

# PART IV



# PART IV

## MAJOR LEGISLATIVE ENACTMENTS OF 2016 RELATING TO THE FUNCTIONS AND OPERATIONS OF THE CENTRAL BANK AND BANKING INSTITUTIONS IN SRI LANKA

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## Microfinance Act, No. 6 of 2016

[Certified on 20th May, 2016]

AN ACT TO PROVIDE FOR THE LICENSING, REGULATION AND SUPERVISION OF COMPANIES CARRYING ON MICROFINANCE BUSINESS; THE REGISTRATION OF NON-GOVERNMENTAL ORGANIZATIONS ACCEPTING LIMITED SAVINGS DEPOSITS AS MICROFINANCE NON-GOVERNMENTAL ORGANIZATIONS; FOR THE SETTING UP OF STANDARDS FOR THE REGULATION AND SUPERVISION OF MICROFINANCE NON-GOVERNMENTAL ORGANIZATIONS AND MICRO CREDIT NON-GOVERNMENTAL ORGANIZATIONS AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

1. This Act may be cited as the Microfinance Act, No. 6 of 2016 and different Parts of this Act shall come into operation on different dates as the Minister may appoint by Order published in the *Gazette*.
2. (1) The provisions of this Act shall not apply to-
  - (a) a licensed commercial bank or a licensed specialized bank within the meaning of the Banking Act, No. 30 of 1988;
  - (b) a finance company within the meaning of the Finance Business Act, No. 42 of 2011;
  - (c) a co-operative society registered under the Co-operative Societies Law, No. 5 of 1972 and a co-operative society registered under a Statute of a Provincial Council;
  - (d) a divineguma community based bank and a divineguma community based banking society established under the Divineguma Act, No. 1 of 2013; and
  - (e) an entity formed in terms of the Agrarian Development Act, No.46 of 2000
- (2) The provisions of this Act, other than Part VIII, Part IX and Part XI, shall not apply to a microfinance non-governmental organization and a micro credit non-governmental organization.

### PART I

#### LICENSING OF COMPANIES CARRYING ON MICROFINANCE BUSINESS

3. Save and except as provided for in section 2, a person shall be eligible to apply for a licence under this Act, if such person is a company registered under the Companies Act, No.7 of 2007 not being a company limited by guarantee, a private company, an offshore company or an overseas company.
4. (1) Every application for a licence shall be made to the Board in compliance with such requirements, in such form, accompanying such information and the evaluation fee as may be specified by the Board from time to time by rules made in that behalf.
  - (2) The Board may, on receipt of an application under subsection (1), make such enquiries and call for such further information and documents as it considers necessary and on being satisfied that-
    - (a) the applicant has complied with all the requirements laid down by the Board by rules made in that behalf; and
    - (b) the issue of a licence to the applicant would not be detrimental to the interests of its creditors and other stakeholders,
 it may issue a licence subject to such terms and conditions as the Board may think fit or, where it is not so satisfied, reject the application and issue such direction as it deems necessary.
5. A licence issued by the Board shall be in such form as may be specified by the Board by rules made in that behalf and shall remain in force until the thirty-first day of December next following the date on which the licence is granted and shall be renewable annually upon a fresh application being made.
6. Every licensed microfinance company shall pay an annual licence fee in such amount as may be specified by the Board from time to time by rules made in that behalf.
7. Every licensed microfinance company shall exhibit its licence at its principal place of business and a copy of such licence at every one of its branches.
8. The Board shall maintain a register of licensed microfinance companies.

### PART II

#### BUSINESS RESTRICTIONS ON LICENSED MICROFINANCE COMPANIES

9. (1) A licensed microfinance company may carry on such forms of businesses as set out in the Schedule to this Act and any other form of business as may be specified by the Board under subsection (2) subject to such restrictions and conditions

- as may be imposed by or under any written law or specified in the licence issued to such licensed microfinance company.
- (2) The Board may specify by notification published in the *Gazette* any form of business that a licensed microfinance company may carry on which is not set out in the Schedule to this Act.
  - (3) A licensed microfinance company shall not carry on any form of business that is not set out in the Schedule hereto or specified by the Board under subsection (2).
  - (4) Every notification published in the *Gazette* under subsection (2) shall, as soon as convenient, be brought before Parliament for approval. Any notification which is not so approved shall be deemed to be rescinded from the date of such disapproval but without prejudice to anything previously done thereunder.
  - (5) Notification of the date on which a notification is deemed to be rescinded shall be published in the *Gazette*.

### PART III

#### MANAGEMENT OF LICENSED MICROFINANCE COMPANIES

10. (1) The general superintendence and management of the affairs of a licensed microfinance company shall vest in the board of directors of the company, which shall manage the business and affairs of such company in good faith and in the best interest of its depositors, creditors and other stakeholders.
- (2) A licensed microfinance company shall maintain a register containing the names of members of the company, members of the board of directors and of the chief executive officer.

### PART IV

#### DIRECTIONS TO AND RULES GOVERNING LICENSED MICROFINANCE COMPANIES

11. Notwithstanding the provisions of any other written law, the Board may issue directions to licensed microfinance companies or to any single licensed microfinance company or to any group or category of microfinance companies (referred to as "company" in this section) as to the manner in which any aspect of the business and corporate affairs of such company are to be conducted, and in particular—
  - (a) the terms and conditions under which deposits may be accepted by such company, the maximum rates of interest payable on such deposits, the maximum period for which deposits may be accepted and the maximum amount that may be deposited with a company in the name of one person in one or more accounts;
  - (b) the terms and conditions under which any loan, credit facility or any type of financial accommodation may be granted by such company, the maximum rates of interest that may be charged on such loans, credit facilities or other types of financial accommodation, and the maximum periods for which any such loan, credit facility or other type of financial accommodation may be granted;
  - (c) the maximum rates which may be paid to, or charged by, such company by way of commissions, discounts, fees or other receipts or payments whatsoever;
  - (d) the terms and conditions under which investments may be made by such company and the maximum permissible maturities of such investments;
  - (e) the minimum amount of core capital and total capital to be maintained;
  - (f) the establishment of a reserve fund, minimum percentage of annual after-tax profits that a company shall transfer to such fund and other operational aspects of such fund;
  - (g) the minimum ratio which capital of a company should bear to the assets and the total deposit liabilities of such company;
  - (h) the minimum ratio which the liquid assets of a company should bear to the total deposit liabilities of such company;
  - (i) the maximum ratio which total outstanding deposit liabilities should bear to the total outstanding accommodation of such company;
  - (j) the minimum ratio which the outstanding accommodation granted to low-income persons and to micro enterprises by the company shall bear to the total outstanding accommodation granted by such company;
  - (k) the establishment of a deposit insurance fund and the premium such company shall transfer to such fund and the other operational aspects of such fund;
  - (l) internal controls, risk management and a code of corporate governance to be adopted by such company;

- (m) a code of conduct to be adopted by such company;
- (n) criteria to assess the fitness and propriety of directors, the chief executive officer and key management personnel of, and persons with specified shareholding in, such company;
- (o) restrictions on the structural changes to corporate or business affairs of such company;
- (p) the grounds upon which a person shall be disqualified from being appointed or elected or from holding the post of a director, chief executive officer, secretary or key management personnel of such company;
- (q) the requirement for obtaining prior approval of the Director for appointing, electing or nominating directors of such companies; and
- (r) the requirement for obtaining prior approval of the Director for appointing the chief executive officer and key management personnel of such company.

For the purpose of this section –

“key management personnel” means a person having authority and responsibility for planning, directing and controlling the activities of any finance company directly or indirectly including any Director (whether executive or otherwise) of such company;

“specified” means specified by the Board by rules made in that behalf.

12. (1) The Board may issue guidelines to the Director on the manner of monitoring compliance with the directions issued under Section 11.
- (2) Where a licensed microfinance company fails to comply with any direction issued under section 11, the Director shall, unless otherwise provided for in any guidelines issued under subsection (1), report such fact to the Board and thereupon the provisions of Section 17 of this Act shall apply accordingly.
13. (1) The Board may, from time to time, make rules on any matter in respect of which rules are authorized or required to be made under this Act.
- (2) Without prejudice to the generality of the powers conferred by subsection (1), the Board may, in particular, make rules in respect of all or any of the following matters:-
  - (a) criteria for licensing under this Act;
  - (b) evaluation fee for an application for a licence as a microfinance company;
  - (c) annual licence fee payable to the Board by microfinance companies;
  - (d) forms to be used for the purposes of this Act.
- (3) Every rule made by the Board under this Act shall be published in the *Gazette*.

## PART V

### FINANCIAL STATEMENTS AND AUDIT OF LICENSED MICROFINANCE COMPANIES

14. (1) Every licensed microfinance company shall at the expiration of each financial year prepare in accordance with the Sri Lanka Accounting Standards, financial statements including-
  - (a) a statement of financial position as at the end of the financial year; and
  - (b) a statement of comprehensive income in respect of such financial year.
- (2) The financial statements prepared by a licensed microfinance company shall be audited by a qualified auditor.
- (3) The financial year of a licensed microfinance company shall commence from first of January, every year.
- (4) Every licensed microfinance company shall transmit to the Director within three months after the closure of each financial year-
  - (a) audited financial statements including –
    - (i) the statement of financial position of the company as at the end of the financial year;
    - (ii) the statement of comprehensive income of the company for that financial year;
  - (b) the auditor’s report in respect of the financial statements;

- (c) the report by the directors relating to the state of affairs of the company; and
  - (d) a certified copy of the auditor's confidential letter, if any, to the board of directors of the company.
- (5) Every licensed microfinance company shall exhibit documents specified in paragraph (a) of subsection (4) in a conspicuous place of each of its places of business until those documents for the succeeding financial year are prepared and exhibited.
- (6) The Board may specify the forms of the financial statements referred to in this Part and any disclosure requirements to be made and where such forms are specified, financial statements of every licensed microfinance company shall be prepared in such form.
- (7) Unless otherwise determined by the Board, the financial statements of a licensed microfinance company shall be signed, on behalf of such company by the chief executive officer and two members of the board of directors.

## PART VI

### EXAMINATION AND SUPERVISION OF LICENSED MICROFINANCE COMPANIES

15. (1) The Director or any officer of the Central Bank authorized by him, or any other person authorized by the Director with the approval of the Board, may at any time examine the books of accounts and records of any licensed microfinance company and for that purpose may do one or more of the following:-
- (a) require any licensed microfinance company, or a director, secretary, manager, employee, auditor, agent or contractor of any licensed microfinance company to furnish him all such information as he may consider necessary and to produce for inspection books, records, files, registers, and such other documents, maintained in print or electronic form, of such licensed microfinance company and to provide authenticated copies in any form as required of such books, records, files, registers and such other documents;
  - (b) enter the premises or storage area of any licensed microfinance company, and notwithstanding anything to the contrary in any other law, examine books, records, files, registers, and such other documents, maintained in print or electronic form, of such licensed microfinance company and may obtain copies, authenticated or otherwise, in any form of such books, records, files, registers and such other documents;
  - (c) require any licensed microfinance company or a director, manager, employee, agent, contractor or secretary of any licensed microfinance company to submit the accounts of such licensed microfinance company, furnish such information and produce such books, records, files, registers, and such other documents, maintained in print or electronic form, for audit by an auditor authorized by the Director;
  - (d) question and record statements of or, if necessary, direct any director, shareholder, secretary, manager, employee, agent, auditor or contractor of any licensed microfinance company and of any other person who may be acquainted with or is aware of or is in possession of, information regarding the business or corporate affairs of such licensed microfinance company to submit answers to the questions raised by way of an affidavit or if necessary administer oath or affirmation in accordance with the Oaths and Affirmation Ordinance (Chapter 17) and cause questions to be asked and record or cause the recording of statements;
  - (e) call for information by notice in writing from any person who may be acquainted with or is aware of or is in possession of or appears to have information regarding the business or corporate affairs of any licensed microfinance company and if required summon such person for an interview;
  - (f) require any related party of a licensed microfinance company to furnish information as the Director may consider necessary and to produce for inspection books, records, files, registers and such other documents maintained in print or electronic form, of such related party and to provide authenticated copies in any form as required of such books, records, files, registers and such other documents.
- For the purposes of this paragraph "related party" means holding company, any subsidiary or associate company of any licensed microfinance company, or any subsidiary or associate company of the holding company of any licensed microfinance company, or any other entity or individual that in the view of the Director has a substantial financial interest or significant management interest in any licensed microfinance company.
- (2) The cost of such examination may be recovered from the licensed microfinance company.
- (3) It shall be the duty of every person to comply with any requirement imposed on him under this section and any person who –



- (a) fails to provide any information or produce for inspection any book, record, file, register or such other document, material or object required under this section;
- (b) fails to attend in person when summoned for an interview;
- (c) provides false or incomplete or incorrect information, book, record, file, register or such other document, material or object; or
- (d) obstructs the Director or any person authorized by the Director under subsection (1) in the performance of any function thereunder,

shall be guilty of an offence under this Act.

- (4) The Director shall upon the conclusion of the examination conducted in terms of subsection (1), submit a report to the Board if such examination reveals that the licensed microfinance company-
- (a) is carrying on its business adopting unsound or improper financial practices which are detrimental to the interests of its depositors, creditors and other stakeholders; or
  - (b) has contravened or failed to comply with any provisions of this Act, or any direction, rule, order or requirement made or imposed thereunder.

16. (1) Where the Board, on a report made by the Director, is of the opinion that a licensed microfinance company –

- (a) is carrying on or is in the process of carrying on its business following unsound or improper financial practices which are detrimental to the interest of its depositors, creditors and other stakeholders; or
- (b) has contravened or failed to comply with any provisions of this Act or any direction, rule, order or requirement made or imposed thereunder,

the Board may do any one or more of the following:–

- (i) direct such licensed microfinance company to cease any such practice;
  - (ii) direct such licensed microfinance company to, forthwith or within such period as may be specified by the Board, comply with the provisions of this Act, direction, rule, order or requirement made or imposed thereunder which such microfinance company has failed to comply with;
  - (iii) direct such licensed microfinance company to take necessary action to correct the negative conditions resulting from such practice or contravention;
  - (iv) restrain any director, manager or controller of the licensed microfinance company from carrying out any function in or in relation to the microfinance company;
  - (v) direct such licensed microfinance company to remove any director, manager or employee of the company within a specified period;
  - (vi) reorganize the licensed microfinance company by arranging for the increase of its capital or reconstitution of the board of directors or both such measures;
  - (vii) provide for such arrangements as are necessary for the amalgamation of the licensed microfinance company with another licensed microfinance company or any other institution that consents to such amalgamation;
  - (viii) appoint a person to manage the affairs of such licensed microfinance company with a view to assuring proper conduct of the business of such licensed microfinance company;
  - (ix) serve a notice in writing on such microfinance company requiring it to show cause within fourteen days from the date of the notice why a penalty should not be imposed on such company, and upon its failure to show cause within the time specified therefor or where the cause shown does not satisfy the Board, impose a penalty not exceeding rupees two hundred and fifty thousand payable within such period as may be specified by the Board.
- (2) Any person aggrieved with any order or direction issued or measure taken under subsection (1), may, before the expiry of thirty days from the date of the issue of such order or direction or the date of such measure taken, appeal in writing to the Board and the Board shall render its decision within sixty days of receipt of such appeal.

## PART VII

### CANCELLATION OF THE LICENCE AND WINDING UP OF LICENSED MICROFINANCE COMPANY

17. The Board may cancel the licence of a licensed microfinance company on any one or more of the following grounds :-
- (a) failing to commence business within nine months of the issue of the licence;
  - (b) failing to satisfy any debt incurred by it, on such debt becoming due for payment;
  - (c) proposing to make or making any composition or arrangement with its creditors or going into liquidation or being wound up or otherwise dissolved;
  - (d) ceasing to carry on microfinance business;
  - (e) acting in contravention of any provisions of this Act or any direction, requirement, rule, order, determination issued, imposed or made under this Act;
  - (f) failing to pay the annual licence fee;
  - (g) carrying on its business in a manner likely to be detrimental to the interests of its depositors, other creditors and the economy; or
  - (h) furnishing false, misleading or inaccurate information or concealing or failing to disclose material facts to the Board.
18. (1) The Board shall, before cancelling the licence of a licensed microfinance company, serve a notice in writing on such licensed microfinance company requiring it to show cause within thirty days from the date of such notice being served as to why its licence should not be cancelled.
- (2) Where the licensed microfinance company fails to show cause within the specified period the Board may cancel the licence.
- (3) Where in compliance with the notice issued to it under subsection (1), such licensed microfinance company, shows cause within the specified period, the Board may, after considering the reasons provided and hearing the licensed microfinance company in support of its objections –
- (a) not cancel the licence, if it is satisfied that such microfinance company has shown sufficient cause as to why its licence should not be cancelled; or
  - (b) cancel the licence, if it is satisfied that such licensed microfinance company has not shown sufficient cause as to why its licence should not be cancelled.
- (4) In the event of cancellation of a licence, the licensed microfinance company concerned shall be notified forthwith of such cancellation and the cancellation shall take effect from the date of such notification. The Board shall publish a notice of such cancellation at least in one each of Sinhala, Tamil and English daily newspapers circulating in Sri Lanka.
- (5) Where the licence of a licensed microfinance company is cancelled, the Board shall remove the name of such licensed microfinance company from the register maintained under section 8 and may issue such directions to such microfinance company as it considers necessary, including directions for winding up.
- (6) Where such microfinance company fails to comply with any directions issued under subsection (5) within the time specified by the Board, the Board may require the Director to file action for the winding up of such microfinance company under section 19.
19. A competent court may, on an application made by the Director, order the winding up of such microfinance company and accordingly the provisions of the Companies Act, No.7 of 2007 relating to winding up of companies subject to the supervision of court shall *mutatis mutandis* apply to and in relation to the winding up of such microfinance company.

## PART VIII

### MICROFINANCE NON-GOVERNMENTAL ORGANIZATIONS

20. (1) A non-governmental organization registered under the Voluntary Social Service Organizations (Registration and Supervision) Act, No.31 of 1980 is eligible to apply for a certificate of registration as a microfinance non-governmental organization (hereinafter referred to as the "microfinance NGO").
- (2) Every application for a certificate of registration as a microfinance NGO shall be made to the Registrar of Voluntary Social Service Organizations (in this Part referred to as the "Registrar") in such form and in compliance with the requirements for such registration, together with such information, as may be specified by the Registrar from time to time by rules made in that behalf.

- (3) The Registrar may, on receipt of such application, make such enquiries and call for such further information and documents as he considers necessary and if he is satisfied that-
- (i) the applicant has complied with the criteria for registration as may be laid down by the Registrar from time to time by rules made in that behalf; and
  - (ii) registration of the applicant would not be detrimental to the interests of its creditors and other stakeholders, shall issue a certificate of registration as a microfinance NGO,
- subject to such terms and conditions as the Registrar may think fit or where he is not so satisfied, reject the application and issue such directions as he may deem necessary.
21. Every microfinance NGO shall exhibit its certificate of registration at its principal place of business and a copy of such certificate at every one of its branches.
22. The Registrar shall maintain a register of microfinance NGOs.
23. (1) The Registrar may make rules for the purpose of carrying out the provisions of this Part and to give effect to standards, principles and guidelines issued by the Board in terms of Part IX of this Act.
- (2) Without prejudice to the generality of the powers conferred by subsection (1), the Registrar may, in particular, from time to time make rules in respect of all or any of the following matters:-
- (a) criteria for registration under this Part of this Act ;
  - (b) annual registration fee payable to the Registrar by a microfinance NGO;
  - (c) reporting and disclosure requirements of a microfinance NGO;
  - (d) terms and conditions for loans and credit facilities to be granted by a microfinance NGO including maximum rates of interest that may be charged on such loans and credit facilities;
  - (e) terms and conditions on savings mobilization and the maximum rates of interest payable on such savings;
  - (f) the maximum ratio of outstanding deposits to outstanding loans;
  - (g) number of borrowers and depositors;
  - (h) consumer protection;
  - (i) net assets to be maintained by a microfinance NGO;
  - (j) internal controls, risk management and a code of corporate governance to be adopted by a microfinance NGO;
  - (k) the types of activities that may be carried on by a microfinance NGO;
  - (l) forms to be used under this Part.
- (3) Every rule made by the Registrar shall be published in the *Gazette*.
24. (1) Every microfinance NGO shall prepare and furnish financial statements in such manner, form and at intervals or times as may be specified by the Registrar.
- (2) The financial statements prepared by a microfinance NGO shall be audited by a qualified auditor.
25. (1) The Registrar or any other officer authorized in writing by him in that behalf, may at any time examine the books of accounts and records of any microfinance NGO and for that purpose may do any one or more of the following:-
- (a) require any microfinance NGO, or a director, manager, employee or auditor of any microfinance NGO to furnish him all such information as he may consider necessary and to produce for inspection books, records, files, registers, and such other documents of such microfinance NGO and to provide authenticated copies in any form as required of such books, records, files, registers and such other documents;
  - (b) enter and examine books, records, files, registers, and such other documents of a microfinance NGO and may obtain copies, authenticated or otherwise, in any form of such books, records, files, registers and such other documents;
  - (c) require any microfinance NGO or a director, manager, employee or auditor of any microfinance NGO to submit the accounts of such microfinance NGO, furnish such information and produce such books, records, files, registers and such other documents for audit by a qualified auditor authorized by the Registrar.
- (2) The cost of such examination may be recovered from the microfinance NGO.
- (3) It shall be the duty of every person to comply with any requirement imposed on him under subsection (1) and any person who-

- (a) fails to provide any information or produce for inspection any book, record, file, register or such other document required under this section;
  - (b) provides false or incomplete or incorrect information, book, record, file, register or such other document; or
  - (c) obstructs the Registrar or any person authorized by the Registrar under subsection (1) in the performance of any function under subsection (1),
- shall be guilty of an offence under this Act.

26. Where the Registrar is of the opinion that a microfinance NGO –

- (a) is carrying on or is in the process of carrying on, its business adopting unsound or improper financial practices detrimental to the interest of its depositors and other creditors; or
- (b) has contravened or failed to comply with any provisions of this Act, or any direction, rule, order or requirement made or imposed thereunder,

the Registrar may take any one or more of the following actions:–

- (i) direct such microfinance NGO to cease any such practice;
- (ii) direct such microfinance NGO to forthwith or within such period as may be specified by the Registrar, comply with the provisions of this Act or rule, or requirement made or imposed thereunder which such microfinance NGO has failed to comply with;
- (iii) direct such microfinance NGO to take necessary action to correct the negative conditions resulting from such practice or contravention;
- (iv) restrain any director, manager or controller of the microfinance NGO from carrying out any function in or in relation to the microfinance NGO;
- (v) remove any director, manager or employee of the microfinance NGO;
- (vi) re-organize the microfinance NGO by arranging for the reconstitution of its board of directors:

Provided however, the Registrar shall, before taking any of the actions referred to in subparagraph (iv), (v) or (vi) of this section, serve a notice in writing on such director, manager, controller, employee or the board of directors requiring him or it, as the case may be, to show cause within fourteen days from the date of such notice, why action as referred to in the relevant subparagraph should not be taken against him or it, as the case may be, and satisfy himself that no satisfactory cause has been made out.

27. (1) The Registrar may cancel the registration of a microfinance NGO on any one or more of the following grounds:–

- (a) failing to satisfy any debt incurred by it, on such debt becoming due;
  - (b) proposing to make or making any composition or arrangement with its creditors or going into liquidation or being wound up or otherwise dissolved;
  - (c) ceasing to accept limited savings deposits;
  - (d) acting in contravention of any provisions of this Act or any direction, requirement, rule, order or determination issued, imposed or made under this Act;
  - (e) failing to pay the annual registration fee;
  - (f) carrying on its business in a manner likely to be detrimental to the interests of its depositors and other creditors;
  - (g) furnishing false, misleading or inaccurate information or concealing or failing to disclose material facts to the Registrar.
- (2) The Registrar shall, before cancelling the registration of a microfinance NGO, serve a notice in writing on such microfinance NGO requiring it to show cause within thirty days from the date of such notice being served as to why its registration should not be cancelled.
- (3) Where the microfinance NGO fails to show cause within the specified period the Registrar may cancel the registration.
- (4) Where in compliance with the notice issued to it under subsection (2), such microfinance NGO, shows cause within the specified period, the Registrar may, after considering the reasons provided and hearing the microfinance NGO in support of its objections –
- (a) not cancel the registration, if he is satisfied that such microfinance NGO has shown sufficient cause as to why its registration should not be cancelled; or

- (b) cancel the registration, if he is satisfied that such microfinance NGO has not shown sufficient cause as to why its registration should not be cancelled.
- (5) In the event of cancellation of a registration, the microfinance NGO concerned shall be notified forthwith of such cancellation and the cancellation shall take effect from the date of such notification. The Registrar shall publish a notice of such cancellation at least in one each of Sinhala, Tamil and English daily newspapers circulating in Sri Lanka.
- (6) Where the certificate of registration of a microfinance NGO is cancelled, the Registrar shall remove the name of such microfinance NGO from the register maintained under section 22 and may issue such directions to such non-governmental organisation as he considers necessary.

#### **PART IX**

##### **PRINCIPLES, STANDARDS AND GUIDELINES LAID DOWN BY THE BOARD**

- 28. (1) Notwithstanding anything to the contrary in this Act or any other written law, the Board may in order to ensure that microfinance business and lending activities are carried on in a transparent, professional and prudent manner and to strengthen, develop and make qualitative improvements in the regulation and supervision of such activities for consumer protection, set principles or standards or issue guidelines in respect of-
  - (a) microfinance NGOs regulated by the Registrar of Voluntary Social Service Organizations in terms of Part VIII of this Act; and
  - (b) micro credit non-governmental organizations.
- (2) The Registrar of Voluntary Social Service Organizations shall give effect to the principles, standards or guidelines laid down by the Board under subsection (1), by making appropriate rules governing microfinance NGOs.
- (3) Nothing in this section shall be deemed to enable a non-governmental organization other than one which is registered in terms of Part VIII of this Act to accept limited savings deposits.
- (4) The Board may call for monthly, quarterly, semi-annual or annual financial data of a microfinance NGO referred to in subsection (1) from the Registrar of Voluntary Social Service Organizations.

#### **PART X**

##### **IMMUNITY FROM PROSECUTION**

- 29. (1) No prosecution shall be instituted in any court against the Board or a member thereof, the Director or any officer or servant of the Central Bank or any other person authorized by the Board or the Director under this Act to carry out any duty or function, by reason of any act done or purported to be done, or omitted to be done by such person under this Act or any direction, rule, order or requirement made or imposed thereunder unless the prior written sanction of the Attorney-General has been first obtained for such prosecution.
- (2) Any expenses incurred by a member of the Board, the Director or any officer or servant of the Central Bank or any other person authorized by the Board, in any suit or prosecution brought against such person before any court in respect of any act which is done or purported to be done or omitted to be done by such person under this Act or any direction, rule, order or requirement made or imposed thereunder, as the case may be, shall if the court holds that such act was done in good faith, be paid out by the Board unless such expenses are recovered by him in such suit or prosecution.

#### **PART XI**

##### **GENERAL**

- 30. The provisions of the Finance Business Act, No.42 of 2011 and Part IXA of the Banking Act, No.30 of 1988 shall not apply to any licensed microfinance company, microfinance NGO or micro credit non governmental organization.
- 31. The provisions of this Act or any regulation, order or rule made under this Act shall have effect notwithstanding anything to the contrary in any other written law.
- 32. No person other than a licensed microfinance company, a microfinance NGO or an institution exempted from the application of the provisions of this Act under section 2, shall carry on microfinance business.
- 33. Notwithstanding anything to the contrary in section 32, any person carrying on microfinance business on the day preceding the date of coming into operation of any Part of this Act-
  - (a) may from the date of coming into operation of any Part of this Act, continue to carry on such business for a period of eighteen months; and

- (b) shall comply with the provisions of this Act and apply for-
- (i) a licence to continue his business as a licensed microfinance company within such period as may be specified by the Board by notice published in the *Gazette*:  
 Provided however, notwithstanding Part VIII of this Act being not operative on the day when Part I comes into operation, such person shall comply with the provisions of this Act and apply for a licence to continue his business as a licensed microfinance company within such period as may be specified by the Board by notice published in the *Gazette*;
  - (ii) a certificate of registration to continue his business as a microfinance NGO within such period as may be specified by the Registrar by notice published in the *Gazette*;
- (c) the period referred to under paragraph (b) above shall fall within the period referred to in paragraph (a).
34. No person other than a licensed microfinance company, microfinance NGO or an institution exempted under section 2 of this Act shall use in its name, the words "microfinance" or any of its derivatives or its transliteration or its equivalent in any other language whether alone or in combination with any other word, without the prior written approval of the Board.
35. (1) Any person who contravenes or fails to comply with any provisions of this Act or any rule, direction, order or requirement issued or imposed thereunder 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 one year or to both such fine and imprisonment.
- (2) Where an offence under this Act is committed by a body of persons, then,-
- (a) if that body of persons is a body corporate, every director, manager, or secretary of that body corporate;
  - (b) if that body of persons is a firm, every partner of the firm; or
  - (c) if that body of persons is an unincorporated body other than a firm, every member of such body,
- shall be deemed to be guilty of that offence:
- Provided however, that a director, manager or secretary of such body corporate or a partner of such firm or a member of such unincorporated body, shall not be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
36. (1) Subject to such rules, if any, as may be made by the Board, the Board may, in writing, authorize an officer of the Central Bank or any other person to represent the Board for any of the purposes of this Act, so however, the Board shall remain and continue to remain responsible for any act or thing done or omitted to be done by such officer or person representing the Board under such authorization.
- (2) The Board may in writing delegate to any officer of the Central Bank any of its powers and duties under this Act, so however, that the Board shall remain and continue to be responsible for any act or thing done or omitted to be done by such officer in the exercise of such powers delegated to him.
37. In this Act, unless the context otherwise requires –
- "Board" means the Monetary Board of the Central Bank of Sri Lanka established under the Monetary Law Act, (Chapter 422);
- "Central Bank" means the Central Bank of Sri Lanka established under the Monetary Law Act, (Chapter 422);
- "deposit" shall have the meaning assigned to it under the Finance Business Act, No. 42 of 2011 as may be amended from time to time;
- "Director" means the head of the department of the Central Bank to which the subject of microfinance companies has been assigned and includes an acting director;
- "licensed microfinance company" means a company, licensed under this Act;
- "liquid assets" means –
- (a) cash in hand;
  - (b) balances in a current or deposit account in a commercial bank, free from any bankers' lien or charge;
  - (c) Sri Lanka Government Treasury Bills and Treasury Bonds maturing within one year, and free from any lien or charge;
  - (d) Sri Lanka Government Securities maturing within one year and free from any lien or charge;

- (e) Central Bank of Sri Lanka securities maturing within one year and free from any lien or charge; and
- (f) Such other assets as may be determined by the Board;

“microfinance business” means accepting deposits and providing :-

- (a) financial accommodation in any form;
- (b) other financial services; or
- (c) financial accommodation in any form and other financial services,

mainly to low income persons and micro enterprises in conformity with the Schedule to this Act;

“microfinance NGO” means a non-governmental organization registered under the Voluntary Social Service Organizations (Registration and Supervision) Act, No.31 of 1980 and issued with a certificate of registration by the Registrar of Voluntary Social Service Organizations under this Act to accept limited savings deposits;

“micro credit non-governmental organization” means a non-governmental organization registered under the Voluntary Social Service Organizations (Registration and Supervision) Act, No.31 of 1980 and engaged in lending activities and not permitted to accept deposits;

“Minister” means the Minister to whom the subject of microfinance is assigned;

“qualified auditor” means –

- (a) an individual who being a member of the Institute of Chartered Accountants of Sri Lanka or of any other Institute established by law, possesses a certificate to practice as an Accountant issued by the Council of such Institute; or
- (b) a firm of Accountants each of the resident partners of which being a member of the Institute of Chartered Accountants of Sri Lanka or of any other Institute established by law possesses a certificate to practice as an Accountant issued by the Council of such Institute.

38. In the event of any inconsistency between the Sinhala and Tamil texts of this Act the Sinhala text shall prevail.

#### SCHEDULE

[Section 9]

A licensed microfinance company may engage in the following businesses :-

- (a) to provide financial accommodation, with or without collateral security, in cash or in kind, subject to such terms and conditions that the Board may impose for all types of economic activities including housing;
- (b) to accept time and savings deposits and to open, maintain and manage deposits, savings and other similar accounts excluding however the carrying on of banking business as defined in the Banking Act, No. 30 of 1988;
- (c) to accept pledges, mortgages, hypothecations or assignments to it of any kind of movable or immovable property for the purpose of securing loans and advances made by it;
- (d) to provide credit to buy, sell and supply industrial and agricultural inputs, livestock, machinery and industrial raw materials, and to act as an agent for any organization for the sale of such goods or livestock;
- (e) to invest its monies prudently;
- (f) to provide storage and safe custody facilities;
- (g) to provide professional advice to its customers regarding investments in small businesses, self-employment projects and cottage industries;
- (h) to provide services and facilities to customers to hedge various risks relating to microfinance;
- (i) to render managerial, marketing, technical and administrative advice to customers and assisting them in obtaining services in such fields;
- (j) to provide technical assistance and training to customers;
- (k) to conduct finance leasing business, pawn brokering and insurance business after obtaining necessary licence or approval from the relevant authority and subject to such rules and regulations of such authority;
- (l) any other business which the Monetary Board of the Central Bank of Sri Lanka may authorize a licensed microfinance company to engage in.

## **Fiscal Management (Responsibility) (Amendment) Act, No. 13 of 2016**

[Certified on 23rd August, 2016]

### **AN ACT TO AMEND THE FISCAL MANAGEMENT (RESPONSIBILITY) ACT, NO. 3 OF 2003**

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

1. This Act may be cited as the Fiscal Management (Responsibility) (Amendment) Act, No. 13 of 2016, and shall be deemed to have come into operation on January 1, 2016.
2. Section 3 of the Fiscal Management (Responsibility) Act, No. 3 of 2003 is hereby amended in paragraph (e) thereof by the substitution for the words and figures “7 per centum;” of the words “ten per centum;”.
3. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.