
  - (i) the acceleration right, termination right, or set-off right of a financial contract to which



the licensed bank is a party, that arises by virtue of the entry of the licensed bank into the resolution or the exercise of any resolution powers under this Act;

- (ii) the obligation to make a payment or delivery under a contract to which the licensed bank is a party;
- (iii) the right to attach assets or otherwise collect money or property under a contract to which the licensed bank is a party;
- (h) to re-organize the licensed bank by increasing its capital and selling shares to new shareholders, and reconstituting the Board of Directors of the licensed bank;
- (i) to re-construct the licensed bank in any manner in the interest of depositors, including the closure of unviable business of the licensed bank or re-organizing its management;
- (j) to recognize losses to be allocated to shareholders and subordinated debt holders of a licensed bank;
- (k) to convert debt obligations of the licensed bank into capital;
- (l) to engage, at the expense of the licensed bank, independent attorneys, accountants, auditors, valuation experts and consultants, on such terms and conditions as may be specified by the Central Bank;
- (m) to meet expenditure incurred in the exercise of resolution powers under this Act; or

- (n) to do such other things as the Central Bank may consider necessary in relation to any matter affecting, or connected with, or incidental to, the exercise of powers under this section.

**15.** (1) In order to achieve the objectives of resolution specified in section 8 and to ensure the effective implementation of resolution measures provided for in sections 30, 31, 32, 33 and 34, the Central Bank shall establish a Financial Stability Fund under this Act.

Financial  
Stability Fund

(2) The Financial Stability Fund shall be managed separately from other assets of, and the assets managed by, the Central Bank.

(3) The Central Bank shall have the power to-

- (a) manage, administer, and supervise the Financial Stability Fund, subject to the provisions of this Act;
- (b) formulate policies in relation to the general administration of the Financial Stability Fund;
- (c) invest and enter into any transaction or agreement as may be necessary or desirable for the financial management of the Financial Stability Fund; and
- (d) contribute to financing of resolutions of licensed banks, without prejudice to the provisions of subsection (3) of section 51.

(4) The following shall be credited to the Financial Stability Fund:-

- (a) budgetary allocations provided by the Government;
- (b) contributions from the Government;
- (c) grants or loans provided by international financial institutions;

- (d) investment income and gains deriving from and out of the investments of the moneys of the Financial Stability Fund;
- (e) contributions from licensed banks as the Central Bank may consider necessary, for the purposes of subsection (5) of section 33; and
- (f) any income from any other source as may be approved by the Minister.

Valuation of assets and liabilities of a licensed bank for the purpose of resolution

**16.** (1) In order to assess the value of the assets, liabilities or shares of a licensed bank for the purpose of resolution, the Central Bank may, at any time before the implementation of any resolution measure, direct such licensed bank to cause a prudent and realistic valuation of the assets, liabilities or shares of such licensed bank to be carried out by an independent professional valuer who shall possess such qualifications and experience as may be determined by the Central Bank, from time to time.

(2) Notwithstanding the provisions of subsection (1), the Central Bank may cause a valuation of the assets, liabilities or shares of a licensed bank to be carried out through an independent professional valuer who shall possess qualifications and experience referred to in subsection (1).

(3) Where a definitive valuation for resolution purposes is not possible due to the urgency of taking resolution measures, the Central Bank may-

- (a) direct a licensed bank to cause a provisional valuation to be carried out; or
- (b) directly undertake a provisional valuation:

Provided however, such provisional valuation shall be complemented with a final independent valuation, as soon as practicable.