

# Draft

## MICROFINANCE ACT

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF AN AUTHORITY FOR THE PURPOSE OF LICENSING, REGULATINON AND SUPERVISION OF MICROFINANCE BUSINESS AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows.

1. (1) This Act may be cited as the Microfinance Act, No. ... of .....
- (2) The provisions of this Act shall come into operation on such date as may be appointed by the Minister by Order published in the *Gazette* (hereinafter referred to as the “appointed date”).

### PART I

#### ESTABLISHMENT, CONSTITUTION, OBJECTS, POWERS AND FUNCTIONS OF THE AUTHORITY

2. (1) There shall be established an authority which shall be called the Microfinance Regulatory and Supervisory Authority (hereinafter called and referred to as the Authority).
  - (2) The Authority shall, by the name assigned to it by subsection (1), be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in such name.
3. The objects of the Authority shall be to :-
    - (1) license, register, regulate and supervise companies, non-governmental organizations, societies and co-operative societies, carrying on microfinance business;
    - (2) strengthen, further develop and make qualitative improvements in companies, non-governmental organizations, societies and co-operative societies, carrying on microfinance business by enhancing their viability and accountability;
    - (3) ensure that microfinance business is carried on by companies, non-governmental organizations, societies and co-operative societies with integrity and in a transparent, professional and prudent manner with a view to safeguard the interests of the depositors and the customers;
    - (4) maintain confidence of the depositors and the customers;
    - (5) minimize risk of losses to the depositors and the customers of companies, non-governmental organizations, societies and co-operative societies carrying on

microfinance business by establishing and enforcing effective standards of governance, accounting and disclosure.

4. To fulfill its objects, the Authority may exercise, perform and discharge all or any of the following powers, functions and duties :

(1) To call for information from and cause examination of companies, non-governmental organizations, societies and co-operative societies licensed or registered by the Authority;

(2) To take such steps as it considers appropriate to maintain and promote good governance, efficiency, competitiveness, transparency, orderliness and professionalism in the operations of companies, non-governmental organizations, societies and co-operative societies licensed or registered by the Authority;

(3) To take such steps as are necessary to ensure that provisions of this Act and any directions or rules made under this Act are complied with by companies, non-governmental organizations, societies and co-operative societies licensed or registered by the Authority;

(4) To manage funds of the Authority;

(5) To acquire and hold any property, movable or immovable, and to sell, lease, mortgage, or otherwise dispose of the same;

(6) Subject to its supervision and direction, delegate or subcontract any of its functions ;

(7) To enter into all such contracts as may be necessary for the exercise, performance and discharge of its powers, duties and functions; and

(8) To do all such other things which in the opinion of the board of directors of the Authority may be necessary for the due exercise, discharge and performance of its powers, duties and functions under this Act.

5. (1) The management and administration of the affairs and business of the Authority shall vest in its board of directors (hereinafter referred to as the "Board").

(2) The Board may do and perform all such acts, deeds and things as may be necessary, incidental or conducive to the fulfillment of the functions and attainment of the objects of the Authority.

(3) The Board shall consist of the following members:-

(a) an officer of the Ministry of Finance, nominated by the Secretary to the Treasury;

(b) an officer of the Central Bank of Sri Lanka nominated by the Monetary Board of the Central Bank of Sri Lanka;

(c) three members appointed by the Minister, one of whom shall be a person representing a professional accounting body and other two from among persons who have academic or professional qualifications in finance, banking, economics, law, management or any other related field together with relevant experience.

(4) Where any member of the Board appointed in terms of paragraph (a) or (b) of subsection (3) is temporarily unable to discharge the duties of his office on account of ill-health, absence from the Republic or any other cause the Secretary to the Treasury or the Monetary Board of the Central Bank of Sri Lanka as the case may be, may appoint another officer to be the alternate to such member of the Board.

(5) The Minister shall appoint one of the members of the Board who has knowledge in the operation of the financial sector as its Chairman. If the Chairman is unable to act in that capacity due to illness or is absent from the Republic, any member elected by the rest of the members may act as the Chairman.

(6) The Minister may remove the Chairman appointed in terms of subsection (5) by informing him such decision in writing. The Chairman may resign from office by informing of such decision to the Minister in writing.

(7) Members of the Board shall not have any direct or indirect interest in any company, non-governmental organization, co-operative society or society licensed or registered by the Authority to carry on microfinance business.

(8) The provisions of the Schedule I to this Act shall have effect in relation to the term of office of the members of the Board, remuneration payable to the members of the Board, conduct of meetings and the Seal of the Authority.

6. (1) The Board shall appoint a Director-General who shall be the Chief Executive Officer of the Authority. The conditions of employment including remuneration of the Director-General, shall be determined by the Board.

(2) The Director General shall subject to the general direction and control of the Board, be charged with the direction of the affairs and transactions of the Authority, the exercise, discharge and performance of its powers, functions and duties, and the administration and control of the employees of the Authority.

(3) The Director-General may, with the approval of the Board, whenever he considers it necessary to do so, delegate to any officer or servant of the Authority any power, function or duty conferred or imposed on or assigned to him by this Act, and such officer or servant shall exercise, discharge and perform such power, function or duty subject to the direction of the Director-General.

(4) The Board may by a majority decision of the members remove the Director-General from office.

(5) The Director-General shall attend meetings of the Board on being invited to do so by the Board, but shall not be entitled to vote at such meetings.

7. The Board may do all things that are necessary for, or incidental or conducive to, the better performance of the functions and duties of the Authority and in particular may :

(a) employ officers and servants as it considers necessary for the purpose of exercising, performing and discharging the powers, duties and functions of the Authority;

(b) determine the remuneration and other payments and terms of employment of officers and servants of the Authority; and

(c) establish provincial or regional offices in conformity with criteria set out by the Monetary Board of the Central Bank of Sri Lanka in that context.

8. (1) The Authority shall have its own Fund.

(2) There shall be paid into the Fund of the Authority:

(a) all sums of money as may be voted from time to time by the Parliament for the use of the Authority;

(b) all such sums of money paid as licence fee or registration fee by companies, non-governmental organizations, societies and co-operative societies, carrying on microfinance business;

(c) all such sums of money as may be received by the Authority by way of loans, donations, gifts and grants from any source whatsoever whether in or outside Sri Lanka; and

(d) all such sums of money as may be received by the Authority in the exercise, performance and discharge of its powers, duties and functions under this Act.

(3) There shall be paid out of the Fund of the Authority all such sums of money required to defray the expenditure incurred by the Authority in the exercise of its powers, discharge of its functions and performance of its duties.

9. (1) The financial year of the Authority shall be the calendar year.

(2) The Authority shall maintain proper books of account and records of its income and expenditure and assets and liabilities.

(3) The Authority shall as soon as practicable after the end of each financial year but not later than 31<sup>st</sup> March of the ensuing year, prepare a statement of accounts for that financial year including an income and expenditure account and a balance sheet.

(4) The provisions of Article 154 of the Constitution relating to the audit of the accounts of Public Corporations shall apply to the audit of accounts of the Authority.

## **PART II**

### **LICENSING OR REGISTRATION OF PERSONS CARRYING ON MICROFINANCE BUSINESS**

10. (1) Subject to the provisions of section 13 and section 19 of this Act, no person other than a person licensed or registered under this Part of this Act, shall carry on microfinance business, after the appointed date.
- (2) For the purposes of this Act “microfinance business” means acceptance of deposits and providing financial accommodation in any form and other financial services, mainly to low income persons and micro enterprises.
- (3) The Authority shall from time to time by order published in the Gazette determine the criteria to identify a “low income person” and “micro enterprise” for the purposes of this Act.
11. (1) Subject to section 12 of this Act, a person shall be eligible to apply for a licence or registration under this Act if such person is-
- (a) a company registered under the Companies Act, No. 07 of 2007, not being a private company, an offshore company or an overseas company;
  - (b) a non-governmental organization registered under the Companies Act, No. 07 of 2007 and Voluntary Social Service Organizations (Registration and Supervision) Act, No. 31 of 1980;
  - (c) a co-operative society registered under the Co-operative Societies Law, No. 05 of 1972 or a co-operative society registered under a statute of a Provincial Council; or
  - (d) a society registered under the Societies Ordinance (Chapter 123).
- (2) A company registered under the Companies Act, No. 07 of 2007, not being a company limited by guarantee, a private company, an offshore company or an overseas company and having a core capital of not less than such amount as may be determined by the Board for the time being may apply for a licence to carry on microfinance business at National level.

- (3) A person referred to in subsection (1) and having a core capital or net assets of not less than such amount as may be determined by the Board for the time being may apply for a licence to carry on microfinance business in a Province or in any two or three Administrative Districts in different Provinces.
- (4) A person referred to in subsection (1) and having a core capital or net assets of not less than such amount as may be determined by the Board for the time being may apply for registration to carry on microfinance business in an Administrative District or in a Divisional Secretary's Division.
- (5) The Board may having considered the volume of assets or liabilities of an institution registered under this Act or which has applied for registration under this Act, require such institution to fulfill the requirements for licensing and apply for a licence under this Act.
12. A person shall not be eligible to be licensed or registered under this Act unless such person-
- (a) is a person specified in subsection (1) of section 11 of this Act;
  - (b) has a core capital or net assets of not less than such amount as may be determined by the Board from time to time;
  - (c) pays the licence fee or registration fee as may be applicable; and
  - (d) fulfill the other requirements as may be laid down by the Board from time to time by rules made in that behalf.
13. The provisions of this Act save and except the provisions of Part VII 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 registered under the Finance Companies Act, No. 78 of 1988;
  - (c) a Samurdhi Banking Society established under the guidance of the Samurdhi Authority of Sri Lanka and functions in conformity with the Samurdhi Authority of Sri Lanka Act, No. 30 of 1995; and
  - (d) a Farmers Organization formed in terms of the Agrarian Development Act No.46 of 2000 and carries on business as provided for in that Act.
14. (1) An application for a licence or registration shall be made to the Board in such form and mode and with such documents and information as may be specified for that purpose by the Board by publication in the Gazette.
- (2) The Board may conduct or cause to be conducted such investigations as it may consider necessary to verify the accuracy of details contained in the application made under subsection (1) and to determine the suitability of the applicant to be licensed or registered under this Act.

(3) Every person who furnishes any information or particulars under subsections (1) or (2) or makes any statement or declaration in an application, knowing the same to be false, shall be guilty of an offence under this Act.

(4) The Board may, on considering an application made to it by a person for a licence or registration under this Part of this Act and the interests of the economy, license or register such person to carry on microfinance business subject to such terms, conditions and restrictions that may be imposed by the Board if it is satisfied that –

(a) the requirements of section 12 and subsection (1) of this section have been complied with; and

(b) on the information made available to it, that licensing or registering of such person would not be detrimental to the interests of the depositors and other creditors of the such person.

(5) The licence or certificate of registration issued under subsection (4) shall specify-

(a) the operative area within which such microfinance institution may carry on its business;

(b) the terms, conditions and restrictions subject to which such licence or certificate of registration is issued; and

(c) the place or places from which such microfinance institution may carry on its business.

Provided however, the Board shall by notification published in the *Gazette* lay down guidelines which the Board shall follow when exercising its powers under paragraphs (a), (b) and (c) above.

15. No microfinance institution shall operate outside the operative area specified in the licence or the certificate of registration without the prior written approval of the Board.
16. Every microfinance institution shall exhibit the licence or the certificate of registration issued to it in a conspicuous place at its principal office or place of business.
17. The Authority shall maintain a register of microfinance institutions.
18. Every microfinance institution shall pay an annual licence fee or registration fee as may be applicable to the Board of such amount as the Authority may determine for each category of institutions licensed or registered to carry on microfinance business, from time to time by publication in the *Gazette*.
19. Notwithstanding the provisions of section 10, a person carrying on microfinance business on the day preceding the appointed date, may, without having a licence or a certificate of registration issued under this Act, continue to carry on such business for a period not exceeding one year from the appointed date.

20. The provisions of the Finance Companies Act, No. 78 of 1988 and of Part IXA of the Banking Act, No. 30 of 1988 shall not apply to-

- (1) the business carried on by any microfinance institution licensed or registered under this Part of this Act; and
- (2) a person who carries on microfinance business on the day preceding the appointed date till the expiry of one year from the appointed date.

21. (1) Where the Board is satisfied that any microfinance institution has-

- a) failed to commence business within nine months of the issue of the licence or certificate of registration to it;
- b) failed to pay up any debts incurred by it, on such debts becoming due;
- c) had petition or action for relief filed against such microfinance institution, and has had appointed in respect of such microfinance institution under any bankruptcy law or any other law which provides for relief for debtors or which relates to debtors, a liquidator, custodian or receiver;
- d) ceased to carry on microfinance business;
- e) continuously been violating or contravening the provisions of this Act or any direction or rule issued thereunder;
- f) failed to pay the annual licence fee or registration fee; or
- g) carried on, or is carrying on, its business in a manner likely to be detrimental to the interests of its depositors, other creditors and the economy,

the Board may, give notice that it would cancel the licence or certificate of registration issued to such microfinance institution.

(2) A microfinance institution may tender objections in writing to the Board against the notice of cancellation under subsection (1), within thirty days of the date of such notice, giving reasons why the licence or the certificate of registration issued to it should not be so cancelled.

(3) The Board may having considered the objections, if any, tendered to the Board under subsection (2), withdraw the notice of intension of cancellation or cancel the licence or certificate of registration issued to the microfinance institution, before the expiration of sixty days from the date of notice of intension of cancellation and shall notify the microfinance institution accordingly.

(4) A cancellation of licence or certificate of registration shall take effect from the date of such notification of such cancellation and the Board shall publish a notice in the Gazette and in at least one Sinhala, Tamil and English daily newspaper circulating in Sri Lanka, informing the public that such microfinance institution is no longer authorized to carry on microfinance business.

### **PART III**

#### **BUSINESS RESTRICTIONS ON MICROFINANCE INSTITUTIONS**

22. (1) A microfinance institution may carry on one or more of businesses set out in the Schedule II hereto, and any other form of business determined by the Board under subsections (2) and (3) hereof, subject to such restrictions and conditions as may be imposed by or under any written law or specified in the licence or certificate of registration issued to such institution.
- (2) The Board shall have power to specify by notification in the Gazette any form of business that a microfinance institution may carry on which is not set out in the Schedule II hereto.
- (3) A microfinance institution shall not carry on any form of business that is not set out in the Schedule II hereto or specified by the Board under subsection (2) without the prior approval of the Board.
- (4) The location of the principal office of a microfinance institution shall not be changed without prior written approval of the Director General.
- (5) No microfinance institution shall establish, relocate or close down any branch office or service outlet without the prior written approval of the Director General or any officer authorized in that behalf by the Director General.

### **PART IV**

#### **DIRECTIONS, RULES AND REQUIREMENTS ON MICROFINANCE INSTITUTIONS**

23. (1) Notwithstanding the provisions of any other law, the Board may give directions to microfinance institutions or to any group or category of microfinance institutions regarding the manner in which any aspect of the business and corporate affairs of such microfinance institutions are to be conducted and, in particular –
- a) the terms and conditions under which deposits may be accepted by such microfinance institutions, the maximum rates of interest payable on such deposits, and the maximum period for which deposits may be accepted and the maximum amount that may be deposited with a microfinance institution 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 microfinance institutions, 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 microfinance institutions 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 microfinance institutions and the maximum permissible maturities of such investments;
- e) the amount of core capital or net assets to be maintained;
- f) the maximum amount of accommodation that may be made by such institution to a single borrower or to a group of related borrowers;
- g) the minimum ratio which the liquid assets of a microfinance institution should bear to the total deposit liabilities of such institution;
- h) establishment of a deposit protection fund, minimum percentage of annual after tax profits that an institution shall transfer to such fund and the other operational aspects of such fund;
- i) the minimum ratio which the outstanding accommodation granted to low-income persons and to micro enterprises by a microfinance institution shall bear to the total outstanding accommodation granted by such institution;
- j) establishment of a reserve fund, minimum percentage of annual after tax profits that an institution shall transfer to such fund and other operational aspects of such fund; and
- k) restriction on the types of activities that may be carried on by microfinance institutions.

(2) The Board may give directions where necessary to any microfinance institution in particular on such matters as are specified in subsection (1).

(3) The Board may issue to microfinance institutions or to any group or category of microfinance institutions a code of corporate governance, which shall be adopted by such institutions.

24. The Board may issue guidelines to the Director General to monitor the compliance with the directions issued under subsections (1) and (2) of section 23 and authorize the Director General to direct microfinance institutions to comply with such directions forthwith or within such period as may be specified by the Director General.

25. (1) If any microfinance institution fails to comply with any direction issued under subsections (1) or (2) of section 23, the Director General shall report such fact to the Board unless otherwise provided for in the guidelines issued under section 24.

(2) If any microfinance institution fails to comply with any direction issued by the Director General in terms of the guidelines issued by the Board under section 24 the Director General shall report such fact to the Board.

(3) Upon considering the report of the Director General made under subsections (1) or (2) the Board may-

- (a) after giving an opportunity of being heard to the institution which is at fault, impose a penalty
  - i. not exceeding Rupees two hundred and fifty thousand if such institution is a licensed microfinance institution
  - ii. not exceeding Rupees one hundred thousand if such institution is a registered microfinance institutionwhich shall be paid within the period stipulated therefor;
- (b) require such institution to comply with such direction forthwith or within a stipulated period; or
- (c) resort to both actions stipulated in paragraphs (a) and (b) above.
- (d) Non-payment of such penalty or the non-compliance with the requirement made under subsection (3) within the period so specified by the Board shall be an offence under this Act.

- 26. The Director General may with a view to ascertaining the manner in which business and corporate affairs of a microfinance institution are being conducted or for some other specified purpose, direct such microfinance institution to submit documents and information in the manner, form and at intervals or at a time that shall be specified in such direction.
- 27. A microfinance institution shall maintain a register of members of the institution, members of the board of directors or its equivalent and the chief executive officer and provide information thereon to the Director General at such time and in such manner as the Director General may determine.
- 28. (1) No person shall be appointed or elected as a director or equivalent or the chief executive officer of a microfinance institution or shall continue in such capacity, if:
  - (a) there is any finding of any regulatory or supervisory authority, professional body, any Commission of Inquiry, tribunal or other body established by law in Sri Lanka or abroad, against such person to have committed, abetted, attempted or conspired in the commission of, any act which involves fraud, deceit, dishonesty or misappropriation;
  - (b) such person has been convicted by any court in Sri Lanka or abroad for an offence involving moral turpitude;
  - (c) such person has been convicted for any offence under this Act, the Companies Act, No. 7 of 2007, the Finance Companies Act, No. 78 of 1988 or the Banking Act, No. 30 of 1988;
  - (d) such person has been declared by a court in Sri Lanka or abroad, to be of unsound mind; or
  - (e) such person is an undischarged insolvent.

(2) Any person who acts as a director or his equivalent or chief executive officer of a microfinance institution while being under any disqualification set out in subsection (1) shall be guilty of an offence under this Act.

## **PART V**

### **FINANCIAL STATEMENTS AND AUDIT**

29. (1) Every microfinance institution shall prepare in accordance with the Sri Lanka Accounting Standards, at the expiration of each financial year:
- (a) a balance sheet as at the end of the financial year; and
  - (b) a profit and loss account for the financial year.
- (2) The financial year of a microfinance institution shall commence from the 1st of April of every year.
30. The financial statements prepared by a microfinance institution shall be audited by a qualified auditor.
31. (1) Every microfinance institution shall transmit to the Director General within three months after the closure of each financial year:
- a) the audited balance sheet of the institution as at the end of the financial year;
  - b) the audited profit and loss account of the institution for that financial year;
  - c) the auditor's report in respect of the financial statements referred to in (a) and (b) above; and
  - d) the report by the directors or equivalent relating to the state of the affairs of the institution.
- (2) Every microfinance institution shall exhibit documents specified in paragraphs (a), (b) and (c) of subsection (1) in a conspicuous place of each of its places of business until those documents for the succeeding financial year are prepared and exhibited.
- (3) The Board may specify the form of the balance sheet and profit and loss account referred to in this Part including any disclosure requirements to be made and where such form is specified, the balance sheet and profit and loss account of every microfinance institution shall be prepared in such form.
32. Unless otherwise determined by the Director General, the financial statements of a microfinance institution shall be signed, on behalf of such institution by the chief executive officer and two members of the board of directors or their equivalent.

## PART VI

### EXAMINATIONS AND SUPERVISORY ACTIONS ON MICROFINANCE INSTITUTIONS

33. (1) The Director General, any officer of the Authority authorized by him, or any other person authorized by the Director General with the approval of the Board, may at any time examine the books and accounts of any microfinance institution.
- (2) It shall be lawful for the Director General or any officer or other person authorized by him to-
- (a) require any microfinance institution, or a director or his equivalent, secretary, manager, employee, auditor, agent or contractor of any microfinance institution 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 microfinance institution 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 microfinance institution, 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 microfinance institution and may obtain copies, authenticated or otherwise, in any form of such books, records, files, registers and such other documents;
  - (c) require any microfinance institution or a director or his equivalent, manager, employee, agent, contractor or secretary of any microfinance institution to submit the accounts of such microfinance institution, 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 General;
  - (d) administer oath or affirmation in accordance with the Oaths Ordinance and field questions and record or cause the recording of statements of any director or his equivalent, shareholder, secretary, manager, employee, agent, auditor or contractor of any microfinance institution 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 microfinance institution;
  - (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 microfinance institution and if required summon such person for an interview.
- (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, book, record, file, register or such other document, material or object;
  - b) fails to attend in person;

- c) fails to produce any book, record, file, register or such other document, material or object;
- d) provides inaccurate or incomplete or incorrect information, book, record, file, register or such other document, material or object; or
- e) obstructs the Director General or any officer or other person authorized by the Director General under subsection (1) in the performance of any function under subsection (2),

shall be guilty of an offence.

(4) The Director General shall upon the conclusion of the examination submit a report to the Board.

(5) Where the Board, on a report made by the Director General, is of the opinion that a microfinance institution:

- (a) is following unsound or improper financial practices, detrimental to the interest of its depositors;
- (b) is likely to be carrying on its business in a manner detrimental to the interest of its depositors;
- (c) 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 one or more of the following-

- (i) after giving an opportunity of being heard to the institution which is at fault, impose a penalty
  - (a) not exceeding Rupees two hundred and fifty thousand if such institution is a licensed microfinance institution,
  - (b) not exceeding Rupees one hundred thousand if such institution is a registered microfinance institution,
 which shall be paid within the period stipulated therefor;
- (ii) direct such microfinance institution to cease following any such practice or desist from any such contravention;
- (iii) direct such microfinance institution to comply with the provisions of this Act, direction, rule, order or requirement made or imposed thereunder which such microfinance institution has failed to comply with, forthwith or within such period as may be specified by the Board;
- (iv) direct such microfinance institution to take necessary action to correct the conditions resulting from such practice or contravention;
- (v) restrain any director or his equivalent, manager or controller of the microfinance institution from carrying out any function in or in relation to the microfinance institution;
- (vi) remove any director or his equivalent, manager or employee of the microfinance institution;
- (vii) re-organize the microfinance institution in any manner including by arranging for the increase of its capital or reconstituting its board of directors or both such measures;
- (viii) secure the reduction of the number of shares held in the microfinance institution by any person;

- (ix) provide for such arrangements as are necessary for the amalgamation of the microfinance institution with another microfinance institution or any other institution, that consents for such amalgamation;
- (x) appoint a person to manage the affairs of such microfinance institution with regard to the proper conduct of the business of such microfinance institution.

## **PART VII**

### **POWERS OF THE MONETARY BOARD**

34. (1) Notwithstanding any provision of any other law, the Monetary Board of the Central Bank of Sri Lanka may set principles, or standards to the following regulators of microfinance business to ensure that microfinance business is carried on in a transparent, professional, and prudent manner and to strengthen, develop and make qualitative improvements in regulation and supervision of microfinance business:
- (a) Microfinance Regulatory and Supervisory Authority established under this Act;
  - (b) Samurdhi Authority of Sri Lanka; and
  - (c) Commissioner General of Agrarian Development.
- (2) The Monetary Board may set criteria to be adopted in opening branches or regional offices of the Authority
- (3) The Monetary Board may call for monthly, quarterly, semi-annual or annual consolidated financial data of institutions regulated and supervised by the regulators of microfinance business specified in paragraphs (a) to (c) of subsection (1).

## **PART VIII**

### **GENERAL**

35. No suit or prosecution shall lie against any member of the Board or any officer or servant of the Authority or any person authorized by the Board or the Director General under the provisions of this Act for any act done or purported to be done or omitted to be done, in good faith, by him under this Act or any direction, order or requirement made or imposed thereunder.
36. No prosecution shall be instituted in any court against the Board or a member thereof or any officer or servant of the Authority or any person authorized by the Board or the Director General under this Act 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,

order or requirement made or imposed thereunder unless the prior written sanction of the Attorney-General has been obtained.

37. (1) Any person who is guilty of an offence under subsection (3) of section 14, subsection (4) of section 25, subsection (2) of section 28 or subsection (3) of section 33 of this Act, 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) Any person, other than a person exempted from the applicability of the provisions of this Act, who carries on microfinance business without having registered or licensed under this Act or any person who carries on microfinance business after the cancellation of its licence or registration as the case may be, shall be guilty of an offence under this Act and 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.

(3) Subject to the provisions of subsection (2) any person who contravenes or fails to comply with any provision of this Act or any order, direction or requirement, issued or imposed thereunder, shall be guilty of an offence under this Act and liable on conviction after summary trial before a Magistrate to a fine not exceeding five hundred thousand rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

(4) Where an offence under this Act is committed by a person that is -

- (a) a body corporate, every director or his equivalent, manager, or secretary of that body corporate;
- (b) a firm, every partner of that firm; or
- (c) an unincorporate body other than a firm, every member of such body,

shall be guilty of such offence.

Provided however, that no person shall be deemed to be guilty of an offence if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of that offence.

38. The Authority may take action to safeguard interests of the depositors through deposit insurance as the Authority deems necessary.

39. Any Government officer or any officer of an authority or body established by a special statute shall furnish documents and information relating to institutions which carry on microfinance business and are under their supervision, to the Director General or an officer of the Authority authorized in that behalf by the Director General, in the manner, form and at intervals or at times as the Director General or an officer of the Authority authorized in that behalf by the Director General, may specify.

40. Winding up of a microfinance institution shall be subject to the provisions of the law under which it was incorporated, or if such law has no provisions for winding up of its business then the provisions of the Companies Act, No. 7 of 2007 relating to winding up shall *mutatis mutandis* apply to such microfinance institution.
41. In the event of any conflict or inconsistency between the provisions of this Act and the provisions of any other written law, the provisions of this Act shall prevail.
42. In this Act, unless the context otherwise requires –

“Administrative District” means an Administrative District established under the Administrative District Act (Chapter 392) having the limits specified thereunder as on July 21, 1977.

“associate company” when used in relation to a particular company means a company in which such particular company holds not less than twenty per centum and not more than fifty per centum of the paid up ordinary share capital;

“core capital” means the aggregate of the following:-

- a) issued and fully paid up ordinary shares or common stock and in the case of partly paid shares or stock the paid up amount:

Provided however, any shares issued against reserves, surpluses, retained profits which are not eligible to be included in core capital in terms of directions issued by the Board from time to time shall not be included in core capital;

Provided further, in calculating core capital in regard to a company applying for a licence or registration under this Act issued ordinary shares shall be considered as paid up only if they are issued for cash;

- b) issued and fully paid up non-cumulative, non redeemable preference shares where the payment of dividends could be reduced or waived off permanently in the event of profit being inadequate to support such payment in part or full:

Provided however, in deciding core capital in regard to a company applying for a licence or registration under this Act, issued non-cumulative, non redeemable preference shares shall be considered as paid up only if they are issued for cash;

- c) the excess of issue price over the par value of the ordinary shares, common stock or non-cumulative, non-redeemable preference shares, if applicable;
- d) amount lying to the credit of a reserve fund maintained in terms of paragraph (j) of subsection (1) of section 23 of this Act;
- e) disclosed reserves in the form of general or other free reserves created or increased by appropriation of retained earnings, share premia or other realized surpluses as shown in the last audited statement of accounts;

- f) accumulated profit or loss as shown in the last audited statement of accounts:  
 Provided however, retained profits arising from the revaluation of investment properties, shall not be included;
- g) subject to any direction that may be issued by the Board, any profit earned or loss incurred since the closing date of the last audited accounts including any surplus or loss after tax arising from the sale of fixed and long term investments; and
- h) any other capital element that meets the requirements stipulated by the Board from time to time;

“deposit” shall have the meaning assigned to it under Finance Business Act No.....

“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 institution” means a company, non governmental organization or a society licensed or registered under this Act.

“Monetary Board” means the Monetary Board of the Central Bank of Sri Lanka established under the Monetary Law Act, (Chapter 422);

“Province” means any Province specified in the Eighth Schedule to the Constitution;

“qualified auditor” means.....

- (a) an individual who,
  - (i) possesses a certificate to practice issued by the Council of the Institute of Chartered Accountants of Sri Lanka ; or
  - (ii) had been an officer in the Department of Inland Revenue not below the rank of assessor; or
  - (iii) possesses a diploma in accountancy granted by the Sri Lanka Institute of Advanced Technical Education or any institute or society recognized under the Companies (Auditors) Regulation -1964; or

- (iv) has been a member of the Sri Lanka Audit Service not below the rank of Superintendent of Audit, Class II, being a person who has been appointed to that Service on the results of a competitive examination; or
- (v) has been a member of Sri Lanka Government Accountants' Service not below Class III of that Service being a person appointed to that Service on the results of a competitive examination; or
- (vi) is a member of any other institution or society of accountants or any other person who the Board may consider as competent to carry out audit of microfinance institutions; 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.

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

## **Schedule I**

### **Provisions relating to the Board of Directors of the Authority**

- (1) A person shall be disqualified from being appointed or continuing as a member of the Board;
  - (a) if he is a member of the Parliament, a Provincial Council or a local authority;
  - (b) if he has been declared insolvent by any court of law;
  - (c) if he has been convicted in any court of law for an offence involving moral turpitude;
  - (d) if he has been declared by a court of competent jurisdiction to be of unsound mind;
  - (e) if he is a director or an employee of any microfinance institution licensed or registered under this Act.
  
- (2) The term of office of a member of the Board subject to the provisions of item (3) shall be the period of three years commencing on the date of his appointment and unless he has been removed from office, be eligible for reappointment.
  
- (3) The office of a Board member shall be ceased:
  - (a) upon death;
  - (b) if he is absent from three consecutive meetings of the Board without prior written permission of the Chairman of the Board;
  - (c) if he is physically incapable of performing his/her duties as a member; or
  - (d) by resigning from office
  
- (4) The Minister may, by notice in writing, remove from office any member appointed in terms of paragraph (d) of subsection (3) of section 5 of the Board of the Authority if it appears to the Minister that such removal is desirable for the effective performance of the functions of the Authority.
  
- (5) In the event of cessation of or removal from office a member of the Board under item (3) or (4), the appointing or the nomination authority shall, appoint or nominate another suitable person to succeed such member. Any person so appointed or nominated in place of such member shall hold office during the unexpired period of the term of office of the member whom he succeeds.
  
- (6) The members of the Board may, out of the funds of the Authority, be paid such remuneration and other expenses incurred in connection with the operations of the Authority, as may be determined by the Board with the concurrence of the Minister.
  
- (7) No act, decision or proceeding of the Authority shall be invalidated by reason of the existence of a vacancy among its members or of any defect in the appointment of a member.

(8) (a) At the meeting of the Board the Chairman shall preside. If the Chairman is not present, within five minutes after the time appointed for the commencement of the meeting the members present may elect one of the members to preside the meeting.

(b) The quorum for any meeting of the Board shall be three members.

(c) Each member of the Board present at a meeting of the Board shall have one vote.

(d) Every question for decision at a meeting of the Board shall be determined by a majority of vote of the members present with the Chairman having a casting vote, if the voting is equally divided.

(e) Subject to the provisions of subsections (b) to (d), the Board may regulate the procedure in regard to the meetings of the Board and the transaction of business at such meetings.

(f) Minutes of each meeting of the Board shall be recorded and shall be confirmed by the members as soon as practicable at a subsequent meeting of the Board.

(9) If a Board member present at a meeting is directly or indirectly interested in any matter which is a subject of consideration at that meeting, such member shall disclose his or her interest and shall not take part in any deliberation with regard to that matter and shall withdraw from the meeting until a decision is made.

(10) (a) The seal of the Authority shall be determined and devised by the Board and may be altered in such manner as the Board may determine.

(b) The seal of the Authority shall be kept in the custody of the Director General or any other officer authorized by him.

(c) The seal of the Authority shall not be affixed on any instrument except in the presence of one Board member and the Director-General or, in the absence of the Director-General, in the presence of any two Board members, both of whom shall sign the instrument in token of their presence.

(d) The Board shall maintain a register of the instruments to which the seal of the Authority has been affixed.

## **Schedule II**

A microfinance institution may engage in the following businesses :-

- (a) to provide financing facilities, with or without collateral security, in cash or in kind, subject to such terms and conditions that the Board may impose on borrowers for all types of economic activities including housing, but excluding business in foreign exchange transactions;
- (b) to accept time and savings deposits and to open, maintain and manage deposit, 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 in economic activities;
- (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 activities;
- (i) to render managerial, marketing, technical and administrative advice to customers and assisting them in obtaining services in such fields;
- (j) to engage in any other business permitted to carry on by the provisions of the law under which a microfinance institution is incorporated;
- (k) to provide financial and technical assistance and training to micro enterprises.