

EXPOSURE DRAFT

FINANCE COMPANIES (CORPORATE GOVERNANCE) DIRECTION, NO. ... OF 2008

This Direction may be cited as the Finance Companies (Corporate Governance) Direction, No. ... of 2008 and shall apply to every finance company registered in terms of section 2 of the Finance Companies Act, No. 78 of 1988 (hereinafter referred to as a ‘finance company’) and shall come into operation with immediate effect.

2. The Responsibilities of the Board

- (1) The board shall strengthen the safety and soundness of the finance company by-
 - a) approving and overseeing the finance company’s strategic objectives and corporate values and ensuring that such objectives and values are communicated throughout the finance company;
 - b) approving the overall business strategy of the finance company, including the overall risk policy and risk management procedures and mechanisms with measurable goals, for at least the next three years;
 - c) identifying risks and ensuring implementation of appropriate systems to manage the risks prudently;
 - d) approving a policy of communication with all stakeholders, including depositors, creditors, share-holders and borrowers;
 - e) reviewing the adequacy and the integrity of the finance company’s internal control systems and management information systems;
 - f) identifying and designating key management personnel, who are in a position to: (i) significantly influence policy; (ii) direct activities; and (iii) exercise control over business activities, operations and risk management;
 - g) defining the areas of authority and key responsibilities for the board of directors themselves and for the key management personnel;
 - h) ensuring that there is appropriate oversight of the affairs of the finance company by key management personnel, that is consistent with the finance company’s policy;
 - i) periodically assessing the effectiveness of its governance practices, including: (i) the selection, nomination and election of directors and key management personnel; (ii) the management of conflicts of interests; and (iii) the determination of weaknesses and implementation of changes where necessary;

- j) ensuring that the finance company has an appropriate succession plan for key management personnel;
 - k) meeting regularly with the key management personnel to review policies, establish communication lines and monitor progress towards corporate objectives;
 - l) understanding the regulatory environment;
 - m) exercising due diligence in the hiring and oversight of external auditors.
- (2) The board shall appoint the chairman and the chief executive officer and define and approve the functions and responsibilities of the chairman and the chief executive officer in line with paragraph 7 of this Direction.
- (3) There shall be a procedure agreed by the board to enable directors, upon reasonable request, to seek independent professional advice in appropriate circumstances, at the finance company's expense. The board shall resolve to provide separate independent professional advice to directors to assist the relevant director(s) to discharge the duties to the finance company.
- (4) If a director has a conflict of interest in a matter to be considered by the board, a conflict which the board has determined to be material, the matter should be dealt with at a board meeting, where independent non-executive directors who have no material interest in the transaction, are present. Further, a director shall abstain from voting on any board resolution in relation to which he or any of his relatives or a concern in which he has substantial interest, is interested, and he shall not be counted in the quorum for the relevant agenda item at the board meeting.
- (5) The board shall have a formal schedule of matters specifically reserved to it for decision to ensure that the direction and control of the finance company is firmly under its authority.
- (6) The board shall, if it considers that the finance company is, or is likely to be, unable to meet its obligations or is about to become insolvent or is about to suspend payments due to depositors and other creditors, forthwith inform the Director of the Department of Supervision of Non-Bank Financial Institutions of the situation of the finance company prior to taking any decision or action.
- (7) The board shall include in the finance company's Annual Report, an annual corporate governance report setting out the compliance with this Direction.

- (8) The board shall adopt a scheme of self-assessment to be undertaken by each director annually, and maintain records of such assessments.

3. Meetings of the Board

- (1) The board shall meet at least twelve times a year at approximately monthly intervals. Obtaining the board's consent through the circulation of written resolutions/papers shall be avoided as far as possible.
- (2) The board shall ensure that arrangements are in place to enable all directors to include matters and proposals in the agenda for regular board meetings where such matters and proposals relate to the promotion of business and the management of risks of the finance company.
- (3) A notice of at least 7 days shall be given of a regular board meeting to provide all directors an opportunity to attend. For all other board meetings, reasonable notice shall be given.
- (4) A director who has not attended at least two-thirds of the meetings in the period of 12 months immediately preceding or has not attended the immediately preceding three consecutive meetings held, shall cease to be a director. Provided that participation at the directors' meetings through an alternate director shall, however, be acceptable as attendance.
- (5) The board shall appoint a company secretary whose primary responsibilities shall be to handle the secretarial services to the board and shareholder meetings and to carry out other functions specified in the statutes and other regulations.
- (6) If the chairman has delegated to the company secretary the function of preparing the agenda for a board meeting, the company secretary shall be responsible for carrying out such function.
- (7) All directors shall have access to advice and services of the company secretary with a view to ensuring that board procedures and all applicable laws, directions, rules and regulations are followed.
- (8) The company secretary shall maintain the minutes of board meetings and such minutes shall be open for inspection at any reasonable time, on reasonable notice by any director.

- (9) Minutes of board meetings shall be recorded in sufficient detail so that it is possible to gather from the minutes, as to whether the board acted with due care and prudence in performing its duties. The minutes of a board meeting shall clearly contain or refer to the following: (a) a summary of data and information used by the board in its deliberations; (b) the matters considered by the board; (c) the fact-finding discussions and the issues of contention or dissent which may illustrate whether the board was carrying out its duties with due care and prudence; (d) the testimonies and confirmations of relevant executives which indicate compliance with the board's strategies and policies and adherence to relevant laws and regulations; (e) the board's knowledge and understanding of the risks to which the finance company is exposed and an overview of the risk management measures adopted; and (f) the decisions and board resolutions.

4. Composition of the Board

- (1) Subject to the transitional provisions contained herein, the number of directors on the board shall not be less than 5 and not more than 13.
- (2) Subject to the transitional provisions contained herein, the total period of service of a director other than a director who holds the position of chief executive officer or executive director shall not exceed nine years, and such period in office shall be inclusive of the total period of service served by such director up to the date of this Direction.
- (3) An employee of a finance company may be appointed, elected or nominated as a director of the finance company (hereinafter referred to as an "executive director") provided that the number of executive directors shall not exceed one-half of the number of directors of the board. In such an event, one of the executive directors shall be the chief executive officer of the company. If the number of executive directors is more than one half of the number of directors of the board on the date of this Direction, the board shall identify and nominate such excess executive directors as 'non-voting executive directors' and such executive directors shall not be eligible to vote at any meetings of the board.
- (4) With effect from two years from the date of this Direction, the number of independent non-executive directors of the board shall be at least one third of the total number of directors.

A non-executive director shall not be considered independent if he:

- a) has shares exceeding 1% of the paid up capital of the finance company or 10% of the paid up capital of another finance company;

- b) has or had during the period of two years immediately preceding his appointment as director, any business transactions with the finance company as described in paragraph 9 hereof, exceeding 10% of the capital funds of the finance company as shown in its last audited balance sheet;
 - c) has been employed by the finance company during the two year period immediately preceding the appointment as director;
 - d) has a relative, who is a director or chief executive officer or a key management personnel or holds shares exceeding 10% of the paid up capital of the finance company or another finance company.
 - e) represents a shareholder, creditor, debtor, supplier or such other similar stakeholder of the finance company;
 - f) is an employee or a director or has a share holding of 10% or more of the paid up capital in a company or business organization:
 - i. which has a transaction with the finance company as defined in paragraph 9, exceeding 10% of the capital funds of the finance company, or
 - ii. in which any of the other directors of the finance company is employed or is a director or are shareholder exceeding 10 % of the capital funds; or
 - iii. in which any of the other directors of the finance company have a transaction as defined in paragraph 9, exceeding 10% of the capital funds, as shown in its last audited balance sheet of the finance company.
- (5) In the event an alternate director is appointed to represent an independent non-executive director, the person so appointed shall also meet the criteria that apply to the independent non-executive director.
- (6) Non-executive directors shall have necessary skills and experience to bring an objective judgment to bear on issues of strategy, performance and resources.
- (7) A meeting of the board shall not be duly constituted, although the number of directors required to constitute the quorum at such meeting is present, unless more than one half of the number of directors that constitute the quorum at such meeting are non-executive directors. This section shall be effective after two years from the date of this Direction .
- (8) The independent non-executive directors shall be expressly identified as such in all corporate communications that disclose the names of directors of the finance company. The finance company shall disclose the composition of the board, by category of directors, including the names of the chairman,

executive directors, non-executive directors and independent non-executive directors in the annual corporate governance report.

- (9) There shall be a formal, considered and transparent procedure for the appointment of new directors to the board. There shall also be procedures in place for the orderly succession of appointments to the board.
- (10) All directors appointed to fill a casual vacancy shall be subject to election by shareholders at the first general meeting after their appointment.
- (11) If a director resigns or is removed from office, the board shall: (a) announce to the shareholders regarding the resignation of the director or removal and the reasons for such resignation or removal, including but not limited to information relating to the relevant director's disagreement with the board, if any; and (b) issue a statement confirming whether or not there are any matters that need to be brought to the attention of shareholders and the Director of the Department of Supervision of Non-Bank Financial Institutions of the Central Bank of Sri Lanka.

5. Criteria to assess the fitness and propriety of directors

- (1) Subject to the transitional provisions contained herein, a person over the age of 70 years shall not serve as a director of a finance company.
- (2) A director of a finance company shall not hold office as a director or any other equivalent position in more than 20 companies/societies / bodies corporate, inclusive of subsidiaries or associate companies of the finance company. Provided that such director shall not hold office of a director or any other equivalent position in more than 10 companies that are classified as Specified Business Entities in terms of the Sri Lanka Accounting and Auditing Standards Act No. 15 of 1995.

6. Management functions delegated by the Board

- (1) The board shall not delegate any matters to a board committee, chief executive officer, executive directors or key management personnel, to an extent that such delegation would significantly hinder or reduce the ability of the board as a whole to discharge its functions.

- (2) The board shall review the delegation processes in place on a periodic basis to ensure that they remain relevant to the needs of the finance company.

7. The Chairman and Chief Executive Officer

- (1) The roles of chairman and chief executive officer shall be separated and shall not be performed by the one and the same person after two years from the date of this Direction.
- (2) The chairman shall be a non-executive director. In the case where the chairman is not an independent non-executive director, the board shall designate an independent non-executive director as the Senior Director with suitably documented terms of reference to ensure a greater independent element. The designation of the Senior Director shall be disclosed in the finance company's Annual Report.
- (3) The board shall disclose in its corporate governance report, which shall be an integral part of its Annual Report, the name of the chairman and the chief executive officer and the nature of any relationship [including financial, business, family or other material/relevant relationship(s)], if any, between the chairman and the chief executive officer and the relationships among members of the board.
- (4) The chairman shall: (a) provide leadership to the board; (b) ensure that the board works effectively and discharges its responsibilities; and (c) ensure that all key issues are discussed by the board in a timely manner.
- (5) The chairman shall be primarily responsible for the preparation of the agenda for each board meeting. The chairman may delegate the function of preparing the agenda to the company secretary.
- (6) The chairman shall ensure that all directors are informed adequately and in a timely manner of the issues arising at each board meeting.
- (7) The chairman shall encourage each director to make a full and active contribution to the board's affairs and take the lead to ensure that the board acts in the best interests of the finance company.
- (8) The chairman shall facilitate the effective contribution of non-executive directors in particular and ensure constructive relationships between executive and non-executive directors.

- (9) The chairman, shall not engage in activities involving direct supervision of key management personnel or any other executive duties whatsoever.
- (10) The chairman shall ensure that appropriate steps are taken to maintain effective communication with shareholders and that the views of shareholders are communicated to the board.
- (11) The chief executive officer shall function as the apex executive-in-charge of the day-to-day-management of the finance company's operations and business.

8. Board appointed Committees

- (1) Every finance company shall have at least the two board committees set out in paragraphs 8(2) and 8(3) hereof. Each committee shall report directly to the board. Each committee shall appoint a secretary to arrange the meetings, maintain minutes, records and carry out such other secretarial functions under the supervision of the chairman of the committee. The board shall present a report on the performance duties and functions of each committee, at the annual general meeting.

(2) Audit Committee

The following shall apply in relation to the Audit Committee:

- a) The chairman of the committee shall be an independent non-executive director who possesses qualifications and experience in accountancy and/or audit.
- b) The board members appointed to the committee shall be non-executive directors.
- c) The committee shall make recommendations on matters in connection with: (i) the appointment of the external auditor for audit services to be provided in compliance with the relevant statutes; (ii) the implementation of the Central Bank guidelines issued to auditors from time to time; (iii) the application of the relevant accounting standards; and (iv) the service period, audit fee and any resignation or dismissal of the auditor, provided that the engagement of an audit partner shall not exceed five years, and that the particular audit partner is not re-engaged for the audit before the expiry of three years from the date of the completion of the previous term.

- d) The committee shall review and monitor the external auditor's independence and objectivity and the effectiveness of the audit processes in accordance with applicable standards and best practices.
- e) The committee shall develop and implement a policy on the engagement of an external auditor to provide non-audit services that are permitted under the relevant statutes, regulations, requirements and guidelines. In doing so, the committee shall ensure that the provision by an external auditor of non-audit services does not impair the external auditor's independence or objectivity. When assessing the external auditor's independence or objectivity in relation to the provision of non-audit services, the committee shall consider:
 - (i) whether the skills and experience of the auditor make it a suitable provider of the non-audit services;
 - (ii) whether there are safeguards in place to ensure that there is no threat to the objectivity and/or independence in the conduct of the audit resulting from the provision of such services by the external auditor; and
 - (iii) whether the nature of the non-audit services, the related fee levels and the fee levels individually and in aggregate relative to the auditor, pose any threat to the objectivity and/or independence of the external auditor.
- f) The committee shall, before the audit commences, discuss and finalise with the external auditors the nature and scope of the audit, including:
 - (i) an assessment of the finance company's compliance with Directions issued under the Act and the management's internal controls over financial reporting;
 - (ii) the preparation of financial statements in accordance with relevant accounting principles and reporting obligations; and
 - (iii) the co-ordination between auditors where more than one auditor is involved.
- g) The committee shall review the financial information of the finance company, in order to monitor the integrity of the financial statements of the finance company, its annual report, accounts and periodical reports prepared for disclosure, and the significant financial reporting judgments contained therein. In reviewing the finance company's annual report and accounts and periodical reports before submission to the board, the committee shall focus particularly on:
 - (i) major judgmental areas;
 - (ii) any changes in accounting policies and practices;
 - (iii) significant adjustments arising from the audit;
 - (iv) the going concern assumption; and
 - (v) the compliance with relevant accounting standards and other legal requirements.

- h) The committee shall discuss issues, problems and reservations arising from the interim and final audits, and any matters the auditor may wish to discuss including those matters that may need to be discussed in the absence of key management personnel, if necessary.
- i) The committee shall review the external auditor's management letter and the management's response thereto.
- j) The committee shall take the following steps with regard to the internal audit function of the finance company:
 - (i) Review the adequacy of the scope, functions and resources of the internal audit department, and satisfy itself that the department has the necessary authority to carry out its work;
 - (ii) Review the internal audit programme and results of the internal audit process and, where necessary, ensure that appropriate actions are taken on the recommendations of the internal audit department;
 - (iii) Review any appraisal or assessment of the performance of the head and senior staff members of the internal audit department;
 - (iv) Recommend any appointment or termination of the head, senior staff members and outsourced service providers to the internal audit function;
 - (v) Ensure that the committee is apprised of resignations of senior staff members of the internal audit department including the chief internal auditor and any outsourced service providers, and to provide an opportunity to the resigning senior staff members and outsourced service providers to submit reasons for resigning;
 - (vi) Ensure that the internal audit function is independent of the activities it audits and that it is performed with impartiality, proficiency and due professional care;
- k) The committee shall consider the major findings of internal investigations and management's responses thereto;
- l) The chief finance officer, the chief internal auditor and a representative of the external auditors may normally attend meetings. Other board members and the chief executive officer may also attend meetings upon the invitation of the committee. However, at least once in six months, the committee shall meet with the external auditors without the executive directors being present.
- m) The committee shall have: (i) explicit authority to investigate into any matter within its terms of reference; (ii) the resources which it needs to do so; (iii) full access to information; and (iv) authority to obtain external professional advice and to invite outsiders with relevant experience to attend, if necessary.

- n) The committee shall meet regularly, with due notice of issues to be discussed and shall record its conclusions in discharging its duties and responsibilities.
- o) The board shall, in the Annual Report, disclose in an informative way, (i) details of the activities of the audit committee; (ii) the number of audit committee meetings held in the year; and (iii) details of attendance of each individual member at such meetings.
- p) The secretary of the committee (who may be the company secretary or the head of the internal audit function) shall record and keep detailed minutes of the committee meetings.
- q) The committee shall review arrangements by which employees of the finance company may, in confidence, raise concerns about possible improprieties in financial reporting, internal control or other matters. Accordingly, the committee shall ensure that proper arrangements are in place for the fair and independent investigation of such matters and for appropriate follow-up action and to act as the key representative body for overseeing the finance company's relations with the external auditor.

(3) Integrated Risk Management Committee

The following shall apply in relation to the Integrated Risk Management Committee:

- a) The committee shall consist of at least one non-executive director, CEO and key management personnel supervising broad risk categories, i.e., credit, market, liquidity, operational and strategic risks. The committee shall work with key management personnel closely and make decisions on behalf of the board within the framework of the authority and responsibility assigned to the committee.
- b) The committee shall assess all risks, i.e., credit, market, liquidity, operational and strategic risks to the finance company on a monthly basis through appropriate risk indicators and management information. In the case of subsidiary companies and associate companies, risk management shall be done, both on the finance company basis and group basis.
- c) The committee shall review the adequacy and effectiveness of all management level committees such as the credit committee and the asset-liability committee to address specific risks and to manage those risks within quantitative and qualitative risk limits as specified by the committee.

- d) The committee shall take prompt corrective action to mitigate the effects of specific risks in the case such risks are at levels beyond the prudent levels decided by the committee on the basis of the finance company's policies and regulatory and supervisory requirements.
- e) The committee shall meet at least quarterly to assess all aspects of risk management including updated business continuity plans.
- f) The committee shall take appropriate actions against the officers responsible for failure to identify specific risks and take prompt corrective actions as recommended by the committee, and/or as directed by the Director of the Department of Supervision of Non-Bank Financial Institutions of the Central Bank of Sri Lanka.
- g) The committee shall submit a risk assessment report within a week of each meeting to the board seeking the board's views, concurrence and/or specific directions.
- h) The committee shall establish a compliance function to assess the finance company's compliance with laws, regulations, directions, rules, regulatory guidelines, internal controls and approved policies on all areas of business operations. A dedicated compliance officer selected from key management personnel shall carry out the compliance function and report to the committee periodically.

9. Related party transactions

- (1) The following shall be in addition to the provisions contained in the Finance Companies (Lending) Direction, No. 1 of 2007 and the Finance Companies (Business Transactions with Directors and their Relatives) Direction, No. 2 of 2007 or such other directions that shall repeal and replace the said directions from time to time.
- (2) The board shall take the necessary steps to avoid any conflicts of interest that may arise from any transaction of the finance company with any person, and particularly with the following categories of persons who shall be considered as "related parties" for the purposes of this Direction:
 - a) A subsidiary of the finance company;
 - b) Any associate company of the finance company;
 - c) A director of the finance company;
 - d) A key management personnel of the finance company;
 - e) A relative of a director or a key management personnel of the finance company ;
 - f) A shareholder who owns shares exceeding 10 % of the paid up capital of the finance company;

- g) A concern in which a director of the finance company or a relative of a director or a shareholder who owns shares exceeding 10 % of the paid up capital of the finance company, has substantial interest.
- (3) The transactions with a related party that are covered in this Direction shall be the following:
- a) Granting accommodation,
 - b) Creating liabilities to the finance company in the form of deposits, borrowings and investments,
 - c) providing financial or non-financial services to the finance company or obtaining those services from the finance company,
 - d) creating or maintaining reporting lines and information flows between the finance company and any related party which may lead to share proprietary, confidential or otherwise sensitive information that may give benefits to such related party.
- (4) The board shall ensure that the finance company does not engage in transactions with a related party in a manner that would grant such party “more favourable treatment” than that is accorded to other similar constituents of the finance company .For the purpose of this paragraph, “more favourable treatment” shall mean:
- a) Granting of “total net accommodation” to a related party, exceeding a prudent percentage of the finance company’s regulatory capital, as determined by the board.
The “total net accommodation” shall be computed by deducting from the total accommodation, the cash collateral and investments made by such related party in the finance company’s share capital and debt instruments with a remaining maturity of 5 years or more.
 - b) Charging of a lower rate of interest than the finance company’s best lending rate or paying a rate of interest exceeding the rate paid for a comparable transaction with an unrelated comparable counterparty;
 - c) Providing preferential treatment, such as favourable terms, covering trade losses and/or waiving fees/commissions, that extends beyond the terms granted in the normal course of business with unrelated parties;
 - d) Providing or obtaining services to or from a related-party without a proper evaluation procedure;
 - e) Maintaining reporting lines and information flows between the finance company and any related party which may lead to share proprietary, confidential or otherwise sensitive information that may give benefits to

such related party, except as required for the performance of legitimate duties and functions.

10. Disclosures

- (1) The board shall ensure that: (a) annual audited financial statements and periodical financial statements are prepared and published in accordance with the formats prescribed by the supervisory and regulatory authorities and applicable accounting standards, and that (b) such statements are published in the newspapers in an abridged form, in Sinhala, Tamil and English.

- (2) The board shall ensure that at least the following disclosures are made in the Annual Report:
 - a) A statement to the effect that the annual audited financial statements have been prepared in line with applicable accounting standards and regulatory requirements, inclusive of specific disclosures.
 - b) A report by the board on the finance company's internal control mechanism that confirms that the financial reporting system has been designed to provide a reasonable assurance regarding the reliability of financial reporting, and that the preparation of financial statements has been done in accordance with relevant accounting principles and regulatory requirements.
 - c) The external auditor's certification on the effectiveness of the internal control mechanism in respect of any statements prepared or published after March 31, 2010.
 - d) Details of directors, including names, transactions with the finance company and the total of fees/remuneration paid by the finance company to each director.
 - e) Total net accommodation as defined in paragraph 9(4) granted to each category of related parties and the net accommodation granted to each category of related parties as a percentage of the finance company's capital funds.
 - f) The aggregate values of remuneration paid by the finance company to its key management personnel and the aggregate values of the transactions of the finance company with its key management personnel, set out by broad categories such as remuneration paid, accommodation granted and deposits or investments made in the finance company.
 - g) A report setting out details of the compliance with prudential requirements, regulations, laws and internal controls and measures taken to rectify any non-compliances.

- h) A statement of the regulatory and supervisory concerns on lapses in the finance company's risk management, or non compliance with the Act, and rules and directions that have been communicated by the Director of the Department of Supervision of Non-Bank Financial Institutions, if so directed by the Monetary Board to be disclosed to the public, together with the measures taken by the finance company to address such concerns.
- i) The external auditor's certification of the compliance with the Act and rules and directions issued by the Monetary Board in the annual corporate governance reports published after January 1, 2011.

11. Transitional provisions

- (1) On the date of this Direction, if the number of directors on the board of a finance company is either less than 5 or exceed 13, such finance company shall comply with paragraph 4(1) hereto, within 2 years from the date of this Direction.
- (2) The following transitional provisions shall apply to the 9-year retirement requirement imposed under the paragraph 4(2) of this Direction:
 - a) In the event that there is only one director on the board who has served more than nine years on the date of this Direction, he/she shall be deemed to have vacated the office as a director on the date of expiry of one year from the date of this Direction.
 - b) In the event that there are two or more directors on the board who have served more than nine years on the date of this Direction, the following provisions shall apply:
 - (i) Of those directors whose period of service has exceeded nine years, the longest serving director, shall be deemed to have vacated office as a director on the date of expiry of one year from the date of this Direction.
 - (ii) Thereafter, at the end of each succeeding year, the remaining directors shall be deemed to have vacated office in sequence, at least one director each year, (on the basis of the longest to the shortest length of service as a director), until all directors who have served a period in excess of nine years on the date of this Direction, have been deemed to have vacated office. Provided also, that all directors of the company who have served more than nine years on the date of this Direction shall be deemed to have vacated their office on the date of expiry of four years from the date of this Direction.

(iii) In the event there are directors who are due to complete nine years of service within three years from the date of this Direction, such directors shall also be deemed to have vacated office, in sequence, at least one director each year, (on the basis of the longest to the shortest length of service as a director), after the directors as set out in paragraph 11(2)(b) have vacated their office as directors. Provided, however, that all such directors covered by this paragraph (c) shall also be deemed to have vacated their office on the date of expiry of four years from the date of this Direction.

(3) The following transitional provisions shall apply to the maximum age limit imposed under the paragraph 5(1) of this Direction:

(a) Where a director who is serving at a finance company is over 70 years of age on the date of this Direction, the following transitional provisions shall apply, subject however, to the provisions as set out in paragraphs 4(2) hereof.

(i) If a director is over 75 years of age on the date of this Direction, such director may continue to serve as a director for a further period of one year from the date of this Direction, and shall be deemed to have vacated office thereafter;

(ii) If a director is between 70 and 75 years of age as on the date of this Direction, such director may continue to serve as a director for a further period of two years from the date of this Direction, and shall be deemed to have vacated office thereafter.

(b) Where a director who is currently serving at a finance company reaches the age of 70 years, within 2 years from the date of this Direction, such director may, subject to the provisions as set out in paragraph 4(2) hereof, continue to serve as a director for a further period that shall not exceed 3 years from the date of this Direction and shall be deemed to have vacated office thereafter.

(4) The following transitional provisions shall apply in the case of a Founder Director and/or an Incumbent Chairman:

a) For purposes of these transitional provisions:

(i) A Founder Director is a director who functioned as a director of the finance company on the date of registration of such finance company or its predecessors under the Act or in the case of a merger/acquisition if one of the entities to be merged is a finance

company, directors of such finance company on the date of the merger.

- (ii) An Incumbent Chairman is a Director who functioned as the Chairman of the Board of Directors of the finance company, on the date of this Direction.
- b) These transitional provisions shall only be applicable in respect of a Founder Director or the Incumbent Chairman who shall be required in terms of paragraph 4(2) and 5(1) of this Direction to vacate post.
- c) In the event a finance company wishes to seek an exemption from the application of paragraphs 4(2) and/or 5(1) of this Direction in respect of a Founder Director or an Incumbent Chairman, an application for such exemption shall be made to the Monetary Board by the board of directors of the finance company, to be received by the Monetary Board prior to six months from the date on which he shall be required to vacate the post and such application shall be with supported the following:
- (i) A certified copy of a board resolution which shall be passed by at least three fourths (3/4) majority of the directors of the finance company, in respect of seeking an exemption for the Founder Director(s) or the Incumbent Chairman, from the application of paragraphs 4(2) and/or 5(1) of this Direction.
 - (ii) A certified copy of a resolution passed at a General Meeting of the shareholders of the finance company which specifically authorises the board of directors to seek the approval of the Monetary Board for the exemption of the Founder Director(s) or the Incumbent Chairman, from the application of paragraphs 4(2) and/or 5(1) of this Direction .
 - (iii) A statement by the board of directors that the finance company has complied with all regulatory requirements and, if not, the details of non-compliance and the action taken and/or to be taken by the finance company within a specific time period.
 - (iv) A statement by the board of directors that the finance company has addressed all the supervisory concerns communicated to the finance company by the Director of the Department of Supervision of Non Bank Financial Institutions.
 - (v) A statement by the board of directors setting out the contribution made by the Founder Director(s) or the Incumbent Chairman, as the case may be, and the contribution envisaged to be made by such Founder Director(s) or Incumbent Chairman for the prosperity and stability of the finance company in the future.

- (vi) A statement by the board of directors on the arrangements for succession of such Founder Director(s) or Incumbent Chairman.
- d) Upon consideration of an application made by a finance company seeking exemption from the application of paragraphs 4(2) and/or 5(1) of this Direction in respect of a Founder Director(s) or an Incumbent Chairman, the Monetary Board may grant such an exemption up to a maximum period of 5 years from the date of this Direction.
- e) In the event a Founder Director or an Incumbent Chairman wishes to seek an exemption from the application of paragraph 5(2), an application for such exemption shall be made to the Monetary Board by the Founder Director or the Incumbent Chairman concerned, to be received by the Monetary Board within 6 months from the date of this Direction. Such application shall contain an assurance that the Founder Director or Incumbent Chairman as the case may be, will not accept any new appointments as a Director in a company/society or body corporate in excess of the number of directorships held by such person as on the date of this Direction, without the prior approval of the Monetary Board. Upon the consideration of an application made by a Founder Director or an Incumbent Chairman, the Monetary Board may grant such exemption up to a maximum period of 5 years from the date of this Direction.

12. Definitions

- (1) “Act” shall mean the Finance Companies Act, No. 78 of 1988.
- (2) “accommodation” have the same meaning as contained in the Finance Companies (Lending) Direction No.1 of 2007
- (3) “relative” shall have the same meaning as contained in section 46 of the Finance Companies Act No 78 of 1988
- (4) “key management personnel” are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of the entity.
- (5) “substantial interest” shall have the same meaning as contained in section 46 of the Finance Companies Act No 78 of 1988.