



**MONETARY BOARD
CENTRAL BANK OF SRI LANKA**

18 June 2020

FINANCE BUSINESS ACT DIRECTIONS

No. 05 of 2020

AMENDMENT TO THE CORPORATE GOVERNANCE DIRECTION

In terms of powers conferred by Section 12 of the Finance Business Act No.42 of 2011, the Monetary Board hereby issues the following amendment to the Finance Companies (Corporate Governance) Direction No. 03 of 2008, issued to Licensed Finance Companies (LFCs) in Sri Lanka.

Having considered the limited ability especially in the presently prevailing, challenging environment, of attracting experienced personnel with impeccable track records to the Board of Directors (BODs) of the non-banking financial institution sector, the Monetary Board considers that it is prudent to provide a degree of continuity in BODs, subject to the qualification that such continuity, from an objective perspective, is in the best interests of the LFCs.

- 1. Applicability and Scope** Notwithstanding the provisions of Direction 5(1) of the Finance Companies (Corporate Governance) Direction No. 3 of 2008, an LFC may, with the prior approval of the Monetary Board, permit a Director who is already holding office, and who attains the age of 70 years on or after the date of this Direction comes into effect, to continue in office as director, subject to strict adherence to the following requirements and conditions of this Direction and the accompanying Guidelines.
- 2. Prior Approval of the Monetary Board** Any extension of the time period, will be subject to the prior approval of the Monetary Board.
- 3. Terms and Conditions** The terms and conditions and the procedure to be followed, are stipulated in the Guidelines annexed to this Direction.



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**4. Effective Date and
Validity period**

The Direction will be effective with immediate effect and the Direction shall be in effect for a period of three years from the date of the said Direction, subject to renewability upon the completion of three year period, at the discretion of the Monetary Board.

Prof W D Lakshman

Chairman of the Monetary Board and
Governor of the Central Bank of Sri Lanka

Guideline on Determining the Fitness and Propriety of Directors Beyond the Age of 70 years up to Maximum of 75 years

1. Applicability

- 1.1. The provisions of this Guideline shall be applicable only in respect of Directors of an LFC who are serving in the said capacity, as at the date of the Direction, and in the event of any such LFC deciding to continue the service of such Directors beyond the age of 70 years, in the future.

2. Assessment Criteria

- 2.1. The Directors who have reached the age of 70 years, will be assessed by the Monetary Board (MB) of the Central Bank of Sri Lanka (CBSL), based on the criteria that have been formulated in order to objectively assess fitness and propriety, as well as the contribution made by such Directors to the financial institution and the level of regulatory compliance of such financial institution.
- 2.2. If an LFC wishes to continue a Director beyond the age of 70 years, the following documents are required to be submitted in order for the MB to evaluate the suitability of approving any extension of the period of service, which will be done by the MB on a case by case basis. However, in no instance will a Director be permitted to function beyond the age of 75 years.

2.3. Fitness and Propriety

The responsibility is with the LFC to establish, to the due satisfaction of the MB, that the relevant director, whose services are proposed to be retained beyond the age of 70 years, is a fit and proper person, to carry out the duties and functions of a director : -

- (i) The Affidavit and Declaration as in Annex I and II of the Finance Companies (Fitness and Propriety of Directors and Officers Performing Executive Functions) Direction No, 03 of 2011, and as may be amended from time to time. The said affidavit and declaration shall be certified by the Chairman and all members of the Board of Directors holding office at the time, excluding however, the Director being evaluated for this purpose.
- (ii) The Board of Directors of the LFC shall adopt a board resolution signed by all the Directors (other than the Director seeking exemption) holding office at the time of such adoption, resolving that they consider the continuation in office of the Director seeking such exemption, will be of benefit to the institution for the reasons stated

in such resolution and recommending to the MB to consider granting the required exemption. The resolution shall be adopted not more than 6 months prior to the date on which exemption will be required to be effective.

- (iii) The reasons set out in such resolution must be sufficiently descriptive and adequate, in order to permit the MB to arrive at an informed decision on the matter and must be supported by documentation, as far as possible. In the event of the MB requiring any further documentation in support of the request for extension, the relevant LFC shall duly furnish the same to the Director, Department of Supervision of Non-bank Financial Institutions (D/SNBFI), for submission before the MB.
- (iv) An affirmative written assurance addressed to the D/SNBFI, signed jointly by the Chief Compliance Officer, Company Secretary and Chief Executive Officer that the LFC is in compliance with all the other requirements relating to the Composition of the Board and Fitness and Propriety of Directors specified under the applicable Directions.
- (v) Certification from the Company Secretary of the relevant LFC, that the continuation of the relevant Directors/s beyond the age of 70 years, has been duly approved by passing a resolution at a general meeting in terms of Section 211 of Companies Act No. 07 of 2007. Such resolution shall be passed, without taking into account and excluding the ownership or equity stake of the Director concerned. Close relatives of the Director concerned and common Directors holding an ownership stake of the LFC concerned shall be omitted from voting on the resolution. Close relatives are defined as per section 74 of the Finance Business Act No. 42 of 2011.
- (vi) In respect of each further year on account of which an extension is sought, upto the maximum age of 75, a fresh resolution, as contemplated above, shall be duly passed.
- (vii) Written Confirmation from the Company Secretary that the continuation of a Director of an LFC, beyond the age of 70 years, is not prohibited by the Articles of Association of the relevant LFC.

2.4. Historical Records/Contribution to the financial institution:

In order to facilitate the due assessment of the performance of the relevant Director, during his/her tenure of office as a Director of the relevant LFC, the following documents shall be submitted by the LFC :-

- (i) Certified copies of the annual self-assessment undertaken by Directors during the preceding five years, in line with the Section 2(8) of the Finance Companies

(Corporate Governance) Direction No. 03 of 2008, as amended, in the case of Directors for the first year of evaluation beyond 70 years of age and thereafter, annual self-assessment form.

- (ii) Self-declaration by an applicant incorporating the improvement of financial performance during the tenure of his service, details of any special assignments, projects carried out under his/her leadership, explaining his/her future plans to increase value of the financial institution, etc.

2.5. Regulatory Compliance in the Present Capacity:

In assessing the continuation in office, of a member of the Board of Directors, the level of following regulatory compliance by the relevant LFC, will be evaluated by the MB in its final discretion. The D/SNBFI, will submit a report to the MB on the level of regulatory compliance with the following Directions and to any other direction or provision that the MB may consider as being relevant, based on the reports of assessment of the Off-site Officer, together with the Examiner in-charge of the latest statutory examination, together with any other relevant matters which requires the attention of the MB :-

- (i) Finance Companies (Corporate Governance) Direction No. 03 of 2008, as amended
- (ii) Finance Companies (Minimum Core Capital) Direction No. 02 of 2017, as amended
- (iii) Finance Business Act (Capital Adequacy Requirements) Direction No. 03 of 2018, as amended
- (iv) Finance Companies (Liquid Assets) Direction No. 04 of 2013, as amended
- (v) Any other supervisory concerns, which are directly, link to the performance of the applicant.
- (vi) Regulatory and supervisory findings of the latest statutory examination.
- (vii) The MB may also have recourse to reports from the D/SNBFI, with regard to due compliance and/or the extent of compliance, of the relevant LFC, including but not limited to time bound action plans imposed by the D/ SNBFI, as well as the failure and/or extent of the failure, if any, on the part of the relevant LFC to duly implement corrective measures that may have been stipulated/imposed, during the period when the Director in question held office in that capacity, in order for the MB to decide the extent of the culpability of the Director in question, in respect of the truancy of the LFC, or whether there are adequate mitigatory factors that commend themselves to the MB.

3. Procedure of approval

- 3.1. The Company Secretary of the LFC shall submit all the documents and assurances required in 2.3 and 2.4 above to D/SNBFI not less than 3 months before the date on which the exemption is first required.
- 3.2. Upon being satisfied that the documents and assurances received are prima facie in order, the D/SNBFI, shall validate the representations and assurances so provided if warranted, and carry out an assessment of the contribution made by the Director on whose behalf the exemption is sought taking into account the criteria stated above.
- 3.3. Upon completion of the assessment, and within 30 days of the receipt of the application for exemption, the D/SNBFI shall submit a report to the MB including points stated in 2.5 above, with his recommendation on the matter of granting the exemption.
- 3.4. The MB may thereupon reject the granting of the exemption or approve the exemption that has been sought. In arriving at its decision, the MB would be guided primarily by the paramount consideration as to whether the grant of the exemption would serve to secure further, the best interests of the LFC and that whether the refusal of the exemption would be detrimental to the soundness or stability of the LFC.
- 3.5. In the course of its decision, the MB may issue the same, subject to any conditions and the D/SNBFI, shall forthwith communicate the decision of the MB to the LFC and also emphasise the importance of strict adherence to any conditions, that the MB may impose and also communicate that the failure to duly comply with such conditions could lead to the MB immediately withdrawing the exemption that has been granted.

4. Transitional Provisions

- 4.1. In the event of a Director holding office as at the date of this Direction, being desirous of seeking the benefit of exemption as provided for herein, but is unable to comply with the time periods set out in 3.1 above, only as a result of his term of office ending on or before 15th September 2020 due to the operation of Direction 5(1) of Direction No. 3 of 2008, such Director and the LFC concerned, may complete the requirements within 45 days from date hereof.
- 4.2. Such Director of a LFC referred to in 4.1 above, may continue in office as a Director, until the formal decision of the MB is communicated with regard to his application and continue thereafter, if the exemption under this Direction is duly granted by the MB.
- 4.3. However, in the event of the MB rejecting the request, the Director shall forthwith cease to function as a Director of the LFC and the Board of Directors of the LFC shall be

collectively responsible to the MB to ensure that the Director in question duly ceases to function and shall also cause a replacement Director to be appointed without delay.

5. Annual Evaluation

- 5.1. All such approvals by MB beyond the age of 70 years shall be subject to annual re-evaluation, subject to the reaching of a maximum of 75 years of age. In no case shall a Director be permitted to function in such a capacity, on an extended basis, beyond the maximum possible age of 75 years.
- 5.2. The persons applying for annual extension shall apply at least prior to 45 days of the lapse of the approval period, with all necessary documents as stated in section 2.3 to 2.4 above. However, LFCs are encouraged to proceed and submit applications for extension at the very earliest opportunity. This will not preclude the MB however, from taking cognizance of any supervening disability that has occurred after the submission of the application, or of any other supervening factual circumstance that renders such Director unfit to function beyond 70 years, in the opinion of the MB.

6. Conditions

All approvals given by MB will be subject but not limited, to following conditions;

- 6.1. The Director concerned shall have completed a minimum period of 3 continuous years in office, as at the date on which the exemption first becomes necessary.
- 6.2. The proportion of Directors above the age of 70 on a Board of an LFC at any given time shall be limited to maximum of 2 Directors. However, if the number of Directors representing the Board at the particular time is 7 directors or below, maximum of one director shall be permitted to serve beyond the age of 70 years.
- 6.3. With regard to Non-executive Directors seeking extension, section 4(2) of the Finance Companies (Corporate Governance) Direction No. 03 of 2008 will be still applicable.
- 6.4. As stated in Section 5 above, all approvals are subject to annual re-evaluation, and the final decision thereon, will be taken by the MB.
- 6.5. Where the D/SNBFI is satisfied at any time that a person continued beyond age of 70 years is not fit and proper as a Director for continuation, he shall submit a report to the MB supported by reasons and documentation, in order to assist the MB in deciding finally, whether such person is not fit and proper to be a Director of the LFC at any time during the extended period beyond 70 years of age.

6.6. Every LFC shall strictly and forthwith notify the D/SNBFI of any reasonable suspicion that have arisen or findings made to the effect that any Director is not a fit and proper person to hold office in the respective LFC within fourteen days of it being aware of such suspicion or findings.

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