

PART IV

MAJOR LEGISLATIVE ENACTMENTS OF 2011 RELATING TO THE FUNCTIONS AND OPERATIONS OF THE CENTRAL BANK AND BANKING INSTITUTIONS IN SRI LANKA

	Page
1. Recovery of Loans by Banks (Special Provisions) (Amendment) Act, No. 1 of 2011	1
2. Recovery of Loans by Banks (Special Provisions) (Amendment) Act, No. 19 of 2011	1
3. Pradeshiya Sanwardana Bank (Amendment) Act, No. 30 of 2011	2
4. Prevention of Money Laundering (Amendment) Act, No. 40 of 2011	2
5. Convention on the Suppression of Terrorist Financing (Amendment) Act, No. 41 of 2011	7
6. Finance Business Act, No. 42 of 2011	12
7. Housing Development Finance Corporation Bank of Sri Lanka (Amendment) Act, No. 45 of 2011	45

**Recovery of Loans by Banks (Special Provisions)
(Amendment) Act, No. 1 of 2011**

[Certified on 28th January, 2011]

AN ACT TO AMEND THE RECOVERY OF LOANS BY BANKS
(SPECIAL PROVISIONS) ACT, NO. 4 OF 1990

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

1. This Act may be cited as the Recovery of Loans by Banks (Special Provisions) (Amendment) Act, No. 1 of 2011.
2. The following new section is hereby inserted immediately after section 5 of the Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990 (hereinafter referred to as the “principal enactment”) and shall have effect as section 5A of that enactment :—
 - 5A. (1) No action shall be initiated in terms of section 3 of the principal enactment for the recovery of any loan in respect of which default is made, nor shall any steps be taken in terms of section 4 or section 5 of the aforesaid Act, where the amount of such loan is less than rupees five million :

Provided however, at the time of default when calculating the amount due and owing to the Bank on the loan granted to such defaulter, the interest accrued on such loan and any penalty imposed thereon, shall not be taken into consideration.
 - (2) The provisions of section 5A of this Act, shall also apply in relation to any bank established by an Incorporation Order made under the provisions of any written law for the time being in force, notwithstanding any provisions relating to the recovery of loans by any such bank.”.
3. Section 22 of the principal enactment is hereby repealed and the following section substituted therefor :—

22 “bank” means a licensed commercial bank or a licensed specialised bank within the meaning of the Banking Act, No. 30 of 1988 which is empowered to take possession of movable or immovable property which has been mortgaged to the bank as security for any loan, overdraft, advance or other accommodation and in respect of which default has been made.”.
4. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

**Recovery of Loans by Banks (Special Provisions)
(Amendment) Act, No. 19 of 2011**

[Certified on 31st March, 2011]

AN ACT TO AMEND THE RECOVERY OF LOANS BY BANKS (SPECIAL PROVISIONS) ACT, NO. 4 OF 1990

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

1. This Act may be cited as the Recovery of Loans by Banks (Special Provisions) (Amendment) Act, No. 19 of 2011 and shall be deemed to have come into operation with effect from January 28, 2011.
2. The Recovery of Loans by Banks (Special Provisions) Act, No. 4 of 1990 is hereby amended in section 5A thereof, by the substitution for the word “amount” wherever such word appears in that section, of the words “principal amount borrowed”.
3. In the event of an inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

**Pradeshiya Sanwardana Bank (Amendment)
Act, No. 30 of 2011**

[Certified on 07th June, 2011]

AN ACT TO AMEND THE PRADESHIYA SANWARDANA BANK ACT, NO. 41 OF 2008

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

1. This Act may be cited as the Pradeshiya Sanwardana Bank (Amendment) Act, No. 30 of 2011.
2. Section 4 of the Pradeshiya Sanwardana Bank Act, No. 41 of 2008 is hereby repealed and the following Section substituted therefor :—
 4. The head office of the Bank may be established in any location in Sri Lanka, outside the Administrative District of Colombo, as may be determined by the Board.”.
3. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

**Prevention of Money Laundering (Amendment)
Act, No. 40 of 2011**

[Certified on 06th October, 2011]

AN ACT TO AMEND THE PREVENTION OF MONEY LAUNDERING ACT, NO. 5 OF 2006

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

1. This Act may be cited as the Prevention of Money Laundering (Amendment) Act, No. 40 of 2011.
2. Section 2 of the Prevention of Money Laundering Act, No.5 of 2006 (hereinafter referred to as the “principal enactment”) is hereby amended in paragraph (a) of that section by the substitution for the words “being resident in Sri Lanka;” of the words “in Sri Lanka;”.
3. Section 3 of the principal enactment is hereby amended as follows:—
 - (1) in subsection (1) thereof by the repeal of all the words from “knowing or having reason” to the end of that subsection and the substitution therefor of the following:—

“knowing or having reason to believe that such property is derived or realized, directly or indirectly from any unlawful activity, or from the proceeds of any unlawful activity shall be guilty of the offence of money laundering and shall on conviction after trial before the High Court be liable to a fine which shall be not less than the value of the property in respect of which the offence is committed and not more than three times the value of such property, or to rigorous imprisonment for a period of not less than five years and not exceeding twenty years, or to both such fine and imprisonment.”;
 - (2) by the insertion immediately after subsection (1) thereof of the following new subsection:—

“(1A) The assets of any person found guilty of the offence of money laundering under this section shall be liable to forfeiture in terms of Part II of this Act.”;
 - (3) in subsection (3) thereof by the substitution for the words “for the commission by the accused of the unlawful activity” of the words “for the commission of the unlawful activity”.
4. Section 6 of the principal enactment is hereby amended by the substitution for the words “be liable to a fine not exceeding fifty thousand rupees or to imprisonment of either description for a period not exceeding six months,” of the words “be liable to a fine not exceeding one hundred thousand rupees or to imprisonment of either description for a period not exceeding twelve months,”.
5. Section 7 of the principal enactment is hereby amended in subsection (1) thereof by the substitution for the words “not below the rank of Superintendent of Police or in the absence of such an officer an Assistant Superintendent of Police may,” of the words “not below the rank of an Assistant Superintendent of Police may,”.

6. Section 8 of the principal enactment is hereby amended as follows:—
- (1) in subsection (1) of that section, by the substitution for the words “provisions of section 6 shall, within the seven days during which such order shall be in force, make an application” of the words “provisions of section 7 shall within the seven days during which such order shall be in force, make an ex parte application”;
 - (2) in subsection (2) of that section—
 - (i) by the repeal of paragraph (b) thereof and the substitution therefor of the following:—

“(b) to the requirement that the maximum period of any extension so granted shall not exceed three months at any given time and in any event shall not in the aggregate exceed a period of two years from the date of the issuing of the Freezing Order by such police officer.”;
 - (ii) by the substitution in the proviso thereof for the words “ indictment is filed for the offence of money laundering in respect of” and for the words “Freezing Order” wherever such words appear in such proviso, of the words “indictment is filed for an offence under section 3 of this Act in respect of” and “Freezing Order” respectively;
 - (3) in subsection (3) thereof by the substitution for the words “Freezing Order” and “Order of Freezing” of the words “Freezing Order”.
7. Section 9 of the principal enactment is hereby amended by the substitution for the words “No transaction shall be effected” of the words and figures “No transaction shall, except with the sanction of Court as provided for in section 10, be effected”.
8. Section 10 of the principal enactment is hereby amended as follows:-
- (1) by the substitution for the words “make order permitting” of the words “make order sanctioning” ; and
 - (2) by the repeal of the marginal note to that section and the substitution therefor of the following:—

“High Court to sanction essential and legitimate transactions”.
9. Section 11 of the principal enactment is hereby amended by the substitution for the words “not below the rank of a Superintendent of Police or in the absence of such an officer an Assistant Superintendent of Police,” of the words “not below the rank of an Assistant Superintendent of Police,”.
10. Section 12 of the principal enactment is hereby amended as follows:—
- (1) by the repeal of all the words from “Any Police Officer” to the end of paragraph (a) of subsection (1) of that section and the substitution therefor of the following:—

“Any police officer not below the rank of an Assistant Superintendent of Police shall take possession of, and otherwise deal with, any account, property or investment, which is subject to a Freezing Order, and the Court may on application made by the said police officer and for the purpose of determining who owns, possesses or is in control of such account, property or investment to which the Freezing Order relates, order—

 - (a) that any document relevant to—
 - (i) identifying, locating or quantifying such account, property or investment;
 - (ii) establishing the ownership, possession or control of such account, property or investment;
 - (iii) obtaining any other information pertaining to such account, property or investment,
 be delivered forthwith to such police officer; and ”;
 - (2) in subsection (3) of that section, by the substitution for the words “Upon determining in whom the ownership, possession or control of any property to which the Freezing Order relates,” of the words “Upon determining who owns, possesses or is in control of any account, property or investment to which the Freezing Order relates,”.
11. Section 13 of the principal enactment is hereby amended as follows:—
- (1) by the repeal of subsection (1) thereof and the substitution therefor of the following:—

“(1) Subject to the provisions of subsection (2), where a person is convicted of an offence under section 3 of this Act, the Court convicting such person shall, make order that any account, property or investment, owned, possessed or under the control of such person which has been derived or realized directly or indirectly from any unlawful activity, any income or profit earned on such account, property or investment and any instrumentalities used in the commission of such unlawful activity, be forfeited to the State free from all encumbrances.”;

(2) by the insertion immediately after subsection (1) thereof of the following new subsections:—

“(1A) Where such account, property, investment, income, profit or instrumentalities cannot be found or traced the Court convicting such person shall order him to pay to the State the equivalent value of such account, property, investment, income, profit or instrumentalities.

(1B) Where such person fails to pay such equivalent value, the Court shall, in accordance with the provisions of the Code of Criminal Procedure Act, No. 15 of 1979, order him to pay such value as a fine within such period as may be specified by Court.”;

(3) in subsection (2) thereof by the substitutions for the words “a bona fide interest in such property.” of the words “a bona fide interest in such property, or investment or any income or profit earned on such property or investment.” ;and

(4) in subsection (4) thereof by the substitution for the words “any movable or immovable property belonging to the person” of the words “any property belonging to the person”.

12. Section 14 of the principal enactment is hereby repealed and the following section is substituted therefor:—

14. (1) Any person, being a person to whom the provisions of paragraph (a) of section 2 do not apply, who owns, possesses or is in control of, any account, property or investment to which the Freezing Order made under section 7 relates, may within thirty days of the making of such Order apply to the Court making the same, seeking the intervention of Court to exclude from such Order any account, property or investment he owns, possesses or is in control of.

(2) Where an application is made under subsection (1), the Court shall upon being satisfied on the information before Court that—

(a) the account, property or investment which the applicant owns, possesses or is in control of, is not derived or realized directly or indirectly, from any unlawful activity or from the proceeds of any unlawful activity or the account, property or investment is not an instrumentality used in the commission of such unlawful activity;

(b) the applicant was not in any way involved in the commission of the offence of money laundering in relation to which the Freezing Order was made;

(c) the applicant had acquired an interest in the account, property or investment at any time prior to the commission of the offence of money laundering and the applicant was unaware of the fact that the defendant had used or had intended to use such account, property or investment in or in connection with the commission of such offence; or

(d) the applicant had acquired an interest in the account, property or investment at the time of or after the commission or alleged commission of the offence, that such interest was acquired in circumstances which would not give rise to a reasonable suspicion that such account, property or investment was proceeds or instrumentalities of such offence,

make Order for the release of the account, property or investment which is the subject of the application before it, from the Freezing Order made under section 7, and restore the right of the applicant in respect of the same.”.

13. Section 15 of the principal enactment is hereby repealed and the following section is substituted therefor:—

15. Where any account, property or investment or any income or profit earned on such account, property or investment has been forfeited to the State under section 13 of this Act, the Court making the Order of Forfeiture may, appoint a Receiver in accordance with the provisions of the Civil Procedure Code (Chapter 101) to be in charge of such account, property, investment, income or profit so forfeited.”.

14. Section 20 of the principal enactment is hereby amended as follows:—

(1) by the addition, immediately after subsection (2) of that section, of the following new subsections:—

“(3) No person shall—

- (a) falsify, conceal, destroy or otherwise dispose of, or cause or permit the falsification, concealment, destruction or disposal of, any document or material or thing which is or is likely to be relevant to the execution of any Order made in accordance with the provisions of this Act; or
 - (b) divulge, the fact that an investigation into an offence of money laundering or an offence under the law of any foreign State corresponding to the offence of money laundering, is being, or is about to be made, or divulge to another person any other information which is likely to prejudice such investigation.
- (4) Any person who contravenes the provisions of subsection (3) shall be guilty of an offence under this Act and shall on conviction after trial before the High Court be liable to a fine not exceeding one hundred thousand rupees or to imprisonment of either description for a period not exceeding twelve months or to both such fine and imprisonment.”;

- (2) by the repeal of the marginal note to that section and the substitution therefor of the following new marginal note:—
“Offences”.

15. Section 21 of the principal enactment is hereby repealed.

16. Section 23 of the principal enactment is hereby amended by the substitution for the words “by means of any illegal activity,” of the words “by means of any unlawful activity,”.

17. Section 27 of the principal enactment is hereby amended as follows:—

- (1) in subsection (1) thereof by the substitution for the words and figure “under section 2 of this Act,” of the words and figure “under section 3 of this Act,”;
- (2) in subsection (2) of that section, by the substitution for the words “No –Commonwealth country” of the words “Non-Commonwealth country”;
- (3) by the repeal of subsection (3) of that section and the substitution therefor of the following:—
“(3) The grant of assistance to any country referred to in subsection (2) may be made subject to such terms and conditions as the Minister may deem appropriate in the circumstances.”.

18. Section 33 of the principal enactment is hereby amended as follows:—

- (1) by the insertion immediately after subsection (1) thereof of the following new subsection: —
“(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations in respect of the following matters:—
(a) prescribing any business as a “designated non finance business” taking into consideration the interests of the national economy;
(b) prescribing any business as a “finance business” taking into consideration the interest of the national economy.”.
- (2) by the renumbering of subsections (2) and (3) of that section, as subsections (3) and (4) thereof, respectively.

19. Section 35 of the principal enactment is hereby amended as follows:—

- (1) by the insertion immediately before the definition of the expression “designated non-finance business” of the following new definition—
“account” means any facility or arrangement by which an Institution does any of the following:—
(a) accepts deposits of currency;
(b) allows withdrawals of currency; or
(c) pays cheques or payment orders drawn on the Institution or collects cheques or payment orders on behalf of a person other than the Financial Institution,
and includes any facility or arrangement for a safety deposit box or any other form of safe deposit;”;

- (2) in the definition of the expression “designated non-finance business”—
- (a) by the repeal of paragraph (e) thereof;
 - (b) by the relettering of all paragraphs from (f) to (l) as paragraphs (e) to (k) thereof, respectively;
 - (c) by the repeal of paragraph (m) thereof and the substitution therefor of the following new paragraphs:—
 - “(l) pawn brokering under Pawn Brokers Ordinance (Chapter 90);
 - (m) non profit organizations or non governmental organizations registered under any written law;”;
- (3) in the definition of the expression “finance business”—
- (a) by the repeal of paragraph (b) thereof and the substitution therefor of the following paragraph:—
 - “(b) finance business as defined in Finance Companies Act, No. 78 of 1988 or any Act enacted in place thereof;”;
 - (b) by the repeal of paragraph (k) thereof and the substitution therefor of the following paragraphs:—
 - “(k) any company, to whom a licence to carry on banking business under the Banking Act, No. 30 of 1988, is issued;
 - (l) any finance business carried on by any society registered under the Co-operative Societies Law, No. 5 of 1972 or any Act enacted in place thereof;
 - (m) any finance business carried on by the Samurdhi Authority of Sri Lanka, established by the Samurdhi Authority of Sri Lanka Act, No. 30 of 1995; and
 - (n) underwriting and placement of insurance as well as insurance intermediation by agents and brokers.”; and
- (4) in the definition of the expression “unlawful activity”—
- (a) by the repeal of paragraph (e) thereof and the substitution therefor of the following:—
 - “(e) the Exchange Control Act (Chapter 423) and any Rule, Order or Regulation made thereunder;”;
 - (b) by the repeal of paragraphs (j) and (k) thereof and the substitution therefor of the following paragraphs:—
 - “(j) any written law for the time being in force relating to offences connected with the trafficking or smuggling of persons;
 - (k) the Customs Ordinance (Chapter 235) and any Regulation, Rule or Order made thereunder;
 - (l) the Excise Ordinance (Chapter 52) and any Regulation, Rule or Order made thereunder;
 - (m) the Payment Devices Frauds Act, No. 30 of 2006 and any Regulation, Rule or Order made thereunder;
 - (n) the National Environmental Act, No. 47 of 1980 and any Regulation, Rule or Order made thereunder;
 - (o) an offence under any other written law for the time being in force which is punishable by death or with imprisonment for a term five years or more:

Provided however that, notwithstanding anything to the contrary in the preceding provision, any offence under sections 386, 388, 399 and 401 of the Penal Code (Chapter 19) shall be deemed to be an unlawful activity for the purposes of this Act; and
 - (p) an act committed within any jurisdiction outside Sri Lanka, which would either constitute an offence in that jurisdiction or which would if committed in Sri Lanka amount to an unlawful activity within the meaning of this Act.”.

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

Convention on the Suppression of Terrorist Financing (Amendment) Act, No. 41 of 2011

[Certified on 06th October, 2011]

AN ACT TO AMEND THE CONVENTION ON THE SUPPRESSION OF TERRORIST FINANCING ACT, NO. 25 OF 2005

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

1. This Act may be cited as the Convention on the Suppression of Terrorist Financing (Amendment) Act, No. 41 of 2011.
2. The following new section is hereby inserted immediately after section 2 of the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005 (hereinafter referred to as the "principal enactment") and shall have effect as section 2A of that enactment:-
 - 2A. (1) The provisions of this Act shall apply in relation to a person who being a citizen of Sri Lanka or a person who not being a citizen of Sri Lanka, commits an offence under this Act,
 - (a) while present in Sri Lanka; or
 - (b) outside Sri Lanka and such offence is an offence under the law for the time being in force, in the country in which such offence is committed.
 - (2) For the purpose of the implementation of the provisions of this Act, the expression "person" shall include a body of persons, whether corporate or unincorporated within or outside Sri Lanka."
3. Section 3 of the principal enactment is hereby amended as follows:-
 - (1) by the repeal of subsection (1) thereof and the substitution therefor of the following subsection:-

"(1) Any person who, by any means, directly or indirectly, unlawfully and wilfully provides or collects funds or property with the intention that such funds or property should be used, or in the knowledge that they are to be used or having reason to believe that they are likely to be used, in full or in part, in order to commit-

 - (a) an act which constitutes an offence within the scope of, or within the definition of any one of the Treaties specified in Schedule I hereto;
 - (b) any other act, intended to cause death or serious bodily injury, to civilians or to any other person not taking an active part in the hostilities, in a situation of armed conflict or otherwise and the purpose of such act, by its nature or context is to intimidate a population, or to compel a government or an international organization, to do or to abstain from doing any act; or
 - (c) any terrorist act,

shall be guilty of the offence of financing of a terrorist act, a terrorist or terrorists, or a terrorist organization:

Provided that, for an act to constitute the offence set out above, it shall not be necessary to show that the funds or property provided or collected were actually used in the commission of an offence.";
 - (2) in subsection (2) by the substitution for the words "the offence of financing of terrorists or terrorist organization" of the words "the offence of financing of a terrorist act, a terrorist or terrorists or a terrorist organization";
 - (3) by the insertion immediately after subsection (2) thereof of the following new subsection :—

"(2A) Any person who unlawfully and wilfully by any direct or indirect means provides or conspires to provide, material support or resources to any terrorist or terrorists or a terrorist organization shall be guilty of an offence under this Act:

Provided however that, providing assistance on humanitarian grounds by a person or body of persons, shall not amount to an offence within the meaning of this Act."
4. Section 4 of the principal enactment is hereby repealed and the following section is substituted therefor :—
 4. (1) A police officer not below the rank of an Assistant Superintendent of Police may, where there are reasonable grounds to believe that any person is involved in the commission of any act which

constitutes an offence under section 3 of this Act and it is necessary for preventing the commission of any further acts in connection with such offence, issue an Order (hereinafter referred to as a "Freezing Order") freezing all funds or property provided or collected in contravention of the provisions of section 3, any income or profit earned on such funds or property or any instrumentalities used in the commission of such offence.

- (2) The Freezing Order obtained under subsection (1) shall be issued on –
 - (a) the person who is believed to be involved in the commission of any act which constitutes an offence in terms of section 3; and
 - (b) on any other person or institution who or which may be required to give effect to such Order.
- (3) A Freezing Order issued under subsection (1) shall, subject to the provisions of section 4A, be in force for a period of seven days of the making thereof.
- (4) Any person who or institution which uses such fund, property, income, profit or instrumentality which is subject to a Freezing Order, in contravention of such Freezing Order issued on him or such institution, shall be guilty of an offence and shall on conviction after trial before the High Court be liable to a fine not exceeding one hundred thousand rupees or one and a half times the value of the money in such funds, property, income, profit or instrumentality which has been dealt with in contravention of the Freezing Order, whichever is higher or to imprisonment of either description for a period not exceeding one year or to both such fine and imprisonment."

5. The following new sections are hereby inserted immediately after section 4 of the principal enactment and shall have effect as sections 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H and 4I of that enactment :—

- 4A. (1) The police officer issuing the Freezing Order in terms of section 4 shall, within the seven days during which such Order shall be in force, make an ex parte application to the High Court seeking confirmation of such Freezing Order and also if the circumstances so necessitate, request an extension to the original period of seven days.
- (2) Where the High Court is satisfied that there is sufficient reason for the making of such Freezing Order, the Court may subject to any Orders which may be made under section 4E, confirm the Freezing Order and also grant the application made for the extension thereof, for such periods as it considers necessary:

Provided that the maximum period of any extension so granted shall not exceed three months at any given time and in any event shall not in the aggregate exceed a period of two years from the date of the issuing of the Freezing Order by the police officer:

Provided further that where indictment is filed for the commission of an offence under section 3 of this Act in respect of the fund, property, income, profit or instrumentality which is subject to the Freezing Order, such Freezing Order shall unless vacated by Court for reasons to be recorded, remain in force until the conclusion of the trial in respect of such offence, or where an appeal is preferred against a conviction for such offence, until the determination of the appeal.
- (3) Where the High Court confirms a Freezing Order under subsection (2) it shall cause a Notification of the Freezing Order to be published in at least one newspaper circulating in the Sinhala, Tamil and English languages, in order to facilitate bona fide third parties to make application to Court in support of their claims to the fund, property, income, profit or instrumentality which is subject to the Freezing Order.
- 4B. No transaction shall, except with the sanction of the Court as provided for in section 4C be effected in relation to such funds, property, income, profit or instrumentalities while the Freezing Order is in force and any transaction so effected shall be null and void.
- 4C. Where any legitimate business or other interests of any person affected by the Freezing Order could be damaged by the prohibition imposed thereby, such person may make an application to High Court stating such facts in support thereof, and the Court may, on a consideration of such application before it, if it is of opinion that such an Order could damage legitimate business or other interests of such person and that essential transactions relating to such funds, property, income, profit or instrumentalities as may have been prohibited by such Freezing Order may be legitimately carried out, confirm the Order made under section 4 and make further Order, sanctioning the carrying on of such transactions subject to the supervision and direction of, either a person appointed in that behalf by Court, or of a Receiver appointed in that behalf by Court under section 4D.

- 4D. Upon an application made in that behalf by a police officer not below the rank of an Assistant Superintendent of Police, the High Court may appoint a Receiver, in accordance with the provisions of the Civil Procedure Code (Chapter 101), to take possession of and otherwise deal with the fund, property, income, profit or instrumentality which has been subjected to the Freezing Order, in accordance with such directions as may be given by Court in that behalf.
- 4E. (1) Any police officer not below the rank of an Assistant Superintendent of Police shall take possession of, and otherwise deal with, any fund, property, income, profit or instrumentality which is subject to a Freezing Order, and the Court may on application made by the said police officer and for the purpose of determining who owns, possesses or is in control of such fund, property, income, profit or instrumentality to which the Freezing Order relates, order-
- (a) that any document relevant to –
- (i) identifying, locating or quantifying such funds, property, income, profit or instrumentalities;
 - (ii) establishing the ownership, possession or control of such funds, property, income, profit or instrumentalities;
 - (iii) obtaining any other information pertaining to such funds, property, income, profit or instrumentalities,
- be delivered forthwith to such police officer; and
- (b) that a named institution furnish to the Receiver all information obtained by the institution about any business transaction conducted by, or for, that person with the institution during such period before or after the date of such order, as the Court may direct.
- (2) Where it appears to the Court making an order under subsection (1) that any person has failed to or delayed in complying with or is otherwise obstructing the execution of, an order made under subsection (1), such Court may make order authorizing the police officer to enter and search any premises of that person, and remove any document, material or other thing therein for the purpose of executing such order.
- (3) Upon determining who owns, possesses or is in control of any funds, property, income, profit or instrumentalities to which the Freezing Order relates, the police officer shall report the same to the Court making the Freezing Order, along with all documents establishing and supporting such ownership, possession or control, as the case may be.
- 4F. (1) Subject to the provisions of subsection (4), where a person is convicted of an offence under section 3 of this Act, the Court convicting such person shall, make order that any funds or property provided or collected in contravention of the provisions of section 3, any income or profit earned on such funds or property or any instrumentalities used in the commission of such offence, be forfeited to the State, free from all encumbrances.
- (2) Where such funds, property, income, profit or instrumentalities cannot be found or traced the Court convicting such person shall order to pay to the State the equivalent value of such funds, property, income, profit or instrumentalities.
- (3) Where such person fails to pay such equivalent value, the Court, shall, in accordance with the provisions of the code of criminal procedure Act, No. 15 of 1979, order him to pay a such value fine within such period as may be specified by Court.
- (4) In determining whether an Order of Forfeiture should be made under subsection (1), the Court shall be entitled to take into consideration the fact whether such an Order is likely to prejudice the rights of a bona fide purchaser for value or any other person who has acquired, for value, a bona fide interest in such funds, property, any income or profit earned on such funds or property or such instrumentality.
- (5) An order made under subsection (1) shall take effect -
- (a) where an appeal has been preferred to the Court of Appeal or the Supreme Court against the Order of Forfeiture, upon the determination of such appeal confirming or upholding the Order of Forfeiture;
 - (b) where no appeal has been preferred to the Court of Appeal against the Order of Forfeiture within the period allowed therefor, after the expiration of the period within which an appeal may be preferred to the Court of Appeal, against such Order of Forfeiture.

- (6) For the purposes of subsection (1), the Court making the Order of Forfeiture may presume that any funds or property belonging to the person convicted of an offence under section 3 of this Act is derived or realized, directly or indirectly from the commission of such offence, if the value of such funds or property is not commensurate with the known sources of income of such person, and the holding of which cannot be explained on a balance of probabilities, to the satisfaction of the Court.
- 4G. (1) Any person, being a person to whom the provisions of section 3 do not apply, and who owns, possesses or is in control of any funds or property or any income or profit earned on such funds or property, or any instrumentalities, to which the Freezing Order made under section 4 relates, may within thirty days of the making of such Order apply to the Court making the same, seeking the intervention of Court to exclude from such Order any fund, property, income, profit or instrumentalities which such person owns, possesses or is in control of.
- (2) Where an application is made under subsection (1), the Court shall upon being satisfied on the information before Court that -
- such funds or property is not derived or realized directly or indirectly from the commission of such offence or such funds or property is not an instrumentality used in the commission of such offence;
 - the applicant was not in any way involved in the commission of an offence under section 3 in relation to which the Freezing Order was made;
 - the applicant had acquired an interest in such funds or property at any time prior to the commission of such offence, and the applicant was unaware of the fact that the defendant had used or had intended to use such funds or property in or in connection with the commission of such offence; or
 - the applicant had acquired an interest in such funds or property at the time of, or after the commission or alleged commission of the offence, and that such interest was acquired in circumstances which would not give rise to a reasonable suspicion that such fund or property was proceeds or instrumentalities of such offence,
- make order for the release of such fund, property income, profit or instrumentality which is the subject of the application before it, from the Freezing Order made under section 4, and restore the rights of the applicant in respect of the same.
- 4H. Where any fund, property, income, profit or instrumentality has been forfeited to the State under section 4F of this Act, the Court making the Order of Forfeiture may, appoint a Receiver in accordance with the provisions of the Civil Procedure Code (Chapter 101), to be in charge of the fund, property, income, profit or instrumentality so forfeited.
- 4I. The provisions of sections 4 to 4H of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction imposed upon the disclosure of information by any written law or otherwise, and accordingly any disclosure of information by any person in compliance with the provisions of sections 4 to 4H of this Act shall be deemed not to be a contravention of, any such obligation or restriction.”.
6. Section 5 of the principal enactment is hereby amended as follows:-
- by the repeal of subsection (1) thereof and the substitution therefor of the following subsection:-

“(1) On the conviction of any person under subsection (4) of section 3, the Court may order that any funds or property provided or collected in contravention of the provisions of section 3, any income or profit earned on such funds or property or any instrumentalities used in the commission of such offence, be forfeited to the State.”;
 - in subsection (2) thereof by the substitution for the words “Any funds forfeited to the State” of the words “Any funds, property, income profit or instrumentalities forfeited to the State”.;
 - by the repeal of subsection (3) thereof and the substitution therefor of the following subsection:-

“(3) Where the court is satisfied on the evidence adduced at a trial for an offence under subsection (1) or subsection (2) of section 3, that any funds, property, income, profit or instrumentalities standing to the credit of any account of any institution are the proceeds of such offence, it may, by written order prohibit the Head of such institution from permitting or allowing the withdrawal of any funds from such account, until the conclusion of the trial.”.

7. Section 6 of the principal enactment is hereby amended in subsection (2) of that section as follows:-
- (1) by the repeal of paragraph (a) thereof, and the substitution therefor of the following paragraph:-
“(a) any person who committed such act is present in Sri Lanka;”;
 - (2) by the insertion immediately after paragraph (e) thereof, of the following new paragraph:-
“(ee) the person in relation to whom the offence is alleged to have been committed is a national of a Convention State;”.
8. The following new section is hereby inserted immediately after section 16 of the principal enactment and shall have effect as section 16A of that enactment:-
- 16A. In this Act unless the context otherwise requires-
- “finance business” includes any one of the following business or activities:-
- (a) banking, as defined in the Banking Act, No. 30 of 1988, including the acceptance of deposits or other repayable deposits from members of the public;
 - (b) finance business as defined in the Finance Companies Act, No. 78 of 1988 or any Act enacted in place thereof;
 - (c) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
 - (d) financial leasing other than transactions relating to consumer products;
 - (e) the transfer of money or value;
 - (f) money and currency changing services;
 - (g) issuing and managing means of payment (i.e. credit cards, travelers’ cheques, money orders and bankers’ drafts and electronic money);
 - (h) issuing financial guarantees and commitments, including but not limited to, consumer credit, factoring with or without recourse and financing of commercial transactions including forfeiting;
 - (i) trading for its own account or for the account of customers in money market instruments (i.e. cheques, bills of exchange, certificates of deposit and derivatives), foreign exchange, exchange, interest rate and index instruments, commodity futures trading and transferable securities;
 - (j) participating in the issue of securities and the provision of financial services related to such issue;
 - (k) banking business carried on by a company, to whom a licence to carry on banking business is issued under the Banking Act, No. 30 of 1988;
 - (l) any finance business carried on by any society registered under the Co-operative Societies Law, No. 5 of 1972 or any Act enacted in place thereof;
 - (m) any finance business carried on by the Samurdhi Authority of Sri Lanka, established by the Samurdhi Authority of Sri Lanka Act, No. 30 of 1995; and
 - (n) underwriting and placement of insurance as well as insurance intermediation by agents and brokers;
- “funds or property” means-
- (a) any currency including also, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit; or
 - (b) any asset, whether-
 - (i) corporeal or incorporeal, movable or immovable, tangible or intangible;
 - (ii) kept or situated within or outside Sri Lanka,
 and where title or legal or equitable interest in such funds or property, or any income or proceeds of such funds or property, is evidenced by any legal document or instrument in any form whatsoever, including any electronic or digital form;
- “institution” means any person or body of persons engaged in or carrying on finance business;
- “material support or resources” includes any tangible, movable or immovable property or service, including currency

or monetary instruments or financial services, lodging, training, expert advice or assistance, safe houses, false documentation or identification, communications equipment or facilities, weapons, lethal substances, explosives, personnel and transportation, but shall not include medicines or religious material;

“person” includes a body of persons; and

“terrorist act” includes, the use of threat of action, which involves-

- (a) the use of threat of action which is designed to influence the government, or to intimidate the public or a section of the public;
- (b) the use of threat of action which is made for the purpose of advancing a political, religious or ideological cause,

and such action,

- (i) involves serious violence against a person;
- (ii) involves serious damage to property;
- (iii) endangers the life of another person, other than the person committing the action;
- (iv) creates a serious risk to health or safety of the public or a section of the public; or
- (v) is designed seriously to interfere with or seriously to disrupt an electronic system.”.

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

Finance Business Act, No. 42 of 2011

[Certified on 09th November, 2011]

AN ACT TO PROVIDE FOR THE REGULATION OF FINANCE BUSINESS AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

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

1. This Act may be cited as the Finance Business Act, No. 42 of 2011.

PART I

LICENSING OF FINANCE COMPANIES

2. (1) Subject to the provisions of section 3 of this Act, no person other than a person licensed under this Act shall carry on finance business.
- (2) No person, other than a person licensed to carry on finance business under this Act or a person exempted from the application of the provisions of this Act in terms of section 3, shall accept deposits.
- (3) A person shall not be eligible to be licensed as a finance company under this Act unless such person is a company registered under the Companies Act, No. 7 of 2007, and such company is not a company limited by guarantee, a private company, an offshore company or an overseas company within the meaning of the Companies Act, No. 7 of 2007.
- (4) Any person who contravenes the provisions of subsections (1) or (2) shall be guilty of an offence under this Act.
3. The provisions of this Act shall not apply to and in relation to any bank licensed under the Banking Act, No. 30 of 1988 or any institution, other than a finance company, exempted in terms of section 76A thereof or a co-operative society registered under a Statute of a Provincial Council, or any other institution exempted from the application of this Act by any written law for the time being in force.
4. An application for a licence shall be made in writing to the Board in such form as may be prescribed by rules and shall contain a declaration by the applicant company that the particulars stated in the application are, to the knowledge and belief of the applicant, true and accurate.

5. (1) Where an application is made to the Board for a licence under this Act, the Board may require the Director to make his recommendation in respect of the application and the Director may call for information as he may consider necessary and call for and examine or cause to be examined books, records and documents of whatever description, of the company applying for a licence and its holding company, any subsidiary company, any associate company or any subsidiary or associate company of its holding company or any other company that in the view of the Director, has a substantial financial interest or a significant management interest in the company applying for a licence and shall make his recommendation to the Board.
- (2) The Board may, at any time prior to issuing of a licence under subsection (3) to a company, cause such investigations as it may deem necessary to satisfy itself as to the suitability of the applicant company and may require the applicant company to satisfy the Board on any matter relevant to the suitability of the applicant company and in particular—
- (a) the veracity and validity of the documents and particulars submitted by the applicant company ;
 - (b) the financial status and history of the applicant company;
 - (c) the academic and professional qualifications, experience, financial standing and suitability of the Board of Directors, the Chief Executive Officer and key management personnel, as the Board may deem necessary;
 - (d) the adequacy of the capital of the applicant company or based on the information furnished by the applicant company, the ability of such company to raise adequate capital;
 - (e) the ability of the applicant company to cover all obligations and liabilities that may be incurred in the conduct of finance business of such company and to comply with the provisions of this Act; and
 - (f) the applicant company's compliance with the provisions of this Act or any direction given thereunder in relation to the application for a licence under this Act.
- (3) On consideration of an application made to the Board and the recommendations of the Director under subsection (1) and after such investigations under subsection (2) —
- (a) if the Board is satisfied that—
 - (i) the applicant company has a core capital of not less than two hundred million rupees or such other higher amount as may be determined by the Board in terms of subsection (1) of section 17;
 - (ii) the applicant company has the ability to comply with the directions and rules applicable to finance companies; and
 - (iii) the issue of a licence to the applicant company on the strength of the information made available to the Board, would not be detrimental to the interests of its creditors and other stakeholders,
 the Board may issue a license to the applicant company as a finance company to carry on finance business subject to such terms and conditions as the Board may deem fit;
 - (b) if the Board is satisfied that the issue of a licence to the applicant company would not be detrimental to the interests of its creditors and other stakeholders and that the applicant company has the potential to fulfil the requirements specified in sub-paragraphs (i) and (ii) of paragraph (a), the Board may grant provisional approval subject to such terms and conditions as the Board may deem fit; or
 - (c) if the Board is satisfied that the issue of a licence to the applicant company would be detrimental to the interests of its creditors and other stakeholders or to the interest and stability of the financial system, the Board may reject the application and issue such directions as it deems necessary.
- (4) The provisional approval granted under paragraph (b) of subsection (3) shall be valid for such period as may be determined by the Board. The Board may in exceptional circumstances extend the period of validity of a provisional approval: Provided however, the period of validity of the provisional approval shall not exceed eighteen months from the date on which the provisional approval was granted under paragraph (b) of subsection (3).
- (5) An applicant company to whom a provisional approval has been granted shall not commence finance business before being issued with a licence under this Act. Any prospectus or notice issued or any advertisement or other publication made by such company shall not state the fact that it has been granted provisional approval under paragraph (b) of subsection (3) unless such disclosure is required under any written law.

- (6) The Board may, withdraw the provisional approval:
- (a) if any information contained in the application for a licence or any information submitted in connection therewith by the applicant company is found to be false, incomplete or incorrect; or
 - (b) if having regard to any information made available to the Board it becomes apparent that the issue of a licence to the applicant company is detrimental to the interest and stability of the financial system.
- (7) The Board having considered the fulfillment of terms and conditions imposed under paragraph (b) of subsection (3) and information received after granting provisional approval and being satisfied that the licensing of the applicant company would not be detrimental to the interests of its creditors and other stakeholders or to the interest of financial system stability may issue a licence to the applicant company subject to such terms and conditions as the Board may deem necessary:
- Provided however, that the provisional approval shall not bind the Board to grant a licence to the applicant company.
- (8) Upon the issuance of a licence to an applicant company, the Board shall cause to be published in the *Gazette* and in at least one Sinhala, Tamil and English daily newspapers circulating in Sri Lanka, a notice informing the public that a licence has been issued to such applicant company authorizing it to carry on finance business.
- (9) Any person who submits information in an application for a licence or in any other document submitted in connection therewith or in the course of any inquiry or investigation conducted to ascertain the suitability of the company to be issued with a licence under this Act, which is false, incomplete or incorrect, shall be guilty of an offence under this Act.
6. Every finance company licensed under this Act, shall pay an annual licence fee in such amount as may be prescribed by rules.
7. (1) The Board shall keep and maintain in such form as may be prescribed by rules a Register of Finance Companies licensed under this Act.
- (2) The Board may from time to time cause to be published a notice containing the names of finance companies licensed under this Act, in a manner and form as the Board deems fit and it may also include the supervisory rating of those companies.
8. Every finance company shall exhibit its licence at all times in the principal office or place of business of such finance company and a copy of such licence at each of its branches.
9. (1) Where any finance company licensed under this Act has ceased to carry on finance business, a notice of such cessation shall be given to the Board forthwith upon such cessation by such company.
- (2) On receipt of a notice of cessation under subsection (1), the Board may issue to such finance company directions for winding up or for divesting the finance business of the finance company or for the settlement in such manner as may be specified by the Board of the deposit liabilities of the finance company and such other directions incidental thereto.
- (3) Where the Board has reasonable grounds to believe that any finance company licensed under this Act is not carrying on finance business, the Board may send to such company a notice by registered post requiring such company to furnish proof, within two weeks from the date of such notice, that it has not ceased to carry on finance business. After the expiration of two weeks from the date of such notice or in the event of the company furnishing proof after considering such proof, the Board may withdraw such notice, or may issue to such finance company directions for winding up or for divesting the finance business of the finance company or for the settlement in such manner as may be specified by the Board of the deposit liabilities of the finance company and such other directions incidental thereto.
- (4) Where a finance company fails to comply with directions issued under subsections (2) or (3) within the period specified by the Board, which period may be extended by the Board in exceptional circumstances having considered the steps taken by the finance company to comply with such directions, the Board may require the Director to file action for winding up of the finance company and the provisions of section 32 shall apply thereto.
10. (1) A finance company shall have as part of its name, the word "finance", "financing" or "financial" or any of its transliterations, or their equivalent in any other language. Any finance company which does not have in its name, the word "finance", "financing" or "financial" or any of its transliterations, or their equivalent in any

other language in its name, shall forthwith take such steps as are necessary to change its name to include the word "finance", "financing" or "financial" or any of its transliterations or their equivalent in any other language in its name, within six months from the date of commencement of operation of this Act.

- (2) No person other than a finance company and an institution specified in subsection (6) shall, except with the prior written approval of the Board, use the word "finance", "financing" or "financial" alone or in combination with another word or any of its derivatives or its transliterations or their equivalent in any other language, as part of the name or the description or the business name of such person.
- (3) Subject to the provision of subsections (1) and (6), any person who uses the word "finance", "financing" or "financial" or any of its derivatives or its transliterations, or their equivalent in any other language as part of the name or the description or the business name of such person, unless it has obtained the written approval of the Board, shall change such name or such description or such business name by deleting the word "finance", "financing" or "financial" or any of its derivatives or its transliterations, or their equivalent in any other language, from such name or such description or such business name within six months from the date of commencement of operation of this Act.
- (4) The Director may require the Registrar General of Companies, the Registrar of Voluntary Social Service Organizations, Registrars of Business Names of Sri Lanka and any other relevant authority to furnish information of the bodies corporate or unincorporate using the word "finance", "financing" or "financial" or any of its derivatives or its transliterations, or their equivalent in any other language, in the name or the description or the business name of such bodies which are established or registered under such authority and such Registrar or Authority shall furnish the information as required by the Director.
- (5) The Board may, in the public interest, where any person uses the word "finance", "financing" or "financial" or any of its derivatives or its transliterations, or their equivalent in any other language as part of the name or the description or the business name of such person in contravention of the provisions of this section and notwithstanding that any action has been or is to be taken under the provisions of any other section of this Act in respect of such contravention, publicise by any means whatsoever :—
 - (a) in the case of an incorporated body of persons, the name, description and address of such incorporated body and the names and addresses of the directors of such incorporated body;
 - (b) in the case of an unincorporate body of persons, the name, description and address of such body and if the Board thinks fit the names and addresses of the members of such body; and
 - (c) in the case of an individual the name and address of such individual and his description or business name or both his description and business name,

and that such person is not authorized to use any of the words "finance", "financing" and "financial" or any of its derivatives or its transliterations or their equivalent in any other language as part of the name or the description or the business name of such person.
- (6) Nothing in this section shall apply to -
 - (a) a company which is required by the Board to have as part of its name the word "finance", "financing" or "financial" or its transliterations, or their equivalent in any other language in its name;
 - (b) an association of finance companies formed for the protection of their interests;
 - (c) a trade union registered under the Trade Union Ordinance (Chapter 138), which is an association or combination of workers who are employees of a finance company;
 - (d) an institution in respect of which such usage is established or recognized by law or international agreement; and
 - (e) a body corporate which exclusively provides educational or consultancy services.
- (7) The Board may introduce a logo or a sign to be used by every finance company. No person other than a finance company shall use such logo.

11. (1) No company, proprietorship, partnership or other entity shall without the prior written approval of the Director, be registered under any written law with a name that contains as part of it, the abbreviated name or acronym of any finance company:

Provided however, the provision of this subsection shall not be construed in such manner as would affect the powers conferred on the Registrar General of Companies in terms of section 7 and 10 of the Companies Act, No. 7 of 2007.

- (2) No person other than the respective finance company shall use the name, abbreviated name or acronym of a finance company, in any of its advertisements promoting its business without the prior written approval of the Director.

PART II

DIRECTIONS, RULES AND REQUIREMENTS ON FINANCE COMPANIES

12. (1) Notwithstanding the provisions of any other law, the Board may give directions to finance companies or to any group or category of finance companies regarding the manner in which any aspect of the business and corporate affairs of such finance companies are to be conducted and, in particular -
- (a) the terms and conditions under which deposits may be accepted by such companies, 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 company in the name of one person in one or more accounts;
 - (b) the terms and conditions under which any loan, credit facility or any type of financial accommodation may be granted by such companies, 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 companies 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 companies;
 - (e) the maximum permissible maturities for loans, credit facilities or other types of financial accommodation and investments made by such companies, and the nature and amount of the security that may be required or permitted for various types of lending, credit and investment operations;
 - (f) the form and manner in which books of accounts or other records or documents are to be maintained by such companies;
 - (g) the exclusion from the income of such companies in whole or in part, unpaid interest in respect of loans granted, if such loans have become overdue;
 - (h) the minimum ratio which the liquid assets of such companies should bear to the total deposit liabilities of such companies;
 - (i) the maintenance of cash balances by finance companies with the Central Bank if so required by the Board, and the minimum ratio of such cash balances should bear to the deposit liabilities of finance companies;
 - (j) conditions which should be applicable to withdrawal by depositors of deposits before maturity;
 - (k) prohibiting such companies from increasing the amount of their loans, credit facilities, other types of financial accommodation or investments;
 - (l) fixing the limits to the rate at which the amount of any loans, investments or financial accommodation made or granted by such companies may be increased within specified periods;
 - (m) requiring such companies to decrease the amount of their loans, investments or financial accommodation to specified limits within a specified period;
 - (n) the maximum percentage of the share capital in a finance company which may be held –
 - (i) by a company, an incorporated body, or an individual; and
 - (ii) in the aggregate by-
 - (a) a company and one or more of the following:-
 - (aa) its subsidiary companies;
 - (bb) its holding company;
 - (cc) a subsidiary company of its holding company; or
 - (dd) a company in which such company or its subsidiary company, or its holding company, or a subsidiary company of its holding company has a substantial interest; or

- (b) an individual and one or more of the following:-
 - (aa) his relative;
 - (bb) a company in which he has a substantial interest or in which his relative has a substantial interest;
 - (cc) a subsidiary company of such company;
 - (dd) the holding company of such company;
 - (ee) a subsidiary company of such company's holding company;
 - (ff) a company in which such company, or its subsidiary company, or its holding company, or a subsidiary of its holding company has a substantial interest; or
 - (gg) an incorporated body, other than a company, in which such individual or his relative has a substantial interest; or
 - (c) companies in each of which an individual or a company as the case may be, has either directly, indirectly or beneficially a substantial interest or significant management interest;
 - (o) the margins to be maintained by such companies in respect of secured accommodations;
 - (p) restriction on the types of activities that may be carried on by finance companies;
 - (q) payment to directors or employees of such companies by way of salary, allowance, perquisites, reimbursement of expenses, terminal benefits, gratuity and other superannuation payments;
 - (r) the amount of core capital to be maintained by a finance company;
 - (s) the academic and professional qualifications and experience required of directors, the chief executive officer and key management personnel of a finance company;
 - (t) composition and the constitution of the quorum of the Board of Directors of such companies;
 - (u) requirement for obtaining prior approval of the Board for appointing, electing or nominating directors of such companies;
 - (v) requirement for obtaining prior approval of the Director for appointing the chief executive officer of a finance company;
 - (w) terms, conditions and procedures to be followed by such companies in the acquisition of real estate, and pricing thereof;
 - (x) formation of subsidiary and associate companies by such companies;
 - (y) submission of a bank guarantee by a finance company for such value and on such terms as may be determined by the Board to ensure the payment of any penalty that may be imposed by the Board under this Act.
- (2) A direction issued under subsection (1) shall have effect notwithstanding that such direction will require a finance company to effect a change in the nature or amount of any of its assets or liabilities, whether acquired or incurred before or after the date of the coming into operation of this Act:
- Provided that, a finance company required to effect a change as stated above, shall be allowed a period of twelve months from the date of such direction within which to effect such change, or such longer period as may be granted by the Board for such purpose.
- (3) In order to comply with a direction issued to it under paragraph (n) of subsection (1), a finance company may direct a person holding shares in such finance company to reduce within such period as specified in such direction, the number of shares held by such person in such finance company, whether such shares were acquired by such person before or after the date of commencement of this Act. It shall be the duty of such person to comply with such direction.
- (4) The Board may in its discretion pay interest on any cash balance maintained by a finance company in the Central Bank in pursuance of a direction issued to it under paragraph (i) of subsection (1), at such rate as may be determined by the Board.
- (5) The Board may give directions where necessary to any finance company in particular on such matters as are specified in subsection (1).

- (6) In order to ensure the soundness of the financial system, the Board may issue directions to holding companies, subsidiaries and associate companies of finance companies regarding the manner in which any aspect of the business of such companies is to be conducted.
13. The Board may issue guidelines to the Director relating to the manner of monitoring compliance with the directions issued under subsections (1) and (2) of section 12 and authorize the Director to direct finance companies to comply with such directions either forthwith or within such period as may be specified by the Director.
14. (1) If any finance company fails to comply with any direction issued under subsection (1) or (2) of section 12, the Director shall report such fact to the Board unless otherwise provided for in any guidelines issued under section 13 and the provisions in section 25 of this Act shall apply in such event.
- (2) If any finance company fails to comply with any direction issued by the Director in terms of the guidelines issued by the Board under section 13, the Director shall report such fact to the Board and the provisions in section 25 of this Act shall apply in such event.
15. The Director may with a view to ascertaining the manner in which business and corporate affairs of a finance company are being conducted or for any other specified purpose, direct any finance company to submit documents and information in the manner, in such form and at such intervals or at such times as shall be specified in such direction.
16. (1) The Board may make rules on any matter in respect of which rules are authorized to be made under this Act, or which is stated or required to be prescribed.
- (2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Board may make rules in respect of all or any of the following matters:-
- (a) licensing of finance companies and the annual licence fees payable to the Board by finance companies;
- (b) the forms to be used under this Act;
- (c) the regulation or the prohibition of the issue by any finance company of any prospectus or advertisement relating to any aspect of finance business, and the conditions subject to which, any such prospectus or advertisement may be issued.
- (3) Every rule made by the Board under this Act shall be published in the *Gazette*.
17. (1) The Board may, from time to time determine the minimum amount of core capital that a company shall have for licensing under this Act:
- Provided however, such amount determined by the Board shall not be less than two hundred million rupees.
- (2) A finance company shall at all times maintain its core capital at a level not less than the amount it had at the time of being licensed as a finance company:
- Provided however, that in the event the Board has issued a direction stipulating a higher amount of core capital or maintenance of core capital in relation to assets or liabilities of a finance company in terms of section 12 of this Act, a finance company shall maintain its core capital in conformity with such direction.
18. (1) A finance company shall at all times maintain a Reserve Fund. Every finance company shall after the payment of tax in respect of each year, but before any dividend is declared, transfer to the Reserve Fund such part of its net profit as the Board may direct.
- (2) A finance company shall not without the prior written approval of the Board reduce or impair its capital or such amount as is lying in its Reserve Fund.
19. A finance company shall at all times carry on its business in such manner so as to safeguard the interests of its depositors and shall take all such measures as are reasonably necessary to repay or pay on the due dates as the case may be, the deposits or interest thereon to its depositors.
20. (1) Where any finance company fails to repay a deposit or fails to pay interest thereon to a depositor, on demand or if a date of maturity is agreed upon at the time of deposit, on or after such date of maturity, every director, manager or secretary of such company shall be guilty of an offence under this Act:
- Provided however that, no such director, manager or secretary shall be guilty of an offence if he proves that

such offence was committed without his knowledge, and that he exercised all due diligence to prevent the commission of that offence.

- (2) Any depositor whose deposit and interest has not been paid on demand or at maturity in terms of subsection (1), may institute proceedings in the Magistrate's Court in terms of section 136 of the Code of Criminal Procedure Act, No. 15 of 1979.

21. (1) A person shall be disqualified from being appointed or elected, as the case may be, as a director, chief executive officer, secretary or key management personnel of a finance company or from holding such post if such person-
- (a) has been declared an undischarged insolvent or a bankrupt, by any court in Sri Lanka or abroad;
 - (b) has been convicted by any court for an offence involving moral turpitude;
 - (c) has been convicted by any court for any offence under this Act or the Companies Act, No.07 of 2007;
 - (d) is a person against whom action has been taken by the Board under section 51 of this Act;
 - (e)
 - (i) is being subjected to any investigation or inquiry in respect of an act of fraud, deceit, dishonesty or other similar criminal activity, conducted by the police, any regulatory or supervisory authority, professional association, commission of inquiry, tribunal, or any other body established by law, in Sri Lanka or abroad;
 - (ii) has been found guilty in respect of an act of fraud, deceit, dishonesty or other similar criminal activity, by any regulatory or supervisory authority, professional association, commission of inquiry, tribunal, or any other body established by law, in Sri Lanka or abroad, at any time during the period of fifteen years immediately prior to being so appointed or elected;
 - (f)
 - (i) is being subject to court proceedings for an offence involving an act of fraud, deceit, dishonesty or other similar criminal activity;
 - (ii) has been convicted by any court for an offence involving an act of fraud, deceit, dishonesty or other similar criminal activity at any time during the period of fifteen years immediately prior to being so appointed or elected;
 - (g) has been removed or suspended by a regulatory or supervisory authority from serving as a director, chief executive or other officer in any bank, finance company or corporate body in Sri Lanka or abroad;
 - (h) has been declared by a court of competent jurisdiction to be of unsound mind;
 - (i) has been determined by the Board -
 - (i) as having carried on finance business-
 - (a) in contravention of subsection (1) of section 2 of this Act; or
 - (b) in contravention of subsection (1) of section 2 of the Finance Companies Act, No. 78 of 1988 (prior to its repeal); or
 - (ii) as having accepted deposits in contravention of subsection (2) of section 2 of this Act; or
 - (j) has been a director, chief executive or held any other position of authority in any body corporate or unincorporate body which the Board has determined as having carried on finance business in contravention of subsection (1) of section 2 of this Act or subsection (1) of section 2 of the Finance Companies Act, No. 78 of 1988 (prior to its repeal) or having accepted deposits in contravention of subsection (2) of section 2 of this Act.
- (2) If the Board so determines, any person who has been a director, chief executive officer or held any other position of authority in any bank, finance company or financial institution whose licence or registration has been cancelled, shall be disqualified from being appointed or elected as the case may be, as a director, chief executive officer, secretary or key management personnel of a finance company or from holding such post.
- (3) Any person who acts as a director, chief executive officer, secretary or key management personnel of a finance company while being under any disqualification set out in subsection (1), shall be guilty of an offence under this Act.

22. (1) The Director may require any director, manager, employee of a finance company to make a declaration of his assets and liabilities to the Director as at a date and in such form as may be specified by the Director.
- (2) In requiring a declaration under subsection (1) the Director may also require the details of increase and decrease in liabilities and acquisition and disposal of assets for a particular period.
- (3) For the purpose of this section “assets and liabilities” means assets and liabilities within and outside Sri Lanka, and includes immovable and movable property owned by the declarant or a relative in whole or in part and any property in which the declarant or a relative has a beneficial interest.
23. (1) Where an owner of a deposit or a holder of a valid Power of Attorney of the owner in respect of such deposit:-
- (a) has not transacted with the finance company either by making a deposit or withdrawal; and
- (b) has not had any correspondence with the finance company,
- for a period not less than ten years, such deposit shall be considered to be a dormant deposit:
- Provided, that in relation to a deposit owned by a person who has not attained the legal age of majority the aforesaid period of ten years in respect of such deposit shall commence only upon such person attaining the legal age of majority.
- (2) Any finance company holding any dormant deposit referred to in subsection (1), shall make a report to the Board stating the nature of the deposit in such manner and time as may be required by the Board.
- (3) The Board may direct a finance company to take such action as it deems necessary in respect of dormant deposit reported by such finance company. Notwithstanding anything to the contrary in any other written law, all monies in such deposit shall, if the Board so directs, be transferred by the finance company to a special account in the Central Bank and may be utilized by the Board for such purposes as may be determined by the Board.
- (4) Any dormant deposit included in the report of a finance company and which does not fall under subsection (3) shall be referred by the Board to the Minister who shall issue such instructions as he considers appropriate in the circumstances.
- (5) Within thirty days from the submission of the report required by subsection (2), the relevant finance company shall publish a notice in at least one Sinhala, Tamil and English daily newspapers circulating in Sri Lanka stating the name of the owner and particulars with regard to such deposit and shall dispatch, by registered post a notice to the owner to his last known address containing particulars of such deposit, provided that the Board may exempt the finance company from the mailing of such notice upon the finance company showing reasonable cause therefor.
- (6) The Central Bank shall where any person furnishes proof to the satisfaction of the Board, that any monies lying to his credit in his name with any finance company or in the name of a person from whom he derives title have been transferred to a special account in the Central Bank under subsection (3) subject to such terms, conditions or restrictions as may be imposed in respect of such monies, by or under any written law, repay to such person such monies, either with interest payable on such monies up to the date of repayment at such rate as the Board may, from time to time determine or if the Board so determines without such interest.

PART III

EXAMINATIONS AND SUPERVISORY ACTIONS ON FINANCE COMPANIES

24. (1) The Director by himself, or by any officer of the Central Bank or any other person, authorized on that behalf by the Director, may examine the books and accounts of every finance company at least once in each examination period, and may make such further examinations in respect of any specified finance company as the Director may deem fit and for such purpose, may do one or more of the following-
- (a) require any finance company, or a director, secretary, manager, employee, auditor, agent or contractor of any finance company to furnish him within such period and in such manner or form as he may specify, information as he considers necessary;

- (b) require any finance company or a director, secretary, manager, employee, auditor, agent or contractor of any finance company to produce for inspection books, records, files, registers, and such other documents, maintained in print, electronic or any other form, of such finance company and to provide authenticated copies in any form as required of such books, records, files, registers and such other documents;
- (c) enter the premises or storage area of any finance company, and notwithstanding anything to the contrary in any other written law, examine books, records, files, registers, and such other documents, maintained in print, electronic or any other form, of such finance company and may obtain copies, authenticated or otherwise, in any form of such books, records, files, registers and such other documents:

Provided however, if the Director receives reasonable information that the books, records, files, registers and such other documents, maintained in print, electronic or any other form, of a finance company are kept at any place other than the places specified above, the Director or any person authorized by the Director shall have the power to enter and examine such other place and examine such books, records, files, registers and such other documents and if necessary obtain copies, authenticated or otherwise, thereof in any form as required:

Provided further, if the Director believes that there will be resistance or obstruction for such entering or search or there will be concealment of information, he may obtain a warrant from a Magistrate to enable him or any person authorized by the Director to enter upon and search such place specified in such warrant and may take into custody of the Director or the person so authorised any books, records, files, registers and such other documents, maintained in print, electronic or any other form, and electronic devices containing relevant information. The Director may when entering upon, any such place obtain the assistance of the office-in-charge of the police station within whose area of jurisdiction such place is situated.

For the purposes of this paragraph any person who is not an officer of the Central Bank when entering the premises of such finance company shall be accompanied by the Director or an officer of the Central Bank authorized by the Director.

- (d) require the holding company, any subsidiary or associate company of any finance company, or any subsidiary or associate company of the holding company of any finance company, or any other company that in view of the Director has a substantial financial interest or significant management interest in any finance company to furnish information as the Director may consider necessary and to produce for inspection books, records, files, registers and such other documents, maintained in print, electronic or any other form, of such company at such time, date and place and in a manner or form as the Director may specify and to provide in any form as required, authenticated copies of such books, records, files, registers and such other documents;
 - (e) require any finance company or a director, manager, employee, agent, contractor or secretary of any finance company to submit the accounts of such finance company, furnish such information and produce such books, records, files, registers, and such other documents, maintained in print, electronic or any other form, for audit by an auditor authorized by the Director;
 - (f) question and record statements of or if necessary direct, any director, shareholder, secretary, manager, employee, agent, auditor or contractor of any finance company or 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 finance company to submit answers to the questions raised by way of an affidavit or if necessary administer oath or affirmation in accordance with the Oaths or Affirmations Ordinance (Chapter 17) and cause questions to be asked of and record or cause the recording of statements;
 - (g) 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 finance company and if required summon such person for an interview.
- (2) A Report on such examination shall be furnished to the Board by the Director after the examination is completed.
 - (3) The Board may recover the costs of such examination from the finance company.
 - (4) It shall be the duty of every person to comply with any requirement imposed on him under this section. Any person who-
 - (a) fails to provide any information or produce for inspection any book, record, file, register or such other document, material or object required under this section;

- (b) fails to attend in person when summoned for an interview;
 - (c) provides false, incomplete or incorrect or misleading information, book, record, file, register or such other document, material or object; or
 - (d) obstructs the Director or any other person authorized by the Director under subsection (1) in the performance of any function under subsection (1),
- shall be guilty of an offence under this Act.

(5) In this section "examination period" means a period as may be fixed for the purpose by the Board.

25. (1) Where the Board, on a report made under section 14 or subsection (2) of section 24 by the Director, is of the opinion that a finance company-
- (i) is carrying on or is likely to carry on, its business following unsound or improper financial practices, which are detrimental to the interest of its depositors and other creditors; or
 - (ii) 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-
- (a) impose a penalty not exceeding five hundred thousand rupees payable within such period as may be specified by the Board;
 - (b) direct such finance company to cease any such practice;
 - (c) direct such finance company to comply with the provisions of this Act or direction, rule, order or requirement made or imposed thereunder which such finance company has failed to comply with, forthwith or within such period as may be specified by the Board;
 - (d) direct such finance company to take necessary action to correct the conditions resulting from such practice or contravention;
 - (e) publish the name of the finance company as a finance company regarding which the Board has serious supervisory concerns;
 - (f) appoint a person to manage the affairs of such finance company with regard to the proper conduct of the business of such finance company;
 - (g) appoint an officer of the Central Bank as its representative in such finance company to monitor the affairs of such finance company and carry on such other functions on terms of reference as may be determined by the Board;
 - (h) restrain any director, manager or controller of the finance company from carrying out any function in or in relation to the finance company;
 - (i) remove any director, manager or employee of the finance company;
 - (j) re-organize the finance company, by arranging for the increase of its capital or reconstituting its Board of Directors or taking both such measures;
 - (k) require the reduction of the number of shares held in the finance company by any person;
 - (l) provide for such arrangements as are necessary for the amalgamation of the finance company with another finance company or any other institution, with the consent of such other finance company or institution;
 - (m) notwithstanding the provisions of any other written law, review any contract entered into by a depositor with the finance company and vary the terms of such contract, including the terms relating to repayment, interest rates and charges where it considers that such contract has been entered into without due regard to the interests of depositors or other creditors of the finance company or due regard to prudent commercial practice;
 - (n) notwithstanding the provisions of any other written law, review any agreement or contract entered into by the finance company, with any person and if upon such review, it appears to the Board that the agreement or contract has been entered into without due regard to the interest of the depositors and other creditors of the finance company or without due regard to prudent commercial practice, vary the terms of such agreement or contract.
- (2) Any finance company dissatisfied with a direction given under paragraphs (b), (c) or (d) of subsection (1), may, before the expiry of thirty days from the date of the issue of such direction, appeal in writing to the Board and

the Board shall render its decision within thirty days of receipt of such appeal.

- (3) The Director may make an application to the Magistrate to impound the passport of any director or key management personnel of a finance company in an event where such finance company has violated the provisions of this Act and the Director has reasons to believe that such director or key management personnel is responsible for such violation.

PART IV

FINANCIAL STATEMENTS AND AUDIT OF FINANCE COMPANIES

26. Every finance company shall prepare at the expiration of each financial year a complete set of financial statements including-
- (a) a balance sheet as at the end of such financial year; and
 - (b) an income statement in respect of such financial year.
27. (1) The balance sheet of a finance company shall set out the state of affairs of such company as at the end of the financial year to which such balance sheet relates.
- (2) Unless the Board otherwise requires there shall be shown in the balance sheet or in any statement annexed thereto-
- (a) capitalized expenses not represented by tangible assets under separate headings, so far as they are not written off;
 - (b) the market value of investments;
 - (c) the method adopted to value fixed assets if there had been any valuation of such assets during the financial year;
 - (d) the aggregate amounts of advances after the provision for bad and doubtful debts;
 - (e) any increase or decrease in the provision for depreciation, renewals, or diminution in the value of fixed assets;
 - (f) the sources and application of funds;
 - (g) reserves, provisions and liabilities distinguishable from each other;
 - (h) changes in equity;
 - (i) except in the case of the first balance sheet of the finance company, the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet.
28. Unless the Board otherwise requires there shall be shown in the income statement of a finance company or in any statement annexed thereto-
- (a) the amount charged to revenue by way of provision for depreciation, renewals, or diminution in value of fixed assets;
 - (b) the amount charged to revenue for Sri Lanka income tax and other Sri Lanka taxation on profits and distinguishable from such accounts, the amounts, set aside, or proposed to be set aside, for liabilities in respect of tax due in the current year of taxation or a succeeding year;
 - (c) the aggregate amount of dividends paid or proposed to be paid;
 - (d) the amount of remuneration of auditors;
 - (e) the amount charged to revenue representing the aggregate amount of the emoluments of directors;
 - (f) the amount set aside or proposed to be set aside to, or withdrawn from reserves;
 - (g) under separate headings, the profit or loss or the income and expenses arising from transactions such as are not usually carried on by the finance company and are carried on owing to circumstances of an exceptional or non-recurrent nature or by a change in the basis of accounting;
 - (h) except in the case of the first income statement of the finance company, the corresponding amount for the immediately preceding financial year for all items shown in the income statement.

29. (1) Every finance company shall transmit to the Director within three months after the closure of each financial year -
- (a) the audited income statement of the company for that financial year;
 - (b) the audited balance sheet of the company as at the end of the financial year;
 - (c) the auditor's report in respect of the documents referred to in paragraphs (a) and (b) above; and
 - (d) the report by the directors relating to the state of the affairs of the finance company attached to the balance sheet.
- (2) Every finance company shall publish at least once in a Sinhala, Tamil and English daily newspapers circulating in Sri Lanka within three months after the closure of each financial year, the documents specified in paragraphs (a), (b) and (c) of subsection (1).
- (3) Every finance company 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.
- (4) The Board may specify the form of the balance sheet and income statement referred to in this section and where such form is specified, the balance sheet and income statement of every finance company shall be prepared in such form.
- (5) Every finance company shall publish its key financial data and key performance indicators in respect of the period of six months immediately following from the end of its each financial year, in such form and within such period as may be specified by the Director.
30. (1) The auditor of a finance company shall inspect the accounts, the finances, the management of the finances and the property of that finance company. The auditor shall as far as possible, and where necessary, examine-
- (a) whether the conduct of the affairs of the finance company has been in accordance with the laws for the time being in force relating to the conduct of finance business by finance companies and rules and directions issued by the Board;
 - (b) whether records relating to the acceptance of deposits and maintaining of accounts are satisfactory;
 - (c) whether the accounting systems, procedures, books, records and other documents have been properly and adequately designed from the point of view of financial control purposes and from the point of view of the presentation of information to enable continuous evaluation of the activities of the finance company and whether such systems, procedures, books, records and other documents are in effective operation;
 - (d) whether the accounts audited have been so designed as to present a true and fair view of the affairs of the finance company in respect of the period under consideration due regard being had to principles of accountancy, financing and valuation.
- (2) The Board may having regard to the need to ensure that competent and qualified auditors are engaged in auditing the accounts of finance companies issue guidelines in that respect to the Director who shall select from time to time in accordance with such guidelines, such number of qualified auditors to audit the accounts of finance companies and transmit a list of the qualified auditors so selected to all finance companies.
- (3) The Board may issue directions regarding the rotation of auditors of finance companies.
- (4) It shall be the duty of each finance company to select its auditors for the purpose of auditing its accounts from and out of the list transmitted under subsection (2) and to comply with directions issued in terms of subsection (3).

PART V

REGULATORY AND RESOLUTION ACTIONS ON FINANCE COMPANIES

31. (1) Where the Director is satisfied after examination by himself or by any officer of the Central Bank or any other person, authorized on that behalf by the Director, or upon information received from the finance company, that it is insolvent or is likely to become unable to meet the demands of its depositors or that its continuance in business is likely to involve loss to its depositors or other creditors, the Director

shall make a report accordingly to the Governor of the Central Bank for submission to the Board; and if the Board, upon review of the facts and circumstances, is of opinion that action should be taken as hereinafter provided, the Board may make an order directing the company forthwith to suspend business and directing the Director to take charge of all books, records and assets of the company, and to take such measures as may be necessary to prevent the continuation of business by the company.

- (2) Any director, manager, secretary or employee of the finance company or any other person having in his possession or custody any books, records or assets of the company, who fails to hand over the same to the Director or to an officer of the Central Bank or to any other person, authorized on that behalf by the Director, or any person who obstructs or resists the Director or an officer of the Central Bank or any other person, authorized on that behalf by the Director from taking charge of any books, records or assets of the company or from taking such other measures as the Director may consider necessary to prevent the continuation of business by the company, shall be guilty of an offence under this Act.
- (3) Where any loss or damage is incurred or is likely or alleged to have been incurred by reason of any order made in good faith under subsection (1) no action or proceeding may be instituted in a court for securing review or revocation of such order or recovery of such loss or damage unless it can be proved that such order was not made in good faith.
- (4) The Board may take such steps as it may consider necessary for enabling the continuation of recovery of debts of the finance company and for such purpose shall have the power to open bank accounts in the name of the finance company to enable the debtors to make payments to the finance company.
- (5) Any order of suspension made by the Board in respect of any finance company under this section shall cease to have effect upon the expiration of a period of six months from the date on which it is made and it shall be the duty of the Board as soon as practicable-
 - (a) make order permitting the company to resume business, either unconditionally or subject to such conditions as the Board may consider necessary in the public interest, or in the interest of the depositors and other creditors of the company; or
 - (b) cause the Director to make application as hereinafter provided to a competent court for the winding up of the finance company and notify such company accordingly. Where a finance company is so notified, the company shall not resume business unless an order to do so is made by a Court,

without prejudice to the generality of the powers conferred by paragraph (a) and notwithstanding anything to the contrary in any other written law or the memorandum and articles of association of the company, the Board may, as a condition of permitting the company to resume business, remove any director, manager or employee of such company where it is of the view that the continuance of such director, manager or employee in the company is detrimental to the interests of its depositors and other creditors and appoint any person as a director, manager or an employee of such company.

- (6) Notwithstanding anything to the contrary in any other written law or the Memorandum and Articles of Association of a finance company, the Board, may where an order has been made by the Board under paragraph (a) of subsection (5), do one or more of the following -
 - (a) make such arrangements as it considers necessary for the amalgamation of the finance company with another finance company or any other institution, with the consent of such other finance company or institution;
 - (b) re-organise the finance company by increasing its capital and arranging for new shareholders;
 - (c) reconstruct the finance company in any manner as it deems necessary in the interest of depositors and other creditors of such finance company;
 - (d) appoint a person to manage the affairs of such finance company with regard to the proper conduct of the business of such finance company;
 - (e) restrain any director, manager or controller of the finance company from carrying out any function in or in relation to the finance company;
 - (f) remove any director, manager or employee of the finance company;
 - (g) reconstitute the Board of Directors of the finance company;
 - (h) review any contract entered into by a depositor with the finance company and vary the terms of such

contract, including the terms relating to repayment, interest rates and charges where it considers that such contract has been entered into without due regard to the interests of depositors or other creditors of the finance company or due regard to prudent commercial practice;

- (i) review any agreement or contract entered into by the finance company, with any person and if upon such review, it appears to the Board that the agreement or contract has been entered into without due regard to the interest of the depositors and other creditors of the finance company or without due regard to prudent commercial practice, vary the terms of such agreement or contract;
- (ii) direct any shareholder of the finance company to divest or transfer the ownership of the shares owned by him, to a person nominated by the Board, on payment by such person of compensation as follows:-
 - (i) where such shares are quoted, at the market value thereof; or
 - (ii) where such shares are not quoted at a price to be determined by a valuer nominated by the Board.

(7) A shareholder who fails to comply with a direction given to him under paragraph (i) of subsection (6) shall be guilty of an offence under this Act.

32. (1) Where an order has been made by the Board under paragraph (b) of subsection (5) of section 31, the Director shall make an application as hereinafter provided to a competent court for the winding up of the finance company.

(2) The Court may, on an application made by the Director, order the winding up of the finance company and accordingly the provisions of the Companies Act, No. 07 of 2007, relating to the winding up of companies subject to the supervision of court shall, *mutatis mutandis*, apply to the winding up of such company.

(3) If the court is of opinion, after such inquiry as it may consider necessary, and after considering the submissions of the Director, that the finance company is not insolvent, it may make order permitting the finance company to resume business, either unconditionally or subject to such conditions as the Court may consider necessary in the public interest or in the interest of the depositors and other creditors of the company:

Provided, that the provisions of this subsection shall not apply to a finance company which has made an application to the Supreme Court in relation to an order made or purported to have been made by the Board in terms of subsection (5) of section 31 of this Act.

(4) The Director or any person authorized on that behalf by the Board shall be appointed to be the liquidator for the purposes of such winding up.

(5) Any costs, charges and expenses incurred in the winding up of a finance company may be paid out of the funds of the Central Bank where the Board considers it in the public interest to do so, in the event such costs, charges and expenses cannot be met out of the funds of such finance company.

(6) Every order made by a competent court under this section shall be subject to an appeal to the Supreme Court and the provisions of the Civil Procedure Code (Chapter 101) relating to appeals in civil actions shall apply, *mutatis mutandis*, in the case of any such appeal.

(7) Where the Director makes an application to Court for winding up of the finance company under subsection (1) for the continuity of legal proceedings it is deemed that the original caption of the plaint shall be valid for all purposes of law even if the Director who made the application to court is no longer the head of the department of the Central Bank to which the subject of finance companies has been assigned.

(8) In this section 'competent court' in relation to any finance company means a High Court established under Article 154P of the Constitution for a Province, empowered with civil jurisdiction by Order published in the *Gazette* under section 2 of the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996, within the Province for which such High Court is established, or where no such High Court vested with such civil jurisdiction is established for any Province, the High Court established for the Western Province.

33. The Minister may make regulations with regard to the priority of claims in a winding up of a finance company:

Provided however, until any regulations are made under this section the provisions of the Companies Act, No. 7 of 2007 or any other applicable law to the extent that such provisions are not inconsistent with the provisions of this Act shall, *mutatis mutandis*, apply with regard to the priority of claims in a winding up of a finance company.

34. (1) The Board may, after review of the facts and circumstances upon the receipt of a report by the Director under section 31 as an alternative to taking action under section 31, take over the administration and management of such finance company for such period as may be determined by the Board and shall publish a notice in the *Gazette* of such take over. The Board may extend the original period of take over and shall publish a notice of such extension in the *Gazette*. The Board shall inform the Registrar General of Companies of such take over and any extension thereto and the Registrar General shall make a minute thereof in the books relating to the company.
- (2) Where the Board takes over the administration and management of a finance company, the Board may do one or more of the following -
- (a) exercise, perform and discharge with respect to such finance company all the powers, duties and functions conferred or imposed on, or assigned to, the Board of Directors of such company by or under any written law or by the Articles of Association of such company or imposed on or assigned to any other person by the Articles of Association of such company;
 - (b) enter into any agreement with any person for the management of the finance company subject to such conditions as may be agreed upon between the Board and such person having regard to the interests of the depositors and other creditors of the company and in the public interest;
 - (c) make such arrangements as it considers necessary for the amalgamation of the finance company with another finance company or any other institution with the consent of such other finance company or institution;
 - (d) re-organise the finance company by increasing its capital and arranging for new shareholders;
 - (e) reconstruct the finance company in any such manner as it considers to be in the interest of depositors and other creditors of such finance company;
 - (f) remove any director, manager or employee of the finance company;
 - (g) reconstitute the board of directors of the finance company;
 - (h) direct any shareholder of the finance company to divest or transfer the ownership of any shares owned by him to a person nominated by the Board on payment by such person of compensation determined as follows-
 - (i) where such shares are quoted, at the market value thereof; or
 - (ii) where such shares are not so quoted, at a price to be determined by a valuer nominated by the Board;
 - (i) notwithstanding anything to the contrary in any other written law, review any contract entered into by a depositor with the finance company and vary the terms of such contract, including the terms relating to repayment, interest rates and charges where it considers that such contract has been entered into without due regard to the interests of depositors or other creditors of the finance company or due regard to prudent commercial practice;
 - (j) notwithstanding anything to the contrary in any other written law, review any agreement or contract entered into by the finance company, with any person and if upon such review, it appears to the Board that the agreement or contract has been entered into without due regard to the interest of the depositors and other creditors of the finance company or without due regard to prudent commercial practice, vary the terms of such agreement or contract.
- (3) During the period for which the administration and management of finance company is taken over by the Board, every director, manager and secretary of such finance company shall, unless expressly authorized to continue by the Board, cease to exercise, perform and discharge any powers, duties and functions with respect to such company.
- (4) Where the administration and management of a finance company is taken over by the Board, the Board may where it considers it in the public interest to do so-
- (a) arrange for or grant such financial accommodation as it may consider necessary to the finance company by way of loans or other accommodation, other than by way of grants; and
 - (b) meet all costs, charges and expenses incurred in the administration and management of the company.

- (5) That the Board may at any time after the taking over of the administration and management of a finance company under subsection (1) suspend the business of the company, if it is of opinion, that it is in the interest of the public or of the depositors to do so, or direct the Director to apply to wind up the company, if on a report made by the Director or any person authorized by the Board, it appears to the Board that the company cannot be made viable and solvent within a reasonable period of time. In the event of the Board directing the Director to wind up the finance company, the provisions of section 32 relating to winding up shall apply.
35. Where the Board has taken over the administration and management of a finance company under section 34, the Board shall not be liable or subject to any action or proceedings in any court in respect of any loss or damage suffered or incurred or alleged to have been suffered or incurred by any person by reason of any act or thing done or omitted to be done in good faith by the Board or in the exercise of any power, duty or function conferred or imposed on, or assigned to, the Board by or under subsection (2) of section 34.
36. (1) Where the Board has taken over the administration and management of a finance company under section 34 the Board may, in order to take steps to safeguard the interest of the depositors or creditors vest the administration and management of such finance company in any person with the consent of such person and publish a notice in the *Gazette* in that regard. The person on whom the administration and management of such finance company is vested shall exercise, perform and discharge with respect to such finance company all the powers, duties and functions conferred or imposed on, or assigned to the Board of Directors of such company by or under any written law or by the Articles of Association of the company or to any other person by the Articles of Association of such company.
- (2) Where the Board has vested the administration and management of a finance company in any person the Board may direct any shareholder of such finance company to divest or transfer the ownership of any shares owned by him to a person nominated by the Board on payment by such person of compensation as follows-
- (a) where such shares are quoted, at the market value thereof; or
- (b) where such shares are not quoted, at a price to be determined by a valuer nominated by the Board.
- (3) Any person in whom the Board vests the administration and management of a finance company, may, discharge such functions in accordance with the provisions of this Act and the provisions of subsection (2) of section 34 shall, *mutatis mutandis*, apply in relation thereto:
- Provide however, if it appears necessary the Board may require such person to obtain the prior written approval of the Board to exercise any of the powers or functions given under subsection (2) of section 34 of this Act.
37. (1) Where the Board is satisfied that any finance company has-
- (a) failed to commence business within nine months of the issue of the licence;
- (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 finance company, and has had appointed in respect of such finance company under any bankruptcy law or any other written law which provides for relief for debtors or which relates to debtors, a liquidator, custodian or receiver;
- (d) ceased to carry on finance 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
- (g) carried on, or is carrying on, its business in a manner likely to be detrimental to the interests of its depositors and other creditors,
- the Board may, give notice to the finance company that it would cancel the licence issued to such finance company.
- (2) A finance company 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 issued to it under section 5 should not be so cancelled.
- (3) After the expiration of sixty days from the date of the notice of the cancellation and after considering the objections tendered to the Board under subsection (2), the Board may withdraw such notice or cancel the licence issued to the finance company, and such cancellations shall take effect on the date of the decision of

the Board to cancel the licence or such other later date as the Board may deem appropriate.

- (4) The decision of the Board to cancel the licence shall be notified to the finance company and the notification of cancellation shall be published in the *Gazette* and in at least one Sinhala, Tamil and English daily newspapers circulating in Sri Lanka, informing the public that such company is no longer authorized to carry on finance business.
- (5) Where the licence of a finance company is cancelled the Board shall remove the name of the finance company from the register maintained under subsection (1) of section 7 and may issue such directions as it considers necessary, including directions for winding up or require the Director to apply for winding up of the company in which event the provisions of section 32, except subsection (3) thereof, shall apply.
- (6) Where the finance company fails to comply with any directions issued under subsection (5) within the time specified by the Board, the Board may require the Director to file action for the winding up of the finance company, and the provisions of section 32, except subsection (3) thereof shall apply.

PART VI

INSURANCE OF DEPOSITS

38. (1) The Board may notwithstanding anything in the Regulation of Insurance Industry Act, No. 43 of 2000, or any other written law, establish, maintain, manage and control a scheme for the insurance of deposits held by finance companies and require such companies to insure under such scheme the deposits held by them.
 - (2) (a) The Board may authorize a body corporate (hereinafter referred to as "authorized body corporate") to carry out all or any of the functions referred to in subsection (1), subject to such terms and conditions, and in such event, the provisions of the Regulation of Insurance Industry Act, No. 43 of 2000 shall not apply to such body corporate for such purpose.
 - (b) The Board may acquire and hold shares in the authorised body corporate.
39. (1) Where a scheme for the insurance of deposits has been established, every finance company shall apply to the Board or to the authorised body corporate in the form specified by the Board to insure under such scheme, the deposits held by such finance company.

A finance company, the deposits of which have been insured under such scheme is referred to as an "insured finance company" in this Part of this Act.

 - (2) The Board or the authorised body corporate, at its discretion, may accept or reject any application made under subsection (1).
 - (3) Every applicant finance company shall pay an initial fee to the Board or authorized body corporate as the case may be, which shall be determined, from time to time by the Board or the authorised body corporate with the concurrence of the Board.
 - (4) An insured finance company shall pay a premium of insurance to the Board or to the authorised body corporate on its deposits.
 - (5) If an insured finance company makes any default in the payment of any premium, it shall, for the period of such default, be liable to pay to the Board or to the authorised body corporate interest on the amount of such premium at such rate as may be determined by the Board or the authorised body corporate with the concurrence of the Board, having regard to the losses likely to be incurred by the Board or the authorised body corporate by such default.
40. (1) The authorised body corporate may, at its discretion, cause to examine the books and accounts of any insured finance company and the provisions of subsections (1) and (4) of section 24 of this Act shall, *mutatis mutandis*, apply to such examination.
 - (2) A copy of the examination report shall be submitted by the authorised body corporate to the Director forthwith after an examination.
41. (1) Rules may be made by the Board or the authorised body corporate with the concurrence of the Board in respect of establishment and operation of a scheme of insurance of deposits and in particular –

- (a) the amount, the time at which and the manner in which the insurance premium shall be paid by an insured finance company;
 - (b) the interest which may be charged from an insured finance company, where it makes default in the payment of premia;
 - (c) any matter that is stated or is required to be prescribed or determined under this Part of this Act for the purpose of insuring depositors of finance companies;
 - (d) record keeping requirements for an insured finance company;
 - (e) reporting requirements for an insured finance company;
 - (f) any other matter affecting, connected with or incidental to the exercise, discharge or performance of the powers, functions and duties of the Board or the authorised body corporate under this Part of this Act.
- (2) Every rule made under this section shall be published in the *Gazette*.

PART VII

ACTION AGAINST PERSONS CARRYING ON FINANCE BUSINESS OR ACCEPTING DEPOSITS WITHOUT AUTHORITY

42. (1) For the purpose of ascertaining whether any person has carried on or is carrying on finance business or has accepted or is accepting deposits from the public in contravention of the provisions of section 2, the Director or any officer of the Central Bank authorized on that behalf by the Director may conduct an investigation and for that purpose may do one or more of the following –
- (a) require such person or a director, partner, member, secretary, manager, employee, agent, contractor or auditor of such person to furnish him within such period and in such manner or form as he may specify, such information as he may consider necessary;
 - (b) require such person or a director, partner, member, manager, secretary, employee, agent, contractor or auditor of such person to produce for inspection books, records, files, registers and such other documents, maintained in print, electronic or any other form, relating to the business and corporate affairs of such person at such place as specified and to provide authenticated copies in any form as required, of such books, records, files, registers and such other documents;
 - (c) at any time enter or authorize any other person whose services have been obtained by the Director for such purpose, to enter the premises or storage area of such person or any vehicle of such person or of any director, partner, member, secretary, manager, employee, agent, contractor or auditor of such person which is at the premises of such person and notwithstanding anything to the contrary in any other written law examine or cause to be examined such premises or storage area or vehicles and books, records, files, registers and such other documents, maintained in print, electronic or any other form, found in such premises, storage area or vehicle relating to the business and corporate affairs of such person and if necessary obtain copies, authenticated or otherwise, in any form as required, of such books, records, files, registers and such other documents, and take account of currency, bills of exchange, corporate and government securities found in such premises or storage area or vehicle or which may be kept in safe custody in such premises or storage area:

Provided further that, if the Director receives reasonable information that the books, records, files, registers and such other documents, maintained in print, electronic or any other form, relating to the business and corporate affairs of such person are kept at any place other than the premises or storage area of such person or any vehicle of such person or of any director, partner, member, secretary, manager, employee, agent, contractor or auditor of such person which is at the premises of such person, the Director or any person authorized by the Director shall have the power to enter and examine such place or vehicle and examine the books, records, files, registers and such other documents, and if necessary obtain copies, authenticated or otherwise, thereof in any form as required and take account of currency, bills of exchange, corporate and government securities found at such place.
 - (d) question and record statements of or if necessary direct such person or a director, partner, member, secretary, manager, employee, agent, auditor or contractor of such person or any other person who may be acquainted with or aware of or in possession of information regarding the business or corporate affairs of such person to submit answers to the questions raised by way of an affidavit or if necessary administer oath or affirmation in accordance with the Oaths or Affirmations Ordinance (Chapter 17) and cause questions to be asked of and record or cause the recording of statements ;

- (e) require the holding company, any subsidiary or associate company of such person, or any subsidiary or associate company of the holding company of such person, or any other company that in view of the Director has a substantial financial interest or significant management interest in such person to furnish information as the Director may consider necessary and to produce for inspection the books, records, files, registers and such other documents, maintained in print, electronic or any other form, relating to its business and corporate affairs at such time, date, place and in a manner or form as the Director may specify and to provide in any form as required, authenticated copies of such books, records, files, registers and such other documents;
 - (f) call for information by notice in writing from any person who may be acquainted with or is aware of or is in the possession of or appears to have information regarding the business and corporate affairs of such person and if required summon such person for an interview;
 - (g) take any other action which he may deem necessary for the purpose.
- (2) (a) Notwithstanding anything to the contrary in any other written law, the Director may require the Inspector General of Police or the Deputy Inspector General of Police in charge of the Province or the Division to provide all assistance as may be necessary in the circumstances in order to carry on an investigation for the purposes of subsection (1) and report the findings of such investigation to the Director in such manner and within such time as he may specify.
- (b) The Inspector General of Police or the Deputy Inspector General of Police in charge of the Province or the Division may order the Assistant Superintendent of Police of the division or the Officer in Charge of the relevant police station to carry on an investigation for the purposes of subsection (1), and such officer shall, in addition to the powers he may lawfully exercise, have the power to do *mutatis mutandis* any act specified in paragraphs (a) to (g) of subsection (1).
- (c) The Director may request the assistance of any Divisional Secretary to carry on an investigation for the purposes of subsection (1) and such Divisional Secretary shall assist the Director in such manner and within such time as he may specify.
- (3) The Director shall, where he has reasons to believe that a person has carried on or is carrying on finance business, or has accepted or is accepting deposits, report such fact to the Board.
- (4) The Board shall, after considering the report of the Director under subsection (3) and after giving the person in respect of whom the report is submitted an opportunity of being heard, determine whether such person has carried on or is carrying on finance business or has accepted or is accepting deposits in contravention of the provisions of section 2, and shall if determined that such person has carried on or is carrying on finance business or has accepted or is accepting deposits in contravention of the provisions of section 2, notify such determination, in writing, to such person accordingly. Any notice required to be given by the Board under this section including the notice regarding the hearing, shall be deemed to be served if dispatched by registered post to the last known address of such person.
- (5) Where in any prosecution instituted under this Act, any question arises as to whether any person has carried on or is carrying on finance business or has accepted or is accepting deposits, a certified copy of the minutes of the meeting of the Board regarding the determination that such person has carried on or is carrying on finance business or has accepted or is accepting deposits shall be admissible in evidence and shall be *prima facie* evidence of the facts stated therein.
- (6) The Board may along with or after the notification of its determination under subsection (4) issue to such person directions as it considers necessary, including directions to divest the business of such person to a person specified by the Board or to repay the deposit liabilities or to make an application within a specified period of time to a competent court for winding up and it shall be the duty of such person to comply with such directions.
- (7) In the event of issuing directions under subsection (6) to divest the business of such person, the Board may notwithstanding provisions to the contrary in any other written law -
- (a) review any contract entered into by a depositor with such person and may vary the terms of such contract, including the terms relating to repayment, interest rates and charges where it considers that such contract has been entered into without due regard to the interests of depositors or other creditors of such person or without due regard to prudent commercial practice;
 - (b) review any agreement or contract entered into by such person with any other person and upon such review,

if it appears to the Board that the agreement or contract has been entered into without due regard to the interest of the depositors and other creditors of such person or without due regard to prudent commercial practice, vary the terms of such agreement or contract.

- (8) (a) Where such person fails to comply with the directions issued under subsection (6), the Board may take such steps as it considers necessary including the winding up of such person or to take action to declare such person as insolvent by a court.
- (b) In the event of winding up of a company, the provisions of section 32 other than the provisions of subsection (3) thereof shall *mutatis mutandis* apply.
- (c) In the event of winding up of a body of persons other than a company, the provisions of section 32 other than the provisions of subsections (2) and (3) thereof shall *mutatis mutandis* apply and the value of the assets and liabilities of such body of persons shall be ascertained in such manner and upon such basis as the liquidator thinks fit. The competent Court may at any time after making a winding up order authorize the liquidator to realize all assets and may require any person to pay, deliver, convey, surrender or transfer forthwith or within a specified time to the liquidator any money, property or books and other documents in his hands to which such body of persons is entitled. A scheme for the purpose of winding up of such body of persons shall be prepared by the liquidator and submitted for confirmation to the competent court and the winding up of such body of persons shall be carried out according to the scheme.
- (9) The Board may take such steps as it considers necessary to recover the money and property of such person determined in terms of subsection (4) and the provisions of section 51 of this Act shall *mutatis mutandis* apply in respect of such recovery.
- (10) The Board may publish a notice in at least one Sinhala, Tamil and English daily newspapers circulating in Sri Lanka, that the person referred to in the determination has carried on or is carrying on finance business or has accepted or is accepting deposits in contravention of the provisions of section 2. Where such person is a body of persons, such notice may include, if that body of persons is:-
- (i) a body corporate the names and addresses of directors of such body corporate;
- (ii) a firm the names and addresses of partners of that firm; and
- (iii) an unincorporate body other than a firm, the names and addresses of members of such body and officers of that body.
- (11) It shall be the duty of every person to comply with any requirement imposed on him under this section and any person who-
- (a) fails to provide any information or produce for inspection any book, record, file, register or such other document, material or object required under this section;
- (b) fails to attend in person when summoned for an interview;
- (c) provides false, incomplete or incorrect or misleading information, book, record, file, register or such other document, material or object; or
- (d) obstructs the Director or any other person authorized by the Director under subsection (1) or the Inspector General of Police or the Deputy Inspector General of Police in charge of the Province or the Division or any Divisional Secretary required or requested to assist the Director in carrying out an investigation by him, or any other person authorized by the Inspector General of Police or the Deputy Inspector General of Police or the Divisional Secretary, as the case may be, in the performance of any function under subsection (1) of this section,

shall be guilty of an offence under this Act.

43. Where any person fails to provide information, book, record, file, register or such other document or material or object or provides false, incorrect or incomplete information, book, record, file, register or such other document or material or object when required in terms of subsection (1) of section 42 or section 46, the Director or any person authorized by the Director may make an application to the appropriate Magistrate for the issuance of an order –
- (a) authorizing any person named in the application to inspect the books, records, files, registers and such other documents maintained in print, electronic or any other form, material or object of the person who has failed to comply with the requirement made in terms of subsection (1) of section 42 or section 46; or
- (b) requiring the person who has failed to comply with the requirement made in terms of subsection (1) of section

42 or section 46, or a director, partner, member, secretary, manager, employee, agent, contractor or auditor of such person as may be named in the order, to produce the books, records, files, registers and such other documents maintained in print, electronic or any other form, material or object of such person, to a person and at a place specified in the order.

44. (1) The Director may at any time where a person is being investigated in terms of subsection (1) of section 42, issue an order (hereinafter referred to as a "Freezing Order") for any one or more of the following:-
- (a) prohibiting such person from disposing assets of such person or any part thereof;
 - (b) prohibiting such person from entering into any transaction or class of transactions as may be determined by the Director;
 - (c) prohibiting such person from soliciting or mobilizing deposits;
 - (d) prohibiting any transaction in relation to any account, property or investment as may be determined by the Director.
- (2) The Director may at any time where a body of persons is investigated in terms of subsection (1) of section 42, issue, if such body of persons is-
- (i) a body corporate, on any director, or manager of that body corporate;
 - (ii) a firm, on any partner of that firm;
 - (iii) an unincorporate body other than a firm, on any member of such body, or any officer of that body responsible for its management and control,
- a Freezing Order for any one or more of the following:-
- (a) prohibiting such person from disposing assets of such person or any part thereof;
 - (b) prohibiting such person from entering into any transaction or class of transactions as may be determined by the Director;
 - (c) prohibiting such person from soliciting or mobilizing deposits;
 - (d) prohibiting any transaction in relation to any account, property or investment as may be determined by the Director.
- (3) Subject to the provisions of section 45, a Freezing Order issued under subsections (1) and (2) shall not be in force for a period exceeding seven days of the issuing thereof.
45. (1) The Director after issuing a Freezing Order under the provisions of section 44 shall within the period during which the Freezing Order is in force, make an application to the High Court seeking confirmation of such Freezing Order and also if the circumstances so necessitates, request an extension thereto.
- (2) Where the High Court is satisfied that there are sufficient reasons for issuance of such Freezing Order, the court may confirm the Freezing Order and if it is satisfied there are sufficient reasons for extension thereof may grant extensions for such periods as it considers appropriate.
- (3) (a) The Director may at any time where a person is investigated in terms of subsection (1) of section 42, make an application to the relevant Magistrate's Court to impound the passport of such person so investigated.
- (b) In an event where the person investigated in terms of subsection (1) of section 42 is a body of persons, it shall be lawful for the Director to make an application or applications as may be necessary to impound the passport –
- (i) if that body of persons is a body corporate, of any director, or manager of the body corporate; and
 - (ii) if that body of persons is a firm, of any partner of that firm; and
 - (iii) if that body of persons is an unincorporate body other than a firm, of any member of such body, or any officer of that body responsible for its management and control.
46. (1) The Director may call for information by notice in writing in such manner and as at such date as he may specify of the assets and liabilities of a person regarding whom an investigation has commenced in terms

- of subsection (1) of section 42 from such person or from any other person who may be acquainted with or aware of or appears to have information regarding the assets and liabilities of such person.
- (2) Where such person is an individual, information of the assets and liabilities of his spouse, children and parents may also be called.
 - (3) Where such person is a body of persons, information of the assets and liabilities of:—
 - (a) the Directors, managers and employees of a body corporate;
 - (b) the Partners of a firm;
 - (c) the Members of an unincorporate body other than a firm, and of their spouses, children and parents may also be called.
 - (4) Where the Director has information that assets of such person has been transferred, gifted, assigned or disposed of in any manner to any other person the Director may call for information of the assets and liabilities of such other person.
 - (5) In requiring information under subsection (1), (2), (3) or (4), the Director may also require the details of increase and decrease in liabilities and acquisition and disposal of assets for a particular period.
 - (6) For the purpose of this section “assets and liabilities” means assets and liabilities in and outside Sri Lanka, and includes immovable and movable property owned by a person or his relative in whole or in part and any property in which such person or his relative has a beneficial interest.
47. The Director may require any officer in charge of a police station or the relevant Divisional Secretary to furnish him with information regarding any person residing or having his place of business within the limits of the relevant police division or the Divisional Secretary’s Division as the case may be, in order to facilitate an investigation in terms of section 42 of this Act, and such officer in charge of a police station or such Divisional Secretary shall make every endeavour to furnish the information required by the Director.
48. (1) No person, other than a person licensed under this Act to carry on finance business or any bank or institution exempted in terms of section 3 of this Act, shall advertise by any means, in any manner whatsoever, either directly or indirectly, soliciting deposits.
- (2) Where the Director is of the opinion that an advertisement made by a person contravenes the provisions of subsection (1), the Director may send a notice to such person requiring him to refrain from publishing advertisements soliciting deposits.
 - (3) The notice referred to in subsection (2) shall be deemed to have been served on the person referred to in the notice if such notice was sent by registered post-
 - (a) to the address given in the advertisement;
 - (b) if such person is an individual to such person’s place of business or residential address;
 - (c) if such person is a body corporate, to such person’s place of business or registered address; or
 - (d) if such person is an unincorporate body, to such person’s place of business or to the addresses of partners or members of such body.
 - (4) If any person fails to comply with the notice sent by the Director in terms of subsection (2), the Director may make an application in writing to the Magistrate’s Court within whose jurisdiction such person’s place of business is situated or to, within whose jurisdiction the registered address, residential address or the address given in the advertisement is situated.
 - (5) (a) The application made by the Director in terms of subsection (4) shall contain the following matters: -
 - (i) that he is the Director for the purposes of this Act;
 - (ii) that the advertisement referred to in the notice issued in terms of subsection (2), is in his opinion intended directly or indirectly for the purpose of soliciting deposits;
 - (iii) that in terms of subsection (2) a notice was issued to the person named in the application, who in his opinion, is the advertiser of the advertisement referred to in subparagraph (ii);
 - (iv) that the advertiser is not a person authorized by subsection (1) to publish an advertisement soliciting deposits; and

- (v) that the advertiser failed to comply with the requirements contained in the notice issued in terms of subsection (2);
 - (b) The application shall contain a prayer for the making of an order directing the advertiser who is named in the application to forthwith refrain from advertising, in any manner, either directly or indirectly soliciting deposits.
- (6) Every application made under subsection (4) shall be supported by an Affidavit confirming the matters set forth in such application and shall be accompanied by a copy of the advertisement referred to in the notice issued in terms of subsection (2) and a copy of such notice.
- (7) Upon receipt of an application made under subsection (4), the court shall, forthwith issue on the advertiser named in the application-
- (a) a conditional order restraining him from publishing the advertisement in respect of which the application is made, and also restraining him from publishing by any means whatsoever any further advertisements soliciting deposits, until the conclusion of the Court proceedings or until such time the Court may consider fit; and
 - (b) summons requiring him to appear and show cause on the date specified in such summons (being a date not later than two weeks from the date of issue of such summons) as to why an order restraining him from advertising, in any manner, either directly or indirectly soliciting deposits, should not be issued.
- (8) If the person on whom the summons were issued under subsection (7) fails to appear in court on the date specified therein or informs the court that he has no cause to show, the court shall make the conditional order issued under subsection (7) hereof a final order restraining the advertiser from publishing advertisement in respect of which the application is made, and also restraining him from publishing by any means whatsoever any further advertisements soliciting deposits.
- (9) If a person on whom summons have been served under subsection (7) appears on the date specified therein and informs court that he has cause to show as to why an order should not be issued prohibiting him from advertising, in any manner, soliciting deposits, the court may proceed to hear and determine the matter.
- (10) (a) At such inquiry under subsection (9) the advertiser on whom summons under subsection (7) have been served shall not be entitled to contest any of the matters stated in the application under subsection (4) except that he has not made the advertisement referred to in the application or he had made such advertisement in accordance with any written law under which he is permitted to do so and such permission is in force and not revoked or otherwise rendered invalid.
- (b) It shall not be competent to the Magistrate's Court to call for any evidence from the Director in support of the application under subsection (4).
- (11) If after inquiry the Magistrate is unable to conclude on the evidence adduced before him that the person showing cause is entitled to advertise soliciting deposits, the Magistrate shall make the conditional order issued under subsection (7) hereof, a final order restraining the advertiser from publishing advertisement in respect of which the application is made, and also restraining him from publishing by any means whatsoever any further advertisements soliciting deposits. If such person shows cause to the satisfaction of the court, the Magistrate shall set aside the conditional order issued under sub section (7).
- (12) Where a Court has made, in pursuance of any application under subsection (4), an Order directing a person to stop forthwith advertising in any manner, soliciting deposits, the Court shall along with such Order make all such orders as are necessary to ensure that the Order of restraint is effectively enforced.
49. Any media institution shall, before publishing an advertisement which solicits deposits, verify from the relevant advertiser whether he is authorised under this Act to accept deposits.
50. (1) The Director may send a notice to any media institution requiring such institution to refrain from publishing advertisements soliciting deposits by a person specified in such notice.
- (2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence under this Act.

PART VIII

OFFENCES AND PENALTIES

51. (1) If the Board, on consideration of a report of the Director, is of the opinion that any past or present director, chief executive officer, manager, employee, agent or a contractor of a finance company has by an act or omission caused a-

- (a) wrongful gain for himself or for any other person of any money or property belonging to such finance company; or
- (b) wrongful loss to the finance company,

the Board may notwithstanding that any action has also been taken under this Act or any other law, require such director, chief executive officer, manager, employee, agent, contractor or any other person referred to in paragraph (a) to repay, restore to or compensate the finance company, the money or property so wrongfully gained or caused to wrongfully lose, with interest on such money or property at such rate as the Board may think fit and within such period of time as may be specified by the Board.

(2) Where any person referred to in subsection (1) fails to repay, restore to or compensate the finance company, the money or property referred to in that subsection, the Board may-

- (a) direct such person to disclose to any officer authorized by it within a specified time, the value, nature and whereabouts of any monies, properties or other assets –
 - (i) owned by such person; or
 - (ii) in which such person has a beneficial interest; or
 - (iii) acquired or purchased or held or possessed, by a relative of such person or any other person, in trust for such person, including the properties and other assets disposed in any manner whatsoever, as at a specified date or within a specified period.
- (b) require such person to furnish an affidavit enumerating all movable or immovable property owned or possessed by such person at any time, or at such time as may be specified by the Board stating the date on which each of the properties enumerated was acquired and whether the acquisition was by way of purchase, gift, bequest, inheritance or otherwise;
- (c) require any other person to furnish an affidavit –
 - (i) enumerating all movable or immovable property owned or possessed at any time, or at such time as may be specified by the Board by such person, where the Board has reasonable grounds to believe that such information can assist an investigation into the affairs of a finance company;
 - (ii) containing particulars of such other matters which in the opinion of the Board are relevant to such investigations;
- (d) require the chief executive officer of any bank in Sri Lanka or any finance company as the case may be to produce within such time as may be specified in the notice, any book, document or cheque of the bank or any book, document or certificate of the finance company containing entries relating to the account of such person or to furnish as so specified, certified copies of such entries;
For the purpose of this paragraph, “document” shall include details of any safe deposit box.
- (e) notwithstanding the provisions to the contrary in any written law, require the Commissioner-General of Inland Revenue to furnish, as specified in the notice, all information available to him relating to affairs of such person and to produce or furnish as specified in the notice, any document or certified copy of any document relating to such person, which is in the possession or under the control of the Commissioner-General of Inland Revenue;
- (f) invite the public by any means whatsoever to furnish to a person authorized by it, any information required in terms of paragraph (a);
- (g) serve a notice on the chief executive officer of any bank or finance company to freeze the accounts and safe deposit boxes of such person, whether held individually or jointly, up to an amount specified by the Board.

Every notice issued under this paragraph shall be in force for a period specified in such notice which period shall however not exceed ninety days and during the period a notice issued under this paragraph is in force any transfer of funds in contravention to the notice shall be void and of no effect;

- (h) serve a notice on any person referred to in subsection (1), or on a relative or other person holding property or assets in trust for the first mentioned person, or on any other person holding property or assets purchased or acquired by the improper utilization or misapplication of monies attributable to the funds of the finance company, prohibiting the transfer by such person, relative of such person, or other person, of possession, ownership or any interest in any properties or other assets specified in that notice, and also requiring such person to submit to the Director:—

Every notice issued under this paragraph shall be in force for a period specified in such notice which period shall however, not exceed ninety days and during the period a notice issued under this paragraph is in force any transfer of ownership, possession or other interest in any property or assets specified in such notice shall be void and of no effect;

- (i) in the case of immovable property the copies of deeds relating to the title of such property;
 - (ii) in the case of a motor vehicle, a copy of the Certificate of Registration issued by the Commissioner of Motor Traffic, in respect of that motor vehicle;
 - (iii) in the case of movable property other than motor vehicles copies of documents in proof of ownership.
- (i) serve a copy of the notice referred to in paragraph (h) on any relevant authority including in the case of immovable property, on the Registrar of Lands, in the case of motor vehicles, on the Commissioner of Motor Traffic, in the case of shares, stocks and debentures of any company, on the Registrar General of Companies and the Secretary of the relevant finance company and where applicable on the Director General of any stock exchange licensed under the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987 and in the case of Government securities on primary dealers appointed in terms of Registered Stock and Securities Ordinance, (Chapter 420) and Local Treasury Bills Ordinance, (Chapter 417);
- (i) require any authority on whom a copy of a notice referred to in paragraph (i) is served, to register such notice in the appropriate books or records in the custody of such authority and during the period, that a notice is in force, the Registrar of Lands, Commissioner of Motor Traffic and Registrar General of Companies and any other relevant authority on whom a copy of such notice has been served under paragraph (i) shall not register any deed or instrument of transfer or other document of title relating to the property or assets specified in that notice;
- (k) require any person or authority referred to in paragraphs (d) and (i) to furnish such information as he may have in his possession or custody relating to the assets of any person or relative of a person, referred to in paragraph (a);
- (l) (i) before the expiration of the period specified in notices served under paragraphs (g) and (h), the Director may make an application by way of summary procedure to the District Court having jurisdiction in the district within which any property specified in such notices is situated, for an order authorizing the seizure and sale of such property, and for a writ of execution for seizure and sale of such property;
- (ii) the District Court upon application made to it under sub-paragraph (i) of this paragraph and being satisfied that such past or present director, chief executive officer, manager, employee, agent, contractor or any other person referred to in subsection (1) has by an act or omission caused a wrongful gain for himself or for any other person of any money or property belonging to the company or wrongful loss to the company shall direct the chief executive officer of any bank or finance company to deposit the amount specified by the Board in the notices issued under paragraph (g) in the District Court, out of the funds in the accounts of such person, whether held individually or jointly, and the District Court shall direct a writ of execution to issue to the Fiscal authorizing and requiring him to seize the deposits so made;
- (iii) the District Court upon application made to it under sub-paragraph (i) of this paragraph and being satisfied that such past or present director, chief executive officer, manager, employee, agent, contractor or any other person referred to in subsection (1) has by an act or omission caused a wrongful gain for himself or for any other person of any money or property belonging to the company or wrongful loss to the company shall direct a writ of execution to issue to the Fiscal authorizing and requiring him to seize and sell-
- (a) any property or assets owned by such director, chief executive officer, manager, employee, agent or contractor of the finance company or any other person or persons so gained wrongfully; or
 - (b) any property or assets held in trust by a relative or any other person for such director, chief

executive officer, manager, employee, agent or contractor of the finance company; or

- (c) any property or assets acquired or purchased with monies attributable to the assets of the finance company;
 - (iv) the provisions of sections 217 to 297 of the Civil Procedure Code shall, *mutatis mutandis*, apply to the seizure and sale of any property under a writ of execution issued under sub paragraphs (ii) and (iii) of this paragraph;
 - (v) any sum realized by the seizure and sale of any property under this paragraph shall be applied by the court-
 - (a) firstly, in payment of the costs and charges incurred in seizing, keeping and selling such property;
 - (b) secondly, in satisfaction of the amount determined by court to be attributable to the finance company, referred to in sub paragraph (ii) of this paragraph, and the balance shall be paid to the owner of the property seized.
 - (vi) where any money is seized in terms of sub-paragraph (ii) of this paragraph it shall be applied by the court in satisfaction of the amount determined by court to be attributable to the finance company, referred to in sub paragraph (ii) of this paragraph, and the balance shall be repaid to the person to whom such money is due.
- (3) Any past or present director, chief executive officer, manager, employee, agent or contractor of a finance company who has by an act or omission caused a-
- (a) wrongful gain for himself or for any other person, of any money or property belonging to the company; or
 - (b) wrongful loss to the company;
- shall be guilty of an offence under this Act.

52. (1) Any person, who being a director, secretary, chief executive officer, manager, officer, employee or auditor of a finance company-
- (a) fails to take all reasonable steps to secure compliance by that finance company with the requirements of this Act;
 - (b) fails to comply with any direction issued or rule made by the Board under the provisions of this Act;
 - (c) fails to comply with any direction issued or requirement made by the Director under the provisions of this Act;
 - (d) fails to take all reasonable steps to secure the correctness of any statement submitted by such finance company under the provisions of this Act;
 - (e) makes a false entry in any book, record, file, register or such other document or statement relating to the business affairs, transactions, conditions, assets or liabilities or accounts of such finance company or causes such entry to be made;
 - (f) omits to make an entry in any book, record, file, register or such other document or statement relating to the business affairs, transactions, conditions, assets or liabilities or accounts of such finance company or causes such entry to be omitted;
 - (g) alters, abstracts, conceals, erases or destroys any entry in any book, record, file, register or such other document, or statement relating to the business affairs, transactions, conditions, assets or liabilities or accounts of such finance company or causes any such entry to be altered, abstracted, concealed, erased or destroyed; or
 - (h) maintains multiple sets of books, records, files, registers, or such other documents for the purpose of concealing the true condition of such finance company,
- shall be guilty of an offence under this Act.
- (2) In any prosecution instituted against a person under subsection (1), it shall be a defence to prove that he had reasonable grounds to believe that another person was charged with the duty of securing compliance with the requirements of this Act or with the duty of ensuring that the statements in question were accurate and that such person was competent and in a position to discharge that duty.

53. (1) Where an offence under this Act is committed by a person, such person shall be guilty of an offence.
- (2) Where an offence under this Act is committed by a person that is—
- (a) a body corporate, every director, 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 and that he exercised all due diligence to prevent the commission of that offence.
54. Where proceedings are instituted in High Court or Magistrate Court under the provisions of this Act for the offences under this Act, the court shall give priority to the disposal of such cases.
55. Any person who abets, conspires or attempts to commit an offence under this Act shall be guilty of an offence and shall be punishable in the same manner as punishable for the substantive offence under this Act.
56. (1) Any person who is guilty of an offence under subsection (4) of section 2 of this Act shall be liable on conviction after trial before the High Court to imprisonment of either description for a term not exceeding five years or to a fine not exceeding five million rupees or to both such imprisonment and fine and to settle liabilities of such person to depositors and other creditors under the supervision of court:
- Provided however, that any person who is found guilty of an offence under subsection (4) of section 2 by application of the provisions of subsection (2) of section 53 of this Act shall settle the liabilities of the relevant body corporate or the unincorporate body as the case may be, in such manner and in such extent as the court may direct:
- Provided further, that the court may direct the debtors of such person or of the relevant body corporate or the unincorporate body as the case may be, to repay their debts in such manner and within such time as the court may direct.
- (2) Any person who is guilty of an offence under subsection (9) of section 5, subsection (1) of section 20, subsection (4) of section 24, subsections (2) and (7) of section 31, subsection (11) of section 42, subsection (3) of section 51 or subsection (1) of section 52 of this Act shall be liable on conviction after trial before a Magistrate to a fine not exceeding three million rupees or to imprisonment of either description for a term not exceeding three years or to both such fine and imprisonment.
 - (3) Any person who is guilty of an offence under subsection (2) of section 21 and subsection (2) of section 50 of this Act shall be liable on conviction after 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.
 - (4) Any person who contravenes or fails to comply with any provisions of this Act or any rule, direction, order or requirement made or imposed thereunder other than where such contravention or failure constitutes an offence in terms of subsections (1), (2) and (3), shall be guilty of an offence under this Act and shall be liable on conviction after trial by 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.
57. (1) A director, manager or secretary of a body corporate or a partner or a member of an unincorporate body ordered to pay a fine shall be guilty of an offence under this Act, if he applies any funds of such body corporate or unincorporate body, as the case may be, for the payment of such fine or part thereof.
- (2) Any person who commits an offence under subsection (1) of this section shall be liable on conviction after trial by a Magistrate to a fine not exceeding one million rupees or to imprisonment of either description for a term not exceeding three years or to both such fine and imprisonment and to restore to such body corporate or unincorporate body an amount equivalent to the amount of funds he utilized from such body corporate or unincorporate body to pay the fine.
58. (1) No person aggrieved by any determination or decision made, direction issued, requirement imposed or purported to have been made, issued, or imposed under section 5 or section 12 or subsection (2) of section 25 or paragraph (b) of subsection (5) or subsection (6) of section 31 or section 34 or section 36 or section 37 or section 42 or section 51 or who apprehends that he would be affected by any act or any step taken,

or proposed to be taken or purporting to be taken under any such section shall be entitled to a permanent or interim injunction, an enjoining order, a stay order or any other order having the effect of staying, restraining, or impeding the Board from giving effect to such order.

- (2) (a) The jurisdiction conferred on the Court of Appeal by Article 140 of the Constitution shall in relation to any determination, decision, direction, or requirement or purported determination, decision, direction, or requirement under sections referred to in subsection (1), be exercised by the Supreme Court and not by the Court of Appeal.
- (b) Every application invoking the jurisdiction referred to in paragraph (a) shall be made within one month of the date of commission of the act in respect of which or in relation to which, such application is made and the Supreme Court shall hear and finally dispose of such application within two months of the filing of such application.
- (3) Nothing contained in subsection (1) shall affect the powers which the Supreme Court may otherwise lawfully exercise in respect of any application made under Article 126 of the Constitution or in the exercise of the jurisdiction referred to in subsection (2).
- (4) The Supreme Court shall before making any order whether interim or final against the Board, in the exercise of the jurisdiction conferred on it by this section, afford the Board an opportunity of being heard.

PART IX

GENERAL

59. (1) There shall be a fund called Enhancing Public Awareness on Financial Matters Fund.
- (2) All fines received under this Act shall be credited to the Fund and the money lying to the credit of such Fund may be utilized for the purposes and in a manner as may be determined by the Board from time to time.
- (3) The amount lying to the credit to the Depositors' Relief Fund of the Central Bank as at the date of coming into operation of this Act shall be transferred to the Enhancing Public Awareness on Financial matters Fund.
60. (1) Subject to and in accordance with such rules, if any, as may be made by the Board in that behalf, the Board may in writing authorise any officer of the Central Bank to represent the Board for any of the purposes of this Act, so however, that the Board shall remain and continue to remain to be responsible for any act or thing done or omitted to be done by such officer in representing the Board under such authorisation.
- (2) The Board may in writing delegate to any officer of the Central Bank any of its powers under this Act, so however, that the Board shall remain and continue to be responsible for any act or thing done or omitted to be done by such officer in the exercise of such powers delegated to him.
61. (1) Every director, manager, officer, employee and agent of any finance company and of any body corporate authorized in terms of paragraph (a) of subsection (2) of section 38 shall observe strict secrecy in respect of all transactions of the finance company, its customers and the state of accounts of any person and all matters relating thereto and shall not reveal any such matter except –
 - (a) when required to do so by a court of law or by the person to whom such matter relates, in the performance of the duties of such director, manager, officer, employee and agent; or
 - (b) in order to comply with any of the provisions of this Act or any other written law:
- (2) Every director, manager, officer, employee and agent of any finance company and of any body corporate authorized in terms of paragraph (a) of subsection (2) of section 38 shall sign a declaration pledging himself to observe strict secrecy in accordance with subsection (1).
- (3) The provisions of subsections (1) and (2) shall not prohibit a finance company from providing in good faith to another finance company on request an opinion or reference relating to a customer in accordance with customary practices in the finance industry.
62. Notwithstanding anything to the contrary in section 61 of this Act or section 77 of the Banking Act, No.30 of 1988 every director, manager, officer, employee and agent of any finance company or of any bank shall inform the Director in writing of any customer of such finance company or bank with respect to whom he has reasonable suspicion of carrying on finance business or accepting deposits from the public in contravention of section 2 of this Act.

63. Every member of the Board, the Director, and any officer authorized by the Board or the Director under this Act shall be deemed to be public servants, within the meaning of and for the purposes of the Penal Code (Chapter 19).
64. The Director or any officer authorized shall be deemed to be public officers within the meaning of section 136 of the Code of Criminal Procedure Act, No. 15 of 1979 for the purpose of instituting proceedings in respect of offences under this Act:
- Provided however, in respect of an offence committed in contravention of the provisions of section 2 of this Act the Board may request the Attorney General to consider instituting criminal proceedings.
65. Notwithstanding anything to the contrary in the Code of Criminal Procedure Act, No. 15 of 1979 every offence under this Act shall be a cognizable and bailable offence within the meaning and for the purpose of the Code.
66. (1) No prosecution shall be instituted in any court against the Board or a member thereof or the Director or any officer or servant of the Central Bank or any other person who is authorized under the provisions of this Act to carry out any duty or function, by reason of any act done or purported to be done, or omitted to be done 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 for such prosecution.
- (2) Any expenses incurred by a member of the Board, the Director or any officer or servant of the Central Bank in any suit or prosecution brought against such person before any court in respect of any act which is done or purported to be done or omitted to be done by such person under this Act or any direction, order or requirement made or imposed thereunder, as the case may be, shall, if the court holds that such act was done in good faith, be paid out by the Board unless such expenses are recovered by him in such suit or prosecution.
67. (1) Where the Director is satisfied, after examination by himself, or by any officer of the Central Bank or any other person, authorized on that behalf by the Director, of the affairs of any finance company, or upon information received from the finance company that it would be in the interest of depositors to provide temporary financial accommodation to such finance company, the Director shall report accordingly to the Board and the Board may grant a loan or advance to a commercial bank from the Medium and Long Term Credit Fund established under section 88e of the Monetary Law Act (Chapter 422), for the purpose of lending to such finance company on such terms and conditions as may be determined by the Board.
- (2) The provisions of section 88A to 88E of the Monetary Law Act shall, *mutatis mutandis*, apply to any loan or advance granted to a commercial bank under the provisions of subsection (1).
- (3) The Board may guarantee loans, advances or other accommodation granted to a finance company by credit institutions operating in Sri Lanka.
- (4) In this section "credit institution" means-
- (a) any bank licensed under the Banking Act, No. 30 of 1988;
- (b) any finance company licensed under this Act;
- (c) any agency or institution acting on behalf of the government (whether established by any written law or otherwise) which grants loans and advances or makes investments or accepts deposits from the public;
- (d) any other person declared by the Minister in charge of the subject of Finance, by Order published in the *Gazette*, to be a banking institution for the purposes of Monetary Law Act (Chapter 422); and
- (e) any such society registered under the Co-operative Societies Law, No 5 of 1972.
68. The Minister may give to the Board general or special directions in writing for the purpose of giving effect to the principles and provisions of this Act and the Board shall give effect to such directions.
69. (1) The Minister may make regulations in respect of matters required by this Act to be prescribed or in respect of which regulations are authorized to be made.
- (2) Every regulation made by the Minister shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.
- (3) Every regulation made by the Minister shall, as soon as is convenient after its publication in the *Gazette*, be brought before Parliament for approval.

- (4) Every regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder. Notification of the date on which any regulation is deemed to be rescinded shall be published in the *Gazette*.
70. Where an investigation or an examination has been commenced or a litigation has been instituted in terms of this Act, notwithstanding the provisions of any other written law, the Director shall have power to call for information by notice in writing, for the purpose of finding the whereabouts of a person who is subject to such investigation, examination or litigation, from:-
- (a) the Telecommunication Regulatory Commission of Sri Lanka or any one or more of telecommunication service providers or internet service providers regarding the telephone or internet usage of such person including the location from which he has made use of the service so provided, whether frequently or at any given time; and
 - (b) any bank or a finance company regarding the transactions made by such person with such bank or finance company including the branch or automated teller machine location from which he has transacted, whether frequently or at any given time.
71. (1) The Finance Companies Act, No 78 of 1988 is hereby repealed.
- (2) Notwithstanding the repeal of the Finance Companies Act, No 78 of 1988, every regulation, notice, order, rule, guideline or direction issued, requirement imposed, determination or delegation made under the repealed Act and in force on the day preceding the date of commencement of this Act shall in so far as such regulation, notice, order, rule, guideline, direction, requirement, determination or delegation is not inconsistent with the provisions of this Act, be deemed to be a regulation, notice, order, rule, guideline, direction, requirement, determination or delegation issued, imposed or made, as the case may be, under the provisions of this Act.
- (3) Companies registered under the Finance Companies Act, No. 78 of 1988 which are carrying on finance business on the day preceding the date of commencement of this Act, shall, with effect from the date of commencement of this Act, deemed to be finance companies licensed under this Act.
- (4) All actions, proceedings or matters instituted in terms of Finance Companies Act, No. 78 of 1988 and pending in a Magistrate Court or District Court on the day preceding the date of commencement of this Act, shall from and after the date of commencement of this Act be heard and determined by the said Magistrate Court or District Court in terms of the provisions of this Act.
72. 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.
73. (1) For the purposes of this Act, "deposit" means a sum of money paid on terms under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed to by or on behalf of the person making the payment and the person receiving it, subject to subsections (2) and (3).
- (2) In any of the following instances a sum of money paid on terms specified in subsection (1) shall not be a deposit for the purposes of this Act:-
- (a) a sum of money paid by way of a loan or investment in a debt instrument including a hybrid debt instrument by –
 - (i) the Central Bank;
 - (ii) a bank licensed under the Banking Act, No. 30 of 1988, a finance company within the meaning of this Act and a person exempted from the licensing requirement of the said Acts;
 - (iii) a person specifically authorized to lend money under any written law;
 - (iv) the Government, a Provincial Council or a local authority;
 - (v) any other source where repayment is guaranteed by the Government;
 - (vi) a foreign government;
 - (vii) the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Asian Development Bank, or any other multilateral lending institution; and
 - (viii) any other institution that may be specified by the Board in this regard.
 - (b) a sum of money paid by way of a loan or subscription to shares by one company to another at a time

- when the first mentioned company is a subsidiary of the other or both are subsidiaries of another company or the first mentioned company is the holding company of the other or the same individual is the majority shareholder controller of both of them;
- (c) a sum of money which is paid by a person who, at the time when it is paid, is a relative of the person receiving it or is a director of the person receiving it or is a relative of a director of the person receiving it:
 Provided however, that a sum of money received, other than by way of borrowings or subscription to shares, by a finance company within the meaning of this Act shall amount to a deposit;
 For the purpose of this paragraph, "a relative" in relation to any individual means the spouse, the children, or the parent of such individuals;
- (d) a sum of money paid to a person authorised to carry on insurance business under the Regulation of Insurance Industry Act, No. 43 of 2000, for the purpose of carrying on authorized insurance business;
- (e) subject to subsection (3), a sum of money paid as subscription to shares;
- (f) a sum of money subscribed to bonds or debentures secured by the mortgage of any asset of a company provided that the total value of such bonds or debentures shall not exceed the market value of such asset of the company;
- (g) a sum of money subscribed to hybrid debt or subordinated debt, provided that the underlying debt instrument is a security listed on a stock exchange licensed under the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987;
- (h) subject to subsection (3), a sum of money paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract;
- (i) subject to subsection (3), a sum of money subscribed to hybrid debt or subordinated debt, the minimum maturity period of which is not less than sixty months;
- (j) subject to subsection (3), a sum of money paid to a person only on particular occasions on terms specified in subsection (1); and
- (k) a sum of money paid in a transaction, the nature of which may be as specified by the Board by notification in the *Gazette*.
- (3) The Board may determine whether a sum of money transacted as specified in paragraphs (e), (h), (i) and (j) of subsection (2), is a deposit for the purposes of this Act, having regard to the frequency of those occasions and to the characteristics thereof.

74. In this Act, unless the context otherwise requires-

"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;

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

"capital" means the paid up capital of a company;

"capital funds" in relation to a finance company means paid up capital and permanent free reserves and includes, if so determined by the Board, the face value of unsecured debentures and other loan bonds, which in the event of the winding up of a finance company or the return or reduction of capital shall rank after and be subordinated to deposits and other borrowings of the finance company;

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

"commercial bank" means a licensed commercial bank within the meaning of the Banking Act, No. 30 of 1988;

"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 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 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 subsection (1) of section 18 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;

“dependent child” shall mean a child who is under the age of eighteen years; or a child under the age of twenty five years who is unmarried and unemployed, or a child, irrespective of age, who suffers from a physical or mental disability that renders him incapable of earning his livelihood;

“Director” means the head of the department of the Central Bank to which the subject of finance companies has been assigned and includes an acting director;

“finance business” means the business of acceptance of deposits, and

- (a) the lending of money; or
- (b) the investment of money in any manner whatsoever; or
- (c) the lending of money and the investment of money in any manner whatsoever;

“finance company” means a company licensed under this Act to carry on finance business;

“holding company” shall have the same meaning assigned to the term in the Companies Act, No. 7 of 2007;

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

“legal age of majority” shall have the meaning assigned to it under the Age of Majority Ordinance (Chapter 66);

“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, 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;
- (f) cash balance, if any, maintained with the Central Bank of Sri Lanka; and
- (g) such other assets as may be determined by the Monetary Board of the Central Bank of Sri Lanka;

“loan” includes any advance or the deferment of payment on any sale or the deferment of payment in a transaction relating to a hire purchase agreement or a leasing agreement;

“Provincial Council” means a Provincial Council established for a Province by virtue of Article 154A of the Constitution;

“qualified auditor” means—

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

“relative” in relation to an individual means spouse or dependent child of such individual;

“subsidiary company” shall have the same meaning assigned to the term in the Companies Act, No. 7 of 2007;

“substantial interest” –

- (a) in relation to a company, the holding of a beneficial interest by another company or an individual or his relative, whether singly or taken together, in the shares thereof, the paid up value of which exceeds ten *per centum* of the paid up capital of the company or the existence of a guarantee or indemnity for a sum not less than ten *per centum* of the paid up capital given by an individual or his relative or by another company on behalf of such company;
- (b) in relation to a firm, the beneficial interest held therein by an individual or his relative, whether singly or taken together, which represents more than ten *per centum* of the total capital subscribed by all partners of the firm or the existence of a guarantee or indemnity for a sum not less than ten *per centum* of that capital given by an individual or the spouse, parent or child of the individual on behalf of such firm;

“wrongful gain” means gain by dishonest, fraudulent or unlawful means of property to which the person gaining is not legally entitled;

“wrongful loss” means the loss by dishonest, fraudulent or unlawful means of property to which the person losing it is legally entitled.

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

Housing Development Finance Corporation Bank of Sri Lanka (Amendment) Act, No. 45 of 2011

[Certified on 21st November, 2011]

AN ACT TO AMEND THE HOUSING DEVELOPMENT FINANCE CORPORATION BANK OF SRI LANKA ACT, NO. 7 OF 1997

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

1. This Act may be cited as the Housing Development Finance Corporation Bank of Sri Lanka (Amendment) Act, No. 45 of 2011.
2. The Housing Development Finance Corporation Bank of Sri Lanka Act, No. 7 of 1997 (hereinafter referred to as the “principal enactment”) is hereby amended in section 13 thereof as follows :—
 - (1) by the repeal of paragraph (l) thereof and the substitution therefor of the following :—

“(l) to borrow or raise money;”;
 - (2) by the addition immediately after paragraph (m) thereof of the following paragraph :—

“(n) to carry on such forms of business as are specified in Schedule IV to the Banking Act, No. 30 of 1980, subject to such restrictions as may be expressly stipulated in the licence issued by the Monetary Board under the said Act.”.
3. Section 16 of the principal enactment is hereby amended in sub section (1) thereof by the substitution for the words “twenty million shares of one hundred rupees each.” of the words “two hundred million shares of ten rupees each.”.
4. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.