

performing executive functions as they apply to a director of a licensed commercial bank and to the licensed commercial bank of which such person is a director.

PART VII

CONTROL OVER LICENSED COMMERCIAL BANKS

Power of the Director
of Bank Supervision
[§ 18, 2 of 2005.]

45. (1) Where the Director of Bank Supervision is satisfied that a licensed commercial bank—

- (a) is engaged in unsafe and unsound practices in the carrying on of its business which is likely to jeopardise its obligations to its depositors or is likely to result in such bank being unable to meet its obligations; or
- (b) has contravened or failed to comply with the provisions of this Act or of any regulation, direction, order or other requirement made or given under this Act or has contravened or failed to comply with any other written law which in the opinion of the Director of Bank Supervision relates to banking or finance,

[§ 18, 2 of 2005.]

the Director of Bank Supervision may, subject to subsection (2) issue an order directing the licensed commercial bank,—

- (i) to cease and desist from any such practice, contravention or failure;
- (ii) to comply with the provisions of this Act or of such other written law, or of any regulation, direction, order or other requirement made or given under this Act;
- (iii) to take necessary action to correct the conditions resulting from such practice, contravention or failure,

within such period as may be specified in the order.

(2) An order issued under subsection (1) shall —

- (a) specify the unsafe and unsound practice engaged in or the provisions of this Act or other written law or the regulation, direction, order or other requirement made or given under this Act that are contravened or not complied with;
- (b) be served personally on, or be sent by registered post to, the licensed commercial bank;
- (c) take effect on the date of its service on the licensed commercial bank, notwithstanding an appeal made under subsection (3), unless the Monetary Board otherwise directs.

[§ 18, 2 of 2005.]

(3) Any licensed commercial bank aggrieved by an order issued under subsection (1) may, before the expiration of thirty days of the date of service of the order, appeal to the Monetary Board and the Monetary Board shall, within thirty days of the date of receipt of the appeal confirm, vary or revoke such order.

[§ 18, 2 of 2005.]

(4) Without prejudice to anything contained in section 9, and notwithstanding that an appeal has been tendered to the Monetary Board under subsection (3), a licensed commercial bank which fails to comply with an order under subsection (1) within the period specified in the order, shall be guilty of an offence under this Act and shall be liable on conviction upon trial by a Magistrate to a fine of one million rupees and to a further fine of one hundred thousand rupees for each day of non-compliance with the order after the conviction, provided that, where an appeal has been tendered under subsection (3), proceedings shall not be instituted before a Magistrate until the decision of the Monetary Board is conveyed to the licensed commercial bank.

Monetary
Board to give
Directions to
licensed commercial
banks.
[§ 25, 33 of 1995.]
[§ 19, 2 of 2005.]

46 (1) In order to ensure the soundness of the banking system, the Monetary Board may issue directions to licensed commercial banks or for reasons to be stated in writing to any one or more of them regarding the manner in which any aspect of the business of such bank or banks is to be conducted and without prejudice to the foregoing, may, also issue directions specifying—

(a) the class or classes of advances which may or may not be made by such bank;

(b) the margins to be maintained in respect of secured advances;

(c) the maximum amount of accommodation which having regard to the equity capital, reserves and deposits of such licensed commercial bank and other relevant considerations, as may be made by such bank —

(i) to any single company, public corporation, firm, association of persons or an individual; or

(ii) in the aggregate to —

(a) an individual, his close relations or to a company or firm in which he has a substantial interest;

(b) a company and one or more of the following: —

(aa) its subsidiaries;

(bb) its holding company;

(cc) its associate company;

- (dd) a subsidiary of its holding company; or
 - (ee) a company in which such company or its subsidiary, or its holding company, or a subsidiary of its holding company, has a substantial interest;
- (d) the maximum percentage of the share capital in a licensed commercial bank incorporated in Sri Lanka—
 - (i) held by a company, an incorporated body, or an individual;
 - (ii) held in the aggregate by—
 - (a) a company and one or more of the following:—
 - (aa) its subsidiaries;
 - (bb) its holding company;
 - (cc) a subsidiary of its holding company; or
 - (dd) a company in which such company or its subsidiary, or its holding company, or a subsidiary of its holding company has a substantial interest; or
 - (b) an individual and one or more of the following :—
 - (aa) his close relations;
 - (bb) a company in which he has a substantial interest or in which his close relation has a substantial interest;
 - (cc) the subsidiary of such company;
 - (dd) a holding company of such company;
 - (ee) a subsidiary of such company's holding company;
 - (ff) a company in which such company, or its subsidiary, or its holding company or a subsidiary of its holding company has a substantial interest; or
 - (gg) an incorporated body other than a company in which such individual or his close relation has a substantial interest; or
 - (c) companies in each of which an individual or company as the case may be, has either directly, indirectly or beneficially a substantial interest or significant management interest.

For the purposes of this Act a company is deemed to be an "associate company" of another company where not less than twenty *per centum* and not more than fifty *per centum* of its shares are held by that other company.

[§ 25, 33 of 1995.]

(2) A direction issued under subsection (1) shall have effect notwithstanding that such direction will require a licensed commercial bank to effect a change in the nature or amount of any of its assets or liabilities, whether acquired or incurred before or after the date of the coming into operation of this Act, provided that a licensed commercial bank which is required to so effect a change, is afforded a period of twelve months from the date of such direction or such longer period as may be granted by the Monetary Board in which to comply with that requirement.

(3) In order to comply with a direction issued to it under paragraph (d) of sub-section (1), a licensed commercial bank may direct a person holding shares in such bank to reduce the number of shares held by such person in such bank, whether such shares were acquired by such person before or after the appointed date, within such period as may be specified in such direction; and it shall be the duty of such person to comply with such direction.

Imposition of general
and specific
requirements for debts.
[§ 26, 33 of 1995]

46A. The Monetary Board shall have the power to require both general and specific provisions relating to bad and doubtful debts, to be made by licensed commercial banks and it shall be the duty of all licensed commercial banks to conform with the requirement so imposed.

[§ 20, 2 of 2005.]

47 (1) the provisions of this section shall apply only to licensed commercial banks carrying domestic banking business.

(2) A licensed commercial bank shall not grant accommodation for the purchase of its own shares nor grant accommodation against the security of —

- (a) its own shares;
- (b) shares of companies which have a substantial interest in it; or
- (c) shares of companies in which the companies referred to in paragraph (b) have a substantial interest:

Provided that nothing in this section shall be taken to prohibit the provision by the licensed commercial bank, in accordance with any scheme for the time being in force, of money for the purchase of or subscription for fully paid shares in the licensed commercial bank being a purchase or subscription by trustees of or for shares to be held by or for the benefit of employees of the licensed commercial bank:

Provided further that the amounts of money so provided and the aggregate principal amount of such accommodation outstanding at any one time, shall not exceed the equivalent of ten *per centum* of the total nominal amount of the subscribed and paid up share capital of the bank or ten *per centum* of the unimpaired capital funds of the bank, whichever is greater.

[§ 20, 2 of 2005.]

(3) A licensed commercial bank shall not grant any accommodation to any of its directors or to a close relation of such director unless such accommodation is sanctioned at a meeting of its Board of Directors with not less than two-thirds of the number of directors constituting the Board of Directors (other than the director concerned) voting in favour of such accommodation and, except where such accommodation is provided by the issue of a credit card, such accommodation is secured by such security as may from time to time be approved by the Monetary Board.

[§ 20, 2 of 2005.]

(4) Accommodation granted by a licensed commercial bank to a director or to a close relation of such director shall not exceed such limit as may be approved by the Monetary Board from time to time by Order published in the *Gazette*.

[§ 20, 2 of 2005.]

(5) A licensed commercial bank shall not grant any accommodation to a concern in which any director of the licensed commercial bank has a substantial interest, being an interest acquired either before or after the appointment as the director, unless such security as may from time to time be approved by the Monetary Board is given and such accommodation is sanctioned at a meeting of the Board of Directors of the licensed commercial bank by the votes of not less than two thirds of the number of its directors other than the director concerned.

[§ 27, 33 of 1995.]

(6) Where any accommodation has been granted by a licensed commercial bank to a person or a close relation of a person or to any concern in which the person has a substantial interest and if the person is a director of that licensed commercial bank on the appointed date or is appointed a director after the appointed date, steps shall be taken to obtain such security as may be approved for that purpose by the Monetary Board, within one year from the appointed date or from the date of appointment as director, whichever is applicable

Provided that the provisions of this section shall not apply to a director who at the time of the grant of an accommodation, was an employee of the bank and the accommodation was granted under a scheme applicable to the employees of such bank.

(7) Where such security has not been provided as specified in subsection (6), the licensed commercial bank shall take steps to recover any amount due on account of any accommodation together with interest, if any, due thereon—

- (a) within the period specified at the time of the grant of accommodation or at the expiry of a period of six months of the termination of the period specified in subsection (5), whichever is earlier;
- (b) where no period has been specified, at the expiry of a period of one year of the termination of the period specified in subsection (5):

Provided that the Monetary Board may, in any case, on an application in writing made to it by the licensed commercial bank in that behalf, extend

the period for the recovery of the accommodation until a date, not beyond the period of three years commencing from the expiry of six months specified in paragraph (a):

Provided further, that the provisions of this subsection and of subsection (6) shall not apply if and when the director concerned vacates such office whether by death, retirement, resignation or otherwise.

(8) Where no security has been provided within the period specified in subsection (6), or the amount due has not been repaid in terms of subsection (7) in respect of an accommodation granted to a director or to a concern in which the director has a substantial interest, such director shall be deemed to have vacated office on the expiry of the period specified in subsection (7).

(9) Every director of a licensed commercial bank, who is in any manner whatsoever, whether directly or indirectly, interested in any accommodation or proposed accommodation from that licensed commercial bank, shall as soon as is practicable, declare the nature of his interest to the Board of Directors and the Secretary or Manager of such licensed commercial bank shall cause the declaration to be circulated forthwith to all the directors.

(10) A director shall not take part in any deliberations or decisions of the Board with regard to any business transacted or proposed to be transacted by a licensed commercial bank in which the director or a close relation of the director, or a concern in which the director has a substantial interest, is interested, and the director shall withdraw from the meeting of the Board at which such business is discussed or transacted while the deliberation is in progress or decision is being made.

[§ 20, 2 of 2005.]

(11) No accommodation granted by a licensed commercial bank under subsection (3) or subsection (5) or any part of such accommodation or any interest due thereon shall be remitted without the prior approval of the Monetary Board and any remission without such approval shall be void and of no effect.

[§ 27, 33 of 1995.]
[§ 20, 2 of 2005.]

(11A) Where any accommodation is granted by a licensed commercial bank under subsection (2) or subsection (4) during the course of any financial year, such accommodation shall be disclosed in the accounts for that financial year and for each subsequent financial year till such accommodation has been repaid or settled in full.

(12) Any director who contravenes the provisions of subsections (9) and (10) shall be guilty of an offence under this Act.

(13) For the purpose of this section—

“ company ” shall not include a company incorporated outside Sri Lanka ;

“ director ” shall not include a director of a licensed commercial bank incorporated outside Sri Lanka.

Licensed commercial bank not to engage in buying, selling, & c.

48. (1) Notwithstanding anything contained in any other written law or in any contract, no licensed commercial bank shall directly or indirectly deal in the buying or selling or bartering of goods, except in connection with the realisation of security given to or held by it, or engage in any trade, or buy, sell or barter goods for others, otherwise, than in connection with bills of exchange received for collection or negotiation or with such of its business as is referred to in Schedule II or in any other law or in the Bank of Ceylon Ordinance (Chapter 397) or in the People’s Bank Act, No. 29 of 1961, where the provisions of these enactments are applicable.

(2) The provisions of the preceding subsection shall not apply to any such business as aforesaid, which was being carried on by a bank on the appointed date:

Provided that the said business shall be completed before the expiry of one year from the appointed date.

Purchase and acquisition of immovable property.
[§ 28, 33 of 1995.]

48A. A licensed commercial bank shall not purchase or in any other way acquire any immovable property or any right therein, exceeding in the aggregate such percentage of its capital funds as may be determined by the Monetary Board from time to time, except as are reasonably required for the purpose of conducting its banking business or of housing or providing amenities for its staff:

Provided this restriction shall not prevent the bank from accepting any immovable property as security for a debt and in the event of default in payment of the debt, from holding such immovable property until its sale at the earliest opportunity.

Prohibition in the sale, transfer, &c., of immovable assets.
§ 21, 2 of 2005.]

49. Without the prior approval obtained in writing of the Director of Bank Supervision, no licensed commercial bank shall sell, transfer, assign or dispose of any of its immovable assets below the market value of the assets or increase the valuation of the assets as recorded in the books of the bank above the market value of the assets.

In case of insolvency to inform Director of Bank Supervision.
[§ 29, 33 of 1995.]

49A. Any licensed commercial bank which considers that it is, or is likely to be unable to meet its obligations or is about to become insolvent or is about to suspend payments due to depositors and other creditors, shall forthwith inform the Director of Bank Supervision of that fact.

PART VIIA

VESTING THE BANKING BUSINESS OF A LICENSED COMMERCIAL BANK

Order vesting banking business of a licensed commercial bank.
[§ 30, 33 of 1995.]

49B. (1) whereupon a report made by the Director of Bank Supervision, the Monetary Board is satisfied that any licensed commercial bank is unable to carry on banking business in Sri Lanka; or is unable to meet the demands of its' depositors and other persons who have had transactions with such licensed

commercial bank (in this Part of this Act referred to as “ the defaulting bank ”) and that its continuance in business is likely to involve serious economic loss to, and to adversely affect, the monetary and banking system and the national economy, the Monetary Board may, notwithstanding the provisions of any other law to the contrary, by Order published in the *Gazette*, vest the business carried on by a defaulting bank being a business which it is authorised to carry on by or under the Act or such part thereof as the Monetary Board may determine, in another licensed commercial bank or licensed specialized bank (in this Part of this Act referred to as the “ acquiring bank ”) which consents to such vesting.

(2) For the purpose of subsection (1), the “ business carried on by a defaulting bank ” includes—

- (a) all immovable and movable property owned by the defaulting bank on, the day preceding the relevant date (including cash balances, reserve funds, investments and deposits) ;
- (b) all rights, powers, privileges, authorities and interests arising in, or out of any property, movable or immovable, owned by the defaulting bank on the day preceding the relevant date;
- (c) all the liabilities of the defaulting bank and subsisting on the day preceding the relevant date; and
- (d) all books, accounts and documents relating or appertaining, to such undertaking in Sri Lanka.

49 C. No order under section 49B shall be made by the Monetary Board unless—

- (a) the Monetary Board is satisfied that the proposed acquiring bank, is capable of carrying on in a competent manner the business of the defaulting bank proposed to be vested, and of meeting liabilities of the defaulting bank to its depositors and creditors pertaining or relating to the business proposed to be vested;
- (b) the proposed acquiring bank agrees in writing to comply with such terms and conditions as may be specified by the Monetary Board relating to the manner in which—
 - (i) any existing assets of the defaulting bank pertaining or relating to the business proposed to be vested, are to be used and any existing liabilities of the defaulting bank pertaining or relating to the business proposed to be vested are to be met;
 - (ii) any payments due to a sovereign Government from the defaulting bank are to be made.

Order to be made after the acquiring bank agrees to comply with terms and conditions.
[§ 30, 33 of 1995.]

Effect of an Order.
[§ 30, 33 of 1995.]

49D. With effect from the date of publication of the Order under section 49B in the *Gazette*, (in this Part of this Act referred to as the “relevant date” vesting the business of the defaulting bank or part thereof in the acquiring bank—

- (a) the acquiring bank shall have control and possession of the vested business of the defaulting bank, and become the transferee of the vested business of such defaulting bank;
- (b) the license issued under this Act to the defaulting bank to carry on the business vested in the acquiring bank shall be modified to the extent necessary to enable the defaulting bank to carry on such part of its business as has not been vested in the acquiring bank;
- (c) the acquiring bank shall comply with such terms and conditions as are agreed to by such bank under paragraph (b) of section 49C and such other directions as the Monetary Board may give to such bank under this Act; and
- (d) the license issued under this Act to the defaulting bank to carry on banking business, shall where both domestic and off-shore banking business of such bank are vested in the acquiring bank, be deemed to be cancelled.

The extent of the liability of the acquiring bank in respect of foreign currency depositors.
[§ 30, 33 of 1995.]

49E. Notwithstanding anything to the contrary in this Act or any other written law, the liability of the acquiring bank to meet the demands of any foreign currency depositor of the defaulting bank, in case of the foreign currency deposits of the defaulting bank not being made available to the acquiring bank, shall be only in respect of such depositors as agree to accept the terms and conditions of any scheme for the grant of relief to such depositors, as may be formulated by the Monetary Board, upon a review of the business of the defaulting bank and only to the extent set out in such scheme:

Provided, however, that in the event of such foreign currency deposits being made available to the acquiring bank or the acquiring bank recovering such foreign currency deposits or other assets abroad of the defaulting bank, the Monetary Board shall have the power to give directions to the acquiring bank with regard to the payment to such foreign currency depositors, of the deposits so made available or deposits and other assets so recovered, and the acquiring bank shall comply with such directions.

Audit of accounts and valuations of vested business.
[§ 30, 33 of 1995.]

49F. (1) For the purpose of ascertaining the value of the vested business of the defaulting bank on the day immediately preceding the relevant date, the Director of Bank Supervision shall cause an audit of such vested business to be conducted by a qualified auditor appointed by him with the approval of the Monetary Board.

(2) The auditor appointed under subsection (1) shall submit a report to the Director of Bank Supervision within three months from the date of his appointment and the Director of Bank Supervision shall forward such report to the Monetary Board and the Monetary Board shall consider the report and if necessary,

require the Auditor to furnish any further information, or explanations as it may consider necessary.

(3) The auditor appointed under subsection (1) shall examine the accounts of the defaulting bank and ascertain the correctness of the balance sheet and furnish a report stating—

- (a) whether he has or has not obtained all the information and explanations required by him;
- (b) whether he has or has not obtained accounts referred to in the report are properly drawn up so as to exhibit a true and fair view of the defaulting bank's affairs; and
- (c) the value of the assets and liabilities of the vested business.

(4) The Monetary Board, after considering the report of the auditor, shall direct the acquiring bank to pay in such manner and within such time as it may specify the value of the vested business to the defaulting bank or its liquidators or successors, as the case may be.

(5) The payment required to be made to the defaulting bank in pursuance of a direction under subsection (4) and all payments required to be made to the auditor appointed under subsection (1), shall be made by the acquiring bank in accordance with such terms and conditions as may be determined by the Monetary Board.

Savings provisions.
[§ 30, 33 of 1995.]

49G. With effect from the relevant date—

- (a) all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation, and other instruments of whatever nature pertaining, or relating to the vested business of the defaulting bank and subsisting, or having effect on the day immediately preceding the relevant date, and to which the defaulting bank is a party or which are in favour of the defaulting bank, shall be deemed with effect from the relevant date, to be contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation or other instruments entered in to or granted, as the case may be, by the acquiring bank;
- (b) all actions and proceedings of whatever nature instituted by or against the defaulting bank pertaining or relating to the vested business of the defaulting bank and pending on the day immediately preceding the relevant date, shall be deemed with effect from the relevant date to be actions and proceedings instituted by or against the acquiring bank, and may be continued or prosecuted accordingly;
- (c) all such officers and servants of the defaulting bank as are connected with such part of the business of the defaulting bank as was vested or all the officers and servants of the defaulting bank where the entirety of the business of the bank is vested, as the case

may be, on the day immediately preceding the relevant date, who are not offered employment with the acquiring bank, shall be entitled to the payment of compensation.

Payment of compensation
[§ 30, 33 of 1995.]

49H. Where any officer or servant of the defaulting bank is entitled to be paid compensation, the acquiring bank shall determine the amount of compensation that shall be paid in consultation with the Commissioner of Labour and such determination shall be deemed not to affect the right such officer or servant may have under any other written law.

Offences
[§ 30, 33 of 1995.]

49J. Any person who contravenes or fails to comply with any provision of this Part or term or condition imposed there under shall be guilty of an offence under this Act.

Section 12(1)(c) not to
apply in respect of
defaulting bank.
[§ 30, 33 of 1995.]

49K. Nothing contained in the provisions of paragraph (c) of subsection (1) of section 12 shall apply, in relation to the vesting of banking business of a defaulting bank or part thereof, to an acquiring bank.

Interpretation
[§ 30, 33 of
1995.]

49L. In this Part of this Act unless the context otherwise requires—

“ value of the vested business ” means the value of the assets of the defaulting bank vested in the acquiring bank by virtue of an Order made under section 49B (excluding unrecoverable assets as determined by the auditor nominated under section 49F) less the value of the liabilities of the defaulting bank vested in the acquiring bank, by virtue of such Order;

“ vested business ” in relation to an acquiring bank or a defaulting bank, means the banking business of the defaulting bank or part thereof, which is vested in such acquiring bank by an Order under section 49B.

PART VIII

LIQUIDATION OF LICENSED COMMERCIAL BANKS INCORPORATED WITHIN SRI LANKA AND CLOSURE OF BRANCHES OF LICENSED COMMERCIAL BANKS INCORPORATED OUTSIDE SRI LANKA

Liquidator.

50. The Director of Bank Supervision shall be appointed as the liquidator for the purposes of this Part.

Liquidation.

51. No voluntary liquidation of a licensed commercial bank incorporated or established in Sri Lanka by or under any written law shall be effected without the prior authorisation of the Monetary Board obtained in writing. The authorisation shall be granted only if it appears to the Monetary Board that—

- (a) the licensed commercial bank is solvent and has sufficient liquid assets to repay its depositors and other creditors without delay; and