

PART IV

MAJOR LEGISLATIVE ENACTMENTS OF 1988 RELATING TO THE FUNCTIONS AND OPERATIONS OF THE CENTRAL BANK AND BANKING INSTITUTIONS IN SRI LANKA

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TURNOVER TAX (AMENDMENT) ACT, No. 6 OF 1988

(Certified on 24th March, 1988)

AN ACT TO AMEND THE TURNOVER TAX ACT, No. 69 OF 1981

1. This Act may be cited as the Turnover Tax (Amendment) Act, No. 6 of 1988.
2. Section 49 of the Turnover Tax Act, No. 69 of 1981 (hereinafter referred to as the "principal enactment") is hereby amended as follows :—

- (1) by the insertion, immediately after subsection (4) of that section, of the following subsection :—

(4A) Subject to the provisions of subsection (5) and subsection (6), where the Commissioner-General is satisfied that any person carrying on the business of manufacturing or producing articles (hereafter in this section referred to as "supplier") supplies such articles to any exporter and that such supply is covered by a letter of credit opened in a bank in Sri Lanka on a back to back basis against an International Letter of Credit for remittance to Sri Lanka, of the foreign exchange value of the exports related to such supply, and—

- (i) that the turnover tax has in fact been paid by such supplier to the Principal Collector of Customs in respect of the raw materials used by such supplier in the manufacture or production of the articles so supplied ;
or

- (ii) that—

- (a) the price paid by such supplier for the purchase of such raw materials as is attributable to the manufacture or production of such articles was paid to the manufacturer or producer from whom such raw materials were purchased ; and

- (b) the turnover tax has in fact been paid by the manufacturer or producer of such raw materials in respect of the turnover of his business as is attributable to such raw materials,

such amount of the turnover tax paid by the supplier as is attributable to the raw materials used in the manufacture or production of such articles shall be paid to such supplier by the Commissioner-General ;

- (2) in subsection (5) of that section by the substitution for the expression "subsections (3) and (4) shall", of the expression "subsections (3), (4) and (4A) shall" ; and

(3) by the repeal of subsection (6) and the substitution therefor of the following subsection :—

“(6) No payment under subsection (3), subsection (4) or subsection (4A) shall be made by the Commissioner-General in respect of any article or any article and container, receptacle or wrapper in which such article is exported or supplied unless a claim in writing for such payment is made by the exporter or supplier of such article not earlier than three months, and not later than nine months, after the export or supply of such article.”.

3. The amendments made to the principal enactment by section 2 of this Act shall for all purposes be deemed to have come into force on January 1, 1988.

MONETARY LAW (AMENDMENT) ACT, No. 7 OF 1988

(Certified on 24th March, 1988)

AN ACT TO AMEND THE MONETARY LAW ACT

1. This Act may be cited as the Monetary Law (Amendment) Act, No. 7 of 1988.

2. Section 10 of the Monetary Law Act (hereinafter referred to as the “principal enactment”), is hereby amended by the insertion, immediately after paragraph (b) of that section of the following paragraph :—

“(bb) may, notwithstanding the provisions of paragraph (c) of section 117, grant loans and advances, for housing purposes, to officers and servants of the Central Bank on the mortgage of, or otherwise on the security of, immovable property ;”.

3. Section 23 of the principal enactment is hereby amended as follows :—

(a) by the insertion immediately after subsection (1) of that section, of the following :—

“Nothing in paragraph (b) or (c) shall be held to disqualify an officer or servant of the Central Bank who has been temporarily released to serve in any office or position for which salary or remuneration is payable out of public funds, or who is a director of any banking institution which is a public corporation, for appointment as a Deputy Governor.” ;

(b) in subsection (2) of that section, by the substitution for paragraph (d) thereof, of the following paragraph :—

“(d) if, in the opinion of the board, he has failed to carry out his duties :

Provided that nothing in this subsection shall be held to empower the Monetary Board, with the concurrence of the Minister, to remove from office, any Deputy Governor who has been temporarily released, under subsection (3) to serve in any office or position for which salary or other remuneration is payable out of public funds or to serve with a banking institution which is a public corporation, as a Director of that banking institution by reason only of the fact that such Deputy Governor holds such office or position or is such Director.”;

(c) by the addition immediately after subsection (2) of that section of the following subsection :—

“(3) The Monetary Board may, with the concurrence of the Minister, temporarily release a Deputy Governor to—

(a) serve in an office or position for which a salary or other remuneration is payable out of public funds ;

(b) serve with a banking institution, which is a public corporation, as a Director of that banking institution,

on such terms as may be determined by the Monetary Board, with like concurrence.

For the purposes of this section, “public corporation” shall have the same meaning as in Article 170 of the Constitution.”.

4. The following new section is hereby inserted immediately after section 120 of the principal enactment and shall have effect as section 120A of that enactment :—

“Release of officers and servants of the Central Bank.

120A. The Monetary Board may, subject to the provisions of subsection (3) of section 23, at the request of the Government or otherwise temporarily release any officer or servant of the Central Bank, with the consent of such officer or servant to serve in any office or position outside the Central Bank, on such terms and conditions as may be determined by the Monetary Board.”.

INLAND REVENUE (AMENDMENT) ACT, No. 8 OF 1988

(Certified on 25th March, 1988)

AN ACT TO AMEND THE INLAND REVENUE ACT, No. 28 OF 1979

1. This Act may be cited as the Inland Revenue (Amendment) Act, No. 8 of 1988.

2. Section 7 of the Inland Revenue Act, No. 28 of 1979 (hereinafter referred to as the “principal enactment”) is hereby amended in subsection (3) of that section as follows :—

- (1) by the substitution in paragraph (b) of that subsection for the words "paragraph (h) and paragraph (l)," of the words "paragraph (h), paragraph (l) and paragraph (m)," ;
- (2) by the substitution in paragraph (k) of that subsection for the words "of that property at that time ; and", of the words " of that property at that time ; " ;
- (3) by the substitution in paragraph (l) of that subsection for the words and figures " after April 1, 1977. " of the words and figures "after April 1, 1977 ; and" ; and
- (4) by the addition immediately after paragraph (l) of that subsection of the following paragraph :—

" (m) where the property is immovable property and that property was acquired by way of gift or inheritance on or after April 1, 1977, by the person to whom such gain arises from any person who had acquired such property on or after April 1, 1977, the value of such property at the time when it was acquired by the first mentioned person shall—

- (i) if the second-mentioned person had acquired that property by purchase, be an amount equal to the cost of such purchase ; and
- (ii) if the second-mentioned person had acquired that property otherwise than by purchase, be an amount equal to the market value of the property at the time of such acquisition,

increased by the cost of any improvements, additions or alterations to that property made by the second-mentioned person after it was acquired by him."

3. Section 8 of the principal enactment is hereby amended in paragraph (a) of that section as follows :—

- (1) by the substitution in sub-paragraph (XLIX) of that paragraph, for the words and figures " the President's Fund established by the President's Fund Act, No. 7 of 1978 ; and " of the words and figures "the President's Fund established by the President's Fund Act, No. 7 of 1978 ;" ;
- (2) by the substitution, in sub-paragraph (L) of that paragraph, for the words and figures "National Defence Fund Act, No. 9 of 1985", of the words and figures "National Defence Fund Act, No. 9 of 1985 ; and" ; and
- (3) by the addition immediately after sub-paragraph (L) of that paragraph, of the following sub-paragraphs :—

“(Li) the Sri Lanka Institute of Architects incorporated by the Sri Lanka Institute of Architects Law, No. 1 of 1976 ;

(Lii) the Surveyors' Institute of Sri Lanka incorporated by the Surveyors' Institute of Sri Lanka Act, No. 22 of 1982 ; and

(Liii) the Institute of Chemistry, Ceylon incorporated by the Institute of Chemistry (Ceylon) Act, No. 15 of 1972.”

4. Section 9 of the principal enactment is hereby amended in subsection (1) of that section as follows :—

(1) by the substitution in paragraph (m) of that subsection, for the words “to his residence”, of the words “to his residence ; and” ; and

(2) by the addition immediately after paragraph (m) of that subsection of the following paragraph :—

“(n) such part of any sum paid to an employee at the time of his retirement, from any provident or pension fund, as represents income derived by that fund for any period commencing on or after April 1, 1987, from investments made by it.”

5. Section 11 of the principal enactment is hereby amended as follows :—

(1) in paragraph (b) of that section by the substitution, for the figures “ 20, 20A, 21,”, of the figures “ 20, 20A, 20B, 20C, 21” ;

(2) in paragraph (c) of that section by the substitution, for the words “within one year thereafter ; and ” of the words “ within one year thereafter ;” ; and

(3) by the insertion immediately after paragraph (c) of that section, of the following paragraph :—

“(cc) any dividend paid on or after April 1, 1988, to a shareholder of a company out of any such dividend as is referred to in paragraph (a) or (b) received by that company through two or more intermediary companies during the period for which the dividends referred to in paragraph (a) or (b) are exempt from income tax or within two years thereafter ; and”.

6. Section 12 of the principal enactment is hereby amended in subsection (1) of that section as follows :—

(1) in paragraph (b), by the substitution for the words “year of assessment if such house is used”, of the words and figures “year of assessment if the construction of such house was or is completed on or before March 31, 1989, and is used” ; and

(2) by the insertion immediately after paragraph (b) of that subsection of the following new paragraph :—

“(bb) the income accruing to the owner of a house for the year of assessment in which the construction of that house was completed and for the six years of assessment immediately succeeding that year of assessment, if the construction of such house is completed on or after April 1, 1989, and is used solely for residential purposes and—

(i) is occupied by the owner thereof : or

(ii) has a floor area (inclusive of the thickness of the walls) not exceeding two thousand square feet :

Provided that where the floor area of the house is one thousand and five hundred square feet or less, the income accruing to the owner shall be exempt from income tax for the year of assessment in which the construction of that house was completed and for the nine years of assessment immediately succeeding that year of assessment ;”.

7. Section 14 of the principal enactment is hereby amended by the repeal of sub-paragraph (xvi) of paragraph (a) thereof and the substitution therefor of the following sub-paragraph :—

(xvi) the change of ownership of any property, on or after November 12, 1986, occurring not less than twenty-five years after its acquisition by the person to whom such gain arises.”.

8. The following section is hereby inserted immediately after section 20B, and shall have effect as section 20C of the principal enactment :—

‘Exemption from income tax of profits from supplies to certain enterprises.

20C. (1) Such part of the profits and income within the meaning of paragraph (a) of section 3, (other than any profits and income from the sale of capital assets), of any undertaking as consists of the export profits and income of that undertaking shall be exempt from income tax for any year of assessment commencing on or after April 1, 1988.

(2) In this section—

(a) “export profits and income” and “total turnover” have the respective meanings assigned to them in subsection (2) of section 20 ;

(b) "export turnover" when used in relation to an undertaking to which this section applies means the total amount received or receivable by that undertaking from the sale, of goods to any enterprise with which an agreement has been entered into by the Greater Colombo Economic Commission under section 17 of the Greater Colombo Economic Commission Law, No: 4 of 1978, during the period for which the profits and income of that enterprise are exempt from income tax under the terms of that agreement, for which payment is made out of funds drawn from any account maintained by such enterprise in a foreign currency banking unit of any commercial bank in Sri Lanka, excluding—

(i) any amount received or receivable by the sale of capital assets ;

(ii) any amount received or receivable from the sale of gems ;

(iii) any amount received or receivable from the sale or export of black tea in bulk, crepe rubber, sheet rubber, scrap rubber, coconut oil, desiccated coconut, copra, fresh coconuts or coconut fibre ;

(iv) any profits and income not being profits and income within the meaning of paragraph (a) of section 3.'.

9. Section 21 of the principal enactment is hereby amended as follows :—

(1) by the renumbering of that section as subsection (1) of that section ;

(2) by the substitution, in the renumbered subsection (1) of that section, for the words "sells any house or flat.", of the words and figures "sells, on or before March 31, 1989, any house or flat," ; and

(3) by the addition immediately after the renumbered subsection (1) of that section of the following subsection :—

"(2) Where any person who carries on an undertaking for the construction and sale of houses or flats, being an undertaking approved by the Commissioner for National Housing having regard to the housing policy

of the Government, sells on or after April 1, 1989, any house or flat, the floor area of which does not exceed two thousand square feet and the construction of which was commenced by such person on or after January 1, 1977, such sale being the first sale of that house or flat, seventy five *per centum* of the profits and income arising from such sale shall be exempt from income tax.”.

10. Section 23 of the principal enactment is hereby amended as follows :—

(1) in subsection (1) of that section—

(a) in paragraph (eee) of that subsection by the substitution for the words “on its cost of construction.” of the words, “on its cost of construction” :

“Provided that no deduction under the preceding provisions of this paragraph shall be allowed to a person in respect of any capital asset referred to in sub-paragraph (i), or sub-paragraph (ii) or sub-paragraph (iii) of this paragraph, in respect of which the total of the allowances granted for depreciation in the preceding years of assessment is equal to the cost of acquisition or the cost of construction, as the case may be, of such capital asset.” ;

(b) by the substitution, in paragraph (hh), of that subsection, for the words “to a special reserve for bad and doubtful debts ;”, of the words “to a general reserve to meet expenditure of a revenue nature ;” ;

(c) by the substitution, in paragraph (i), of that subsection for the words and figures “on or after April 1, 1987,”, of the words and figures “on or after April 1, 1986,” ;

(2) in subsection (3) of that section—

(a) by the substitution, in paragraph (bbb) of that subsection, for the words “cost of acquisition”, wherever those words occur in that paragraph of the words “cost of acquisition or the cost of construction, as the case may be” ;

(b) by the substitution for the proviso to paragraph (bbb) of that subsection, of the following proviso :—

“ Provided that, where such difference exceeds the proceeds of such disposal, the excess shall be treated for the purposes of subsection (1) as an expense incurred in the production of income :

Provided further that, nothing in this paragraph shall apply to—

- (a) the transfer on or after April 1, 1987, of any such capital asset to a company referred to in section 14 (a) (xv) on the conversion of a business carried on by an individual either solely or in partnership, to such company ; or
- (b) the disposal by any person, of any such capital asset, if the full proceeds of disposal are used by such person, within one year of the disposal, for the replacement of such capital asset to be used by him for producing income in any trade, business, profession, vocation or employment carried on, or exercised by him.” ;
- (3) in subsection (5) of that section by the substitution for the word and figures “(1) (ee), or (1) (f)”, of the word and figures “(1) (ee), (1) (eee) or (1) (f)” ; and
- (4) in subsection (7) of that section—

(a) by the substitution in sub-paragraph (i) of paragraph (a) of that subsection for the words and figure “ or paragraph (ee) of subsection (1) ”, of the words and figure “ or paragraph (ee) or paragraph (eee) of subsection (1) ” ;

(b) by the substitution in sub-paragraph (i) of paragraph (f) of that subsection, for the words “ such proceeds of sale ;” of the words “the profits on the sale of the asset sold ;” ; and

(c) by the insertion immediately after sub-paragraph (i) of paragraph (f) of that sub-section of the following :—

“ For the purposes of this sub-paragraph the profit on the sale of an asset sold shall be the excess of the proceeds of sale of such asset over the difference between—

(i) the cost of acquisition or the cost of construction, as the case may be, of such asset ; and

(ii) the total allowance for depreciation granted in respect of such capital asset ;”.

11. Section 24 of the principal enactment is hereby amended in subsection (2) of that section. by the substitution for the words and figures “ 23 (1) (a) or 23 (1) (e) or 23 (1) (f)—”, of the words and figures “ 23 (1) (a) or 23 (1) (e) or 23 (1) (eee) or 23 (1) (f)—”.

12. Section 25 of the principal enactment is hereby amended by the insertion immediately after subsection (1) of that section of the following subsection :—

“(1A) Where the Commissioner-General directs under the provisions of subsection (3) of this section, that the accounts in respect of any trade, business, profession or vocation be made up for such periods as may be specified in that direction, he may further direct that the statutory income from that source for any year of assessment commencing on or after April 1, 1988, be computed on the amount of the profits of the period ending in that year of assessment. Where, however the statutory income of any person from a trade, business, profession or vocation has been computed by reference to an account made up for a certain period and such person fails to make up an account for the corresponding period in the year following, the statutory income from that source both of the year of assessment for which such failure occurs and of the two years of assessment following shall be computed on such basis as the Commissioner-General shall consider just and equitable in the circumstances of the case :

Provided that the Commissioner-General may at any time vary or revoke a direction given under the preceding provisions of this subsection :

And provided further that where any such direction is varied or revoked by the Commissioner-General he may order that the statutory income for any year of assessment from the source in respect of which such direction was given be computed as if the accounts were made upto the thirty-first day of March in that year of assessment.”.

13. Section 29 of the principal enactment is hereby amended as follows :—

(1) in subsection (4A) of that section by the substitution for the words and figures “ section 20, or section 20A ”, wherever those words and figures occur in that subsection, of the words and figures “ section 20, or section 20A, or section 20B, or section 20C ” ; and

(2) by the addition at the end of paragraph (a) of subsection (6) of that section, of the following :—

“(iv) no deduction shall be made in respect of any capital loss arising from the disposal of any capital asset used by such person for producing profits and income of any trade, business, profession or vocation carried on or exercised by him, if a deduction for depreciation in respect of such asset has been allowed under section 23 of this Act or under section 10 of the Inland Revenue Act, No. 4 of 1963, or under section 11 of the Income Tax Ordinance.”.

14. Section 31 of the principal enactment is hereby amended as follows :—

(1) in subsection (1) of that section by the substitution for the words and figures, “Subject to the provisions of subsection (5) and subsection (5A),”, of the words and figures “Subject to the provisions of subsection (5), subsection (5A), subsection (5B), and subsection (5C),” ;

(2) in subsection (2) of that section—

(a) in paragraph (e) of that subsection—

(i) by the substitution in sub-paragraph (i) of that paragraph for all the words and figures from “in the repayment of capital” to “of a house purchased on or after that date,” of the following words and figures :—

“in the repayment of capital of any loan granted on or after April 1, 1973, but on or before March 31, 1989 for the construction of a house or for the purchase either of the first house or of the first site for the construction of a house purchased on or after April 1, 1973,” ; and

(ii) by the substitution in sub-paragraph (ii) of that paragraph for the words and figures “on or after April 1, 1973,” of the words and figures “on or after April 1, 1973, but on or before March 31, 1989,” ;

(b) by the insertion, immediately after paragraph (e) of that subsection of the following new paragraph :—

“(ee) any amount paid by an individual to the Government of Sri Lanka or to any banking institution within the meaning of the Monetary Law Act or to any local authority or to any other institution approved by the Minister in charge of the subject of Housing having regard to the housing policy of the Government—

(i) in the repayment of capital of any loan, granted on or after April 1, 1989, for the construction at a cost not exceeding one million rupees of a house, being the first house constructed by such individual, on or after April 1, 1978 or, for the purchase either of a house or of a site for the construction of a house purchased at a cost not exceeding one million rupees, being the first house or the first site purchased by such individual on or after April 1, 1978, such repayment being made

by the individual while he is the owner of that house or site or while the owner of that house or site is the child, under eighteen years of age, of such individual—

(a) who has acquired ownership of such house or site, by way of gift from such individual ; and

(b) whose income has been, for the purposes of this Act, aggregated with that of such individual in that year of assessment ;

(ii) as monthly payments in terms of any rent purchase agreement the consideration of which does not exceed one million rupees entered into, on or after April 1, 1989, in respect of the first house purchased on or after April 1, 1978 on rent purchase terms ;” ;

(c) in paragraph (f) of that subsection by the substitution for the words “on the construction of a house,”, of the words and figures “on the construction of a house on or before March 31, 1989,” ;

(d) by the insertion, immediately after paragraph (f) thereof, of the following new paragraph :—

“(ff) any amount spent by an individual on the construction, at a cost not exceeding one million rupees, on or after April 1, 1989, of the first house constructed by him on or after April 1, 1978, such amount not being an amount obtained on any loan from the Government of Sri Lanka or any institution or authority referred to in paragraph (e) ;” ;

(e) in paragraph (g) of that subsection by the substitution for all the words and figures from “any amount spent” to “on or after that date,”, of the words and figures “any amount spent by an individual for the purchase on or after April 1, 1978, but on or before March 31, 1989, of either the first house or of the first site for the construction of a house purchased by him on or after April 1, 1978,” ;

(f) by the insertion immediately after paragraph (g) of that subsection of the following new paragraph :—

“(gg) any amount spent by an individual for the purchase at a cost not exceeding one million rupees on or after April 1, 1989, of either the first house or of the first site for the construction of a house, being the first house or the first site purchased by him on or after April 1, 1978, such amount not being an amount obtain on a loan from the Government of Sri Lanka or any institution or authority referred to in paragraph (e) ;” ;

(g) in paragraph (l) of that subsection—

(i) by the substitution, for the words “spent by a person in constructing any house or flat or the cost of purchase of any unit”, of the words and figures “spent by a person in constructing, on or before March 31, 1989, any house or flat or, the cost of purchase, on or before March 31, 1989, of any unit”; and

(ii) by the substitution, in sub-paragraph (iii) of that paragraph, for the words and figures “sub-paragraph (i) of paragraph (b) of subsection (1) of section 23 or paragraph (f) of subsection (1) of section 23”, of the words and figures “sub-paragraph (i) of paragraph (b) of subsection (1) of section 23 or sub-paragraph (iii) of paragraph (eee) of subsection (1) of section 23 or paragraph (f) of subsection (1) of section 23”;

(h) by the insertion immediately after paragraph (l) of that subsection, of the following paragraph :—

“(II) any amount spent by a person in constructing any house or flat at a cost not exceeding one million rupees, on or after April 1, 1989, or in the purchase at a cost not exceeding one million rupees on or after April 1, 1989, of any unit of residential accommodation constructed with the approval of the Urban Development Authority (established by the Urban Development Authority Law, No. 41 of 1978) and comprised in a registered condominium property within the meaning of the Apartment Ownership Law, No. 11 of 1973, if—

(i) such house, flat or unit is for occupation as a dwelling house by any member of the staff employed by such person,

(ii) the floor area of such house, flat or unit does not exceed two thousand square feet, and

(iii) no allowance is deductible under sub-paragraph (i) of paragraph (b) of subsection (1) of section 23, or sub-paragraph (iii) of paragraph (eee) of subsection (1) of section 23, or paragraph (f) of subsection (1) of section 23 in respect of such house, flat or unit.”;

- (i) by the substitution, in the paragraph immediately succeeding paragraph (o) of that sub-section, for the words "In paragraphs (e) and (g) of this subsection", of the words "In paragraphs (e), (ee), (g) and (gg) of this subsection" ;
- (3) in subsection (3) of that section, by the substitution, for the words "in paragraph (f) or paragraph (g), such", of the words "in paragraph (f) or paragraph (ff) or paragraph (g) or paragraph (gg), such" ;
- (4) in subsection (5B) of that section, by the substitution for the words and figures "for any year of assessment commencing on or after April 1, 1986—", of the words and figures "for the year of assessment commencing on April 1, 1986, and the year of assessment immediately succeeding that year of assessment—";
- (5) by the insertion, immediately after subsection (5B), of that section, of the following subsection :—

"(5C) The deduction from the assessable income of any person other than a company for any year of assessment commencing on or after April 1, 1988—

- (i) in respect of all qualifying payments other than those referred to in paragraphs (b), (c), (m) and (n) of subsection (2), made by him, or deemed to have been made by him, in that year of assessment, shall not exceed one-third of such assessable income or fifty thousand rupees, whichever is less ;
- (ii) in respect of all qualifying payments, referred to in paragraphs (c), (m) and (n) of subsection (2), made by him or deemed to have been made by him, shall not exceed fifty thousand rupees ; and
- (iii) in respect of the aggregate of all qualifying payments referred to in paragraphs (i) and (ii) of this subsection shall not exceed fifty thousand rupees." ; and
- (6) in subsection (7) of that section, by the addition at the end of the proviso to that subsection, of the following proviso :—

" Provided further that where an additional assessment arises in consequence of any sum of money in respect of those shares being withdrawn or realised by, or paid to, the person who purchased those shares, such additional assessment consisting of the difference between—

- (i) the income tax to which the person who has been granted the allowance would have been liable if such part of such allowance as is attributable to the total sum withdrawn or realised by, or paid to, such person had not been granted, and

(ii) the amount of tax charged for that year of assessment,

shall, notwithstanding anything in this Act, be made in respect of that person and accordingly the provisions of this Act relating to notice of assessment, appeal and other proceedings shall apply to such additional assessment.”

15. Section 32 of the principal enactment is hereby amended as follows :—

(1) in paragraphs (a) of subsection (1) of that section—

(a) by the substitution in sub-paragraph (v), of that paragraph, for the words and figures “in respect of any year of assessment commencing on or after April 1, 1986,” of the words and figures, “in respect of the year of assessment commencing on April 1, 1986, and in respect of the year of assessment immediately succeeding that year of assessment,” ;

(b) by the insertion immediately after sub-paragraph (v) of that paragraph of the following sub-paragraph.—

“(vi) in respect of any year of assessment commencing on or after April 1, 1988, at the appropriate rates specified in Part II D of the First Schedule to this Act ;” ;

(2) in subsection (2) of that section—

(a) by the substitution in paragraph (e) of that subsection, for the words “has been paid by the employer”, of the words “has been paid by the employer, or” ;

(b) by the insertion, immediately after paragraph (e) of that subsection of the following paragraph :—

“(f) any sum paid to him at the time of his retirement from any employment, from the Employees’ Trust Fund, established by the Employees’ Trust Fund Act, No. 46 of 1980 ;” ; and

(c) by the substitution, for the words “if such aforementioned sum has been paid by the employer of such individual,” of the words “if any one or more of the aforementioned sum or sums has been or have been paid to such individual by his employer, or if such employer has contributed to such fund or funds,” ;

(3) in subsection (3A) of that section, by the substitution for the words “more than two years but less than five years after the acquisition of such property by such person, and the rate of income tax payable on such part of such

income", of the words "more than two years but not more than five years after the date of acquisition of such property by such person, and the rate of income tax payable on a part of such income";

(4) in subsection (3B) of that section—

(a) by the substitution, for the words "within such period after the acquisition of that property", of the words "within such period after the date of acquisition of that property";

(b) by the substitution in Column I of that subsection—

(i) for the words "more than five years but less than fifteen years", of the words "more than five years but not more than fifteen years"; and

(ii) for the words "more than fifteen years but less than twenty years", of the words "more than fifteen years but not more than twenty years"; and

(5) by the insertion immediately after subsection (3B) of that section, of the following subsection :—

"(3C) Where for the purposes of paragraph (l) or (m) of subsection (3) of section 7, the value of any property is determined by reference to a date earlier than the actual date of acquisition of such property by any person, the date of acquisition of such property by such person, shall for the purposes of this section, be deemed to be the date on which the person second-mentioned in such paragraph acquired such property."

16. Section 33 of the principal enactment is hereby amended by the repeal of subsection (1c) of that section and the substitution therefor, of the following subsection :—

"(1c) Where for the period commencing on November 12, 1986, the taxable income of a company includes any capital gain arising from the change of ownership of any property, the provisions of subsections (3A) and (3B) of section 32 shall, *mutatis mutandis*, apply to the taxation of that capital gain."

17. Section 50 of the principal enactment is hereby amended as follows :—

(1) by the repeal of paragraph (b) of that section, and the substitution, of the following paragraph therefor :—

"(b) for the year of assessment commencing on April 1, 1986, and the year of assessment immediately succeeding that year of assessment, shall not exceed sixty *per centum*;" ; and

(2) by the insertion immediately after paragraph (b), of that section of the following new paragraph :—

“(c) for any year of assessment commencing on or after April 1, 1988, shall not exceed fifty *per centum*,”.

18. Section 67 of the principal enactment is hereby amended by the repeal of subsections (2), (3) and (4) of that section, and the substitution there for, of the following subsections :—

“(2) An individual who is physically present in Sri Lanka for one hundred and eighty three days or more during any year of assessment shall be deemed to be resident in Sri Lanka throughout that year of assessment.

(3) An individual who has been deemed resident for two or more consecutive years of assessment shall be deemed to be resident until such time as he is continuously absent from Sri Lanka for an unbroken period of three hundred and sixty five days. When such person is so absent he shall, notwithstanding the provisions of subsection (2), be deemed to be non-resident from the commencement of the year of assessment in which such absence commences.

(4) Where, but for his presence in Sri Lanka for any period or periods not exceeding in the aggregate thirty days, a person would have been deemed under subsection (3) to have been non-resident, such period or periods not exceeding thirty days shall be treated as if it or they had been spent by him outside Sri Lanka.”.

19. Section 86 of the principal enactment is hereby amended as follows :—

(1) in paragraph (a) of subsection (2) of that section by the substitution, for the words and figures “on or after April 1, 1986, and”, of the words and figures “on or after April 1, 1986, but before April 1, 1988, and”; and

(2) by the addition, at the end of that section, of the following new subsection:—

“(3) Where the aggregate of—

(a) the wealth tax to which a person is liable for any year of assessment commencing on or after April 1, 1988, and

(b) the income tax to which such person is liable for that year of assessment,

exceeds fifty *per centum* of the aggregate of the assessable income of that person for that year of assessment and of any profits and income (other than the net annual value of a residence and any subsidy exempt from income

tax under this Act), being profits and income exempt from income tax under this Act, or under any other enactment, and which but for that exemption would have been taken into account in computing the assessable income of that person for such year of assessment, such excess shall be set off against the wealth tax to which he is liable for that year of assessment.”.

20. Section 89 of the principal enactment is hereby amended in the proviso to that section, by the substitution, for the words and figures “ paragraph (e) of subsection (1) of section 23,” of the words and figures “ paragraph (e) or paragraph (eee) of subsection (1) of section 23,”.

21. Section 92 of the principal enactment is hereby amended by the insertion immediately after subsection (2), of that section, of the following new subsection :—

“(2A) Every person who furnishes a return of income or wealth which is not in such form and does not contain such particulars as are specified by the Commissioner-General for the purposes of the foregoing subsections shall be deemed, for the purposes of this Act, not to have furnished a return of his income or wealth,”.

22. Section 115 of the principal enactment is hereby amended in subsection (5) of that section as follows :—

(1) in paragraph (a) of that subsection by the substitution for the words “ end of that year of assessment ; and ”, of the words “ end of that year of assessment ; ” ;

(2) in paragraph (b) of that subsection by the substitution for the words “ after the expiry of three years from the end of that year of assessment : ”, of the words “ after the expiry of three years from the end of that year of assessment ; and ” ; and

(3) by the insertion, immediately after paragraph (b) of that subsection, of the following paragraph :—

“(c) of the income tax or wealth tax, as the case may be, payable under this Act, for any year of assessment commencing on or after April 1, 1988, by any person who has made a return of his income or wealth as the case may be, after the thirtieth day of November next succeeding the end of that year of assessment, but on or before the thirty first day of March in the next succeeding year,

after the expiry of five years from the end of the year of assessment in which the return is made : ”.

23. Section 118 of the principal enactment is hereby amended by the substitution, for the word “ Clerk ” wherever that word occurs in that section, of the word “ Secretary ”.

24. Section 119 of the principal enactment is hereby amended in paragraph (c) of subsection (3) of that section, by the substitution, for the word " Clerk ", of the word " Secretary ".

25. Section 121 of the principal enactment is hereby amended in subsection (1) of that section, by the substitution, for the word " Clerk ", of the word " Secretary ".

26. Section 122 of the principal enactment is hereby amended in subsection (1) of that section by the substitution, for the word " Clerk ", of the word " Secretary ".

27. Section 163 of the principal enactment is hereby amended by the substitution, in the definition of " executive officer ", for the words " one thousand five hundred rupees ; ", of the words " five thousand rupees ; ".

28. The First Schedule to the principal enactment is hereby amended as follows :—

(1) in PART IIC of that Schedule, by the substitution, for the words and figures " for any year of assessment commencing on or after April 1, 1986," of the words and figures " for the year of assessment commencing on April 1, 1986, and for the year of assessment immediately succeeding that year of assessment," ; and

(2) by the insertion immediately after PART IIC of that Schedule, of the following Part :—

" PART IID

The rates of income tax for any year of assessment commencing on or after April 1, 1988, shall be as follows :—

On the first Rs. 21,000 of the taxable income	.. 10%
On the next Rs. 24,000 of the taxable income	.. 20%
On the next Rs. 24,000 of the taxable income	.. 30%
On the balance of the taxable income	.. 40% "

29. (a) The amendments made to the principal enactment by section 15 (3) and section 15 (4) of this Act shall be deemed for all purposes to have come into force on November 12, 1986 ;

(b) The amendments made to the principal enactment by section 10 (2), section 10 (3), section 10 (4) (a), section 11, section 14 (2) (g) (ii) and section 20 of this Act Shall be deemed for all purposes to have come into force on April 1, 1987 ; and

(c) The amendments made to the principal enactment by section 2 and section 15 (5) of this Act shall be deemed to have come into force on November 17, 1987.

BANKING ACT, No. 30 OF 1988

(Certified on 25th August, 1988)

AN ACT TO PROVIDE FOR THE INTRODUCTION AND OPERATION OF A PROCEDURE FOR THE LICENSING OF PERSONS CARRYING ON BANKING BUSINESS ; FOR THE REGULATION AND CONTROL OF MATTERS RELATING TO THE BUSINESS OF BANKING ; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

1. (1) This Act may be cited as the Banking Act, No. 30 of 1988.
- (2) The provisions of this Act other than Part V shall come into operation on such date as may be appointed by the Minister by Order published in the *Gazette* (hereinafter referred to as the "appointed date").
- (3) The provisions of Part V of this Act shall come into operation on such later date as may be appointed by the Minister by Order published in the *Gazette*.

PART I

LICENSING OF PERSONS CARRYING ON BANKING BUSINESS

2. (1) On or after the appointed date, no banking business shall be carried on except by a company under the authority of a licence issued by the Monetary Board with the approval of the Minister.
- (2) Where such company is a company incorporated outside Sri Lanka no licence shall be issued unless such company has complied with the provisions of Part XIII of the Companies Act, No. 17 of 1982.
- (3) Any company which has been issued a licence under the provisions of this Act shall, hereinafter be referred to as a "licensed commercial bank".
- (4) Notwithstanding the provisions of subsections (1) and (2) of this section and of section 3 of this Act, all commercial banks specified in Schedule I to this Act, which on the appointed date are carrying on banking business, shall be issued a licence in accordance with the provisions of this Act.
- (5) Any company which carries on banking business in contravention of subsection (1) shall be guilty of an offence under this Act.

For the purposes of this section "company" means a company formed and registered under the Companies Act, No. 17 of 1982, and includes a company duly incorporated outside Sri Lanka, or formed in pursuance of any statute of any foreign country, Royal Charter or letters patent and a body corporate established by or under any written law and shall not include the Central Bank, or a private company incorporated outside Sri Lanka except the banks specified Schedule I.

3. (1) An application for a licence shall be made in writing to the Monetary Board in such manner as may be determined by the Monetary Board.

(2) Every application for a licence shall be accompanied by—

(a) a copy of the Memorandum and the Articles of Association of the company or the constitution of the company or any other document associated with the same ;

(b) a copy of the balance sheet and profit and loss account if any, of the company in respect of the year, preceding the year in which the licence is applied for ; and

(c) in the case of an application by a company incorporated outside Sri Lanka, an affidavit from the Chairman of such company supported by a resolution of its Board of Directors, stating that such company shall on demand by the Central Bank provide such funds as may be necessary to cover all obligations and liabilities incurred in the carrying on of banking business in Sri Lanka.

(3) On receipt of an application under subsection (1) the Monetary Board may, where such Board considers it necessary, require the applicant to furnish such other documents or particulars, in order to determine whether, a licence should be issued or not.

(4) No company incorporated in Sri Lanka under any written law shall make an application for the issue of a licence—

(a) unless such company is registered as a public company ;

(b) unless the Memorandum of Association of the company sets out as the primary objects of such company, the carrying on of the business of accepting deposits of money subject to withdrawal on demand by cheque, draft, order or otherwise ; and

(c) if the Memorandum of Association of the company provides for the carrying on of any other form of business, unless the Memorandum of Association of the company limits such forms of business to one or more of the forms of business specified in Schedule II to this Act.

(5) Any person who submits an application and other documents under subsections (1), (2) and (3) containing information which is to his knowledge false or misleading in any material particular, shall be guilty of an offence under this Act.

4. (1) The Monetary Board may require any company incorporated outside Sri Lanka, which has applied for a licence under section 3, to undertake to remit to Sri Lanka, prior to the commencement of their business in Sri Lanka, a sum of money,

determined with the approval of the Minister, in United States Dollars, or its equivalent in any designated foreign currency. The amount so remitted may form part of the assigned capital of such company and shall be kept as a deposit with the Central Bank or in such other manner as may be determined from time to time by the Monetary Board.

(2) The Monetary Board may, where such Board considers it necessary or expedient to do so in the interest of national economy, from time to time, make further determinations as regards the remittance of money after the expiry of a period of six months from the date of the last of such determinations.

(3) A determination made under this section shall apply uniformly to all companies incorporated outside Sri Lanka which apply for a licence after each such determination.

5. (1) On receipt of an application under section 3, the Monetary Board, having considered the documents and particulars accompanying such application, and having satisfied itself that the terms and condition of such licence will be observed by the applicant, shall, with the approval of the Minister, issue a licence to the applicant authorizing such applicant to carry on banking business in Sri Lanka.

(2) The licence shall specify—

(a) whether the bank shall carry on domestic banking business or offshore banking business, or both such business ; and

(b) the place or places or area within which any bank may carry on business.

(3) Every licensed commercial bank shall display a copy of the licence issued to it under subsection (1) in a conspicuous place within the premises of any such bank.

6. (1) Subject to the provisions of section 17, no licensed commercial bank shall—

(a) carry on any banking business other than the business specified in the licence ;
or

(b) carry on any other form of business other than those specified in Schedule II to this Act.

7. Nothing contained in the provisions of section 6 shall be construed so as to restrict the Bank of Ceylon or the People's Bank, established under the Bank of Ceylon Ordinance (Chapter 397), the People's Bank Act, No. 29 of 1961, respectively, and any Regional Rural Development Bank established under the Regional Rural Development Bank Act, No. 15 of 1985, in the exercise of the powers conferred on each such bank by and under the aforesaid statutes applicable to each of such banks, respectively.

8. (1) Every licensed commercial bank shall pay to the Central Bank an annual licence fee as may be determined by the Monetary Board, having regard to the different classes of banking business carried on by such bank.

(2) The Monetary Board shall inform each such licensed commercial bank the amount payable as licence fee, and the manner in which such fee shall be paid.

(3) Where a licence fee is determined in respect of classes of banking business such fee shall apply to all banks carrying on such classes of business.

9. (1) Where the Monetary Board is satisfied that any licensed commercial bank has—

(a) failed to commence business within nine months of the issue of the licence under section 5 ; or

(b) failed to pay up any debts incurred by it, on such debts becoming due ; or

(c) where a petition or action for relief has been filed against it, had appointed in respect of it, under any bankruptcy law or any other law which provides for relief of debtors or which relates to debtors, a custodian or receiver ; or

(d) ceased to carry on banking, business,

the Monetary Board may, give notice that it would cancel the licence issued to such bank and shall communicate such notice to the licensed commercial bank.

(2) A licensed commercial bank may tender objections in writing to the Monetary Board against the notice of cancellation under subsection (1), within thirty days of the date of receipt 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 notification of the cancellation and after considering the objections tendered to the Board under subsection (2), the Monetary Board may withdraw such notice or cancel the licence issued to the licensed commercial bank, and shall notify the bank accordingly.

(4) A cancellation of a licence under subsection (3) shall take effect—

(a) where no appeal against the cancellation is preferred under subsection (5), after the period for preferring such appeal has expired ; or

(b) where an appeal against the cancellation is preferred under subsection (5), after the cancellation is upheld by the Court of Appeal,

and notification of such cancellation shall be published in the *Gazette*.

(5) Any person aggrieved by a decision of the Monetary Board in respect of any cancellation under subsection (3), may appeal against such decision to the Court of Appeal within fourteen days of his being informed by the Board of such cancellation.

(6) Until rules are made under Article 136 of the Constitution pertaining to appeals under this section, the rules made under that Article pertaining to applications by way of revision to the Court of Appeal shall apply to every appeal made under this section.

(7) The Court of Appeal may on an appeal made to it under subsection (5), confirm, revise, modify or set aside the decision against which the appeal is made and make any other order as the interests of justice may require.

10. (1) Where notice for the cancellation of a licence has been issued by the Monetary Board under subsection (1) of section 9, the Board may give directions to the licensed commercial bank—

(a) prohibiting it from dealing with or disposing of its assets in any manner specified in such direction ;

(b) prohibiting it from entering into any transaction or class of transactions so specified ; or

(c) prohibiting it from soliciting deposits.

(2) Whereas a licensed commercial bank has failed to comply with the directions issued under subsection (1) the Monetary Board may further direct—

(a) such bank to forthwith suspend its business within Sri Lanka, and, in the case of a bank incorporated or established in Sri Lanka, its business within and outside Sri Lanka ; and

(b) the Director of Bank Supervision to take charge of its business and of its books, records, and assets, and it shall be lawful for the Director of Bank Supervision to take such steps as are necessary for him to comply with the directive of the Monetary Board.

(3) Where the Director of Bank Supervision takes charge of all books, records and assets under subsection (2) and the Monetary Board withdraws the cancellation unconditionally, the Monetary Board shall direct the Director of Bank Supervision to deliver forthwith to such bank the books, records and assets taken into his custody.

(4) Notwithstanding anything in any written law for the time being in force, no action or proceedings may be instituted by any licensed commercial bank in any court in respect of any directions given *bona fide* under this section, and any loss or damage incurred or likely to be incurred or alleged to be incurred by reason of any such direction.

11. (1) Where a licence of a licensed commercial bank is cancelled, the Monetary Board shall direct the licensed commercial bank forthwith to suspend its business in Sri Lanka and, in the case of a licensed commercial bank incorporated or established within Sri Lanka, the business both within and outside Sri Lanka, and shall also direct the Director of Bank Supervision to take charge of its business and its books, records and assets and to take such steps as may be necessary to prevent the continuance of the business of banking by such bank. It shall be lawful for the Director of Bank Supervision to take such action as he may deem necessary to comply with the directive of the Monetary Board.

(2) Where the cancellation of a licence has been made in respect of a licensed commercial bank incorporated or established within Sri Lanka by or under any written law for the time being in force, the Director of Bank Supervision shall forthwith make application to a court of competent jurisdiction to commence proceedings for the winding up of the business of such bank, and he shall be appointed liquidator for the purposes of winding up of the bank in accordance with the provisions of Part VIII of this Act:

(3) Where cancellation of a licence has been made in respect of a licensed commercial bank incorporated outside Sri Lanka, the Director of Bank Supervision shall forthwith inform the head office of such bank that it should honour the obligations and liabilities incurred in the carrying on of the business of the branch established within Sri Lanka, and shall take such steps as may be necessary to enforce any such undertaking as may have been given in this regard in accordance with the provisions of subsection (2) of section 3.

(4) The Monetary Board may, in addition to the procedures laid down in subsections (1), (2) and (3) of this section, take such other steps in respect of the licensed commercial bank, as it may deem necessary by—

(a) requiring such bank to forthwith take any action or to do any act or thing which the Board may consider necessary in relation to the business of such bank ;

(b) appointing a fit and proper person to advise such bank in regard to the proper conduct of the business of such bank ;

(c) assuming control of and carrying on business of such bank, or by delegating the control so assumed by the Board, to another person in order to carry on the business of the bank ;

(d) re-organising such bank by increasing its capital, arranging for new shareholders and reconstituting its board of directors ; and

(e) making such arrangements as are necessary for the amalgamation of such bank with any other licensed commercial bank, that consents to such amalgamation.

12. (1) The written approval of the Monetary Board given with the concurrence of the Minister, shall be required—

- (a) for a licensed commercial bank to open or close a branch, agency or office of such bank, in any part of Sri Lanka or to effect a change in the location of any existing place of business ;
- (b) for a licensed commercial bank incorporated or established within Sri Lanka by or under any written law to open or close a branch, agency, or office in any place outside Sri Lanka ;
- (c) for a licensed commercial bank to acquire the business of another licensed commercial bank or of any branch of another licensed commercial bank ;
- (d) for any person or nominee of such person, partnership, company or corporation to acquire a material interest in a licensed commercial bank incorporated or established within Sri Lanka by or under any written law ;

For the purposes of this paragraph “ material interest ” means the holding of over ten *per centum* of the issued capital of such licensed commercial bank ; and

- (e) for banks incorporated or established outside Sri Lanka to open a representative office or such other place of business within Sri Lanka.

(2) The approval under this section may be granted subject to such terms and conditions as may be specified by the Monetary Board with the concurrence of the Minister.

13. (1) The Monetary Board may, with the approval of the Minister, on a report by the Director of Bank Supervision, by order made in writing, withdraw the approval or vary the terms and conditions of an approval granted under section 12, including the closure of a branch, agency or office of a licensed commercial bank. Notice of the decision of the Monetary Board shall be communicated by the Director of Bank Supervision to such bank which shall carry out all the obligations and meet all the liabilities of the branch, agency or office.

(2) Any licensed commercial bank to whom notice has been issued under subsection (1) may within thirty days of the date of such order, tender objections in writing to the Monetary Board giving reasons why such approval should not be withdrawn or the terms and conditions varied.

(3) After the expiration of sixty days from the date of the notice and after considering the objections placed before the Board under subsection (2), the Monetary Board shall, with the approval of the Minister—

(a) by order made in writing, cancel the notice of withdrawal or the variation unconditionally ; or

(b) by order made in writing and published in the *Gazette*, confirm the withdrawal or variation with or without modification.

(4) Where the order for the closure has been made under subsection (1), the Monetary Board shall direct the Director of Bank Supervision to take all steps as may appear necessary in the circumstances, to satisfy himself that all persons who have deposited moneys in that branch, agency or office are given the opportunity to withdraw such moneys expeditiously and to ensure that such measures as would safeguard the interest of such depositors are taken. It shall be lawful for the Director of Bank Supervision to take such steps accordingly.

14. (1) Where the Governor of the Central Bank has reasonable grounds to believe that any person or any commercial bank is carrying on banking business without a licence, the Governor may direct the Director of Bank Supervision or any other officer of the Central Bank to examine the books, accounts and records for the purpose of ascertaining whether such person or bank has contravened, or is contravening any of the provisions of this Act.

(2) The Director of Bank Supervision or such other officer so authorized by the Governor in terms of subsection (1) may require such person or the bank to furnish to him such information or to produce for inspection any books, minutes, accounts, cash, securities, vouchers, other documents and records as he may consider necessary to obtain for the purpose of such examination, and it shall be the duty of such person or bank to furnish such information and to submit to such officer for examination such books, minutes, accounts, cash, securities, vouchers, other documents and records, as the case may be, when so required.

(3) Any person who fails to furnish such information or to produce any books, minutes, accounts, cash, securities, vouchers, other documents and records when required to do so under subsection (2) shall be guilty of an offence under this Act.

(4) Any refusal by any person or commercial bank to furnish such information or to submit such books, minutes, accounts, cash, securities, vouchers, other documents and records in contravention of the provisions of subsection (2) shall be prima facie evidence of such person or bank carrying on banking business without a licence.

15. The provisions of this Part shall not be construed to mean that a licence under section 5, or approval under section 12, shall be required for the Monetary Board or the Central Bank to exercise, perform or discharge the powers, duties or functions, in respect of banking business conferred on, or imposed on, or assigned to, the Monetary Board under the Monetary Law Act or any written law.

PART II

BANKING NAMES AND DESCRIPTIONS

16. (1) No company other than a licensed commercial bank shall use as part of its name or its description any of the words " bank ", " banker ", or " banking " or any of its derivatives or its transliterations, or their equivalent in any other language and no licensed commercial banks shall carry on the business of banking in Sri Lanka, unless it uses as part of its name at least one of such words :

Provided, however, a licensed commercial bank incorporated outside Sri Lanka and carrying on the business of banking and whose names does not contain the word " bank "; " banker "; or " banking " in any language may carry on such business in Sri Lanka notwithstanding the omission of these words in its name.

(2) No firm, individual or group of individuals, shall for the purpose of carrying on any business, use as part of its or his name or description any of the words " bank ", " banker " or " banking " or any of its derivatives, or its transliterations, or their equivalent in any other language.

(3) Nothing in this section shall apply to—

(a) a subsidiary of a licensed commercial bank formed for one or more of the purposes mentioned in subsection (1) of section 17 of this Act ;

(b) any association of licensed commercial banks formed for the protection of their interests ;

(c) a trade union registered under the Trade Unions Ordinance (Chapter 138) which is an association or combination of workers, who are employees of a banking institution within the meaning of section 127 of the Monetary Law Act, or of the Central Bank ;

(d) an agency, institution, person or body of persons which falls within the meaning of paragraphs (b) and (d) of the definition of " banking institution " contained in section 127 of the Monetary Law Act ;

(e) a company which, within one week of its incorporation, applies for a licence under section 2 and until such time as the decision of the Monetary Board in respect of the application is conveyed to the company ;

(f) the representative office of a commercial bank incorporated or established outside Sri Lanka.

17. (1) A licensed commercial bank incorporated or established in Sri Lanka shall not have as its subsidiary a company which is not a licensed commercial bank :

Provided however, such bank may, with the written permission of the Monetary Board, have a subsidiary which—

- (a) carries on the sole business of providing training in any one of the subjects relating to banking, accountancy, valuation, project appraisal and credit appraisal ;
- (b) carries on the sole business of engaging in hire purchase transactions ;
- (c) carries on the sole business of providing medium and long term credit for development ;
- (d) carries on the sole business of factory leasing and warehousing ;
- (e) carries on the sole business of providing management consultancy services ;
- (f) become the subsidiary only by reason of a licensed commercial bank having to acquire the share of a company consequent to such licensed commercial bank capitalising the capital and the interest accrued thereon and which is unpaid by the company to the bank, on loans granted by the licensed commercial bank ;
- (g) carries on any form of business which is not specified in Schedule II to this Act :

Provided, further that the provisions of this subsection shall not apply to a subsidiary formed before the appointed date by any licensed commercial bank incorporated or established in Sri Lanka.

(2) A licensed commercial bank shall not accord to any of its subsidiary companies, treatment which is more favourable than the treatment accorded to other constituents of the bank, carrying on the same business as any such subsidiary company.

(3) For the purposes of this Act a company shall, subject to the provisions of subsection (4) of this section, be deemed to be a subsidiary of another if, and only if—

- (i) that other company holds more than half in nominal value of its equity share capital ; or
- (ii) that other company is a shareholder of it and controls the composition of its board of directors ; or
- (iii) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

(4) In determining whether one company is a subsidiary of another—

(a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it ;

(b) subject to the provisions of paragraphs (c) and (d), any shares held or power exercisable—

(i) by any person as a nominee for that other except where that other is concerned only in a fiduciary capacity ; or

(ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

shall be treated as held or exercisable by that other ;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first mentioned company or of a trust deed for securing the issue of such debentures shall be disregarded ;

(d) any shares held or power exercisable by, or by a nominee of, that other or its subsidiary (not being held or exercisable as referred to in paragraph (c)) shall be treated as not held or exercisable by that other, if the ordinary business of that other or its subsidiary, as the case may be, includes the lending of money, and the shares are held or power is exercisable as aforesaid by way of security, only for the purposes of a transaction entered into in the ordinary course of that business.

(5) For the purposes of this Act, a company shall be deemed to be another's holding company if, and only if, that other is its subsidiary.

(6) In this Part the expression " equity share capital " in relation to a company, means its issued share capital excluding any part thereof which, neither in respect of dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

PART III

CAPITAL REQUIREMENTS, RESERVE FUNDS AND MAINTENANCE OF LIQUID ASSETS

18. Notwithstanding anything contained in any other written law no licensed commercial bank shall on or after the appointed date, commence or carry on business in Sri Lanka unless it complies with all the requirements specified in this Part.

19. (1) Every licensed commercial bank shall at all times maintain an unimpaired capital in an amount not less than twenty-five million rupees.

(2) The unimpaired capital shall be—

- (a) paid up if it is a licensed commercial bank incorporated or established in Sri Lanka by or under any written law ;
- (b) assigned to such bank by the head office if it is a licensed commercial bank incorporated or established outside Sri Lanka :

Provided however, the Monetary Board may having regard to the deposit liabilities or to the total liabilities including contingent liabilities, or to the total assets or to any specified categories of such assets, of a bank, after a period of five years from the appointed date, vary from time to time the amount specified as the minimum amount required to be maintained by a licensed commercial bank as unimpaired capital. The Monetary Board shall, in writing, communicate to all licensed commercial banks any variation made by it in respect of the unimpaired capital required to be maintained by a licensed commercial bank. Where any licensed commercial bank is required by such variation to augment its capital, it shall upon application to the Monetary Board, be afforded a period of twelve months, or such longer period as may be granted by the Monetary Board, in which to comply with that requirement.

(3) For the purpose of computing the minimum required capital, when such amount is prescribed in reference to liabilities or assets, both capital and liabilities or assets shall be of such kind and computed in such manner as the Monetary Board may from time to time determine, having regard to the interests of national economy.

(4) In the case of a licensed commercial bank incorporated or established in Sri Lanka by or under any written law, the limit of foreign participation in the capital of such bank, shall at no time exceed the limit, established from time to time, by the Monetary Board.

(5) A licensed commercial bank shall not reduce its—

- (a) paid-up capital ; or
- (b) capital assigned to such bank,

without the prior written approval of the Monetary Board.

(6) A licensed commercial bank shall not create any charge upon any unpaid capital of such bank and any such charge created in contravention of these provisions shall be null and void.

(7) (a) Every licensed commercial bank shall at all times maintain capital funds in an aggregate amount equivalent to such percentage of the average of its month-end liabilities including contingent liabilities, incurred during the preceding twelve months as may from time to time be determined by the Monetary Board, having regard to the interests of national economy.

(b) Any variation in the percentage referred to in paragraph (a) shall be communicated to every licensed commercial bank by the Monetary Board in writing, provided that every licensed commercial bank which is required by such variation to augment its capital funds, shall be afforded a period of twelve months or such longer period as may be granted by the Monetary Board, in which to comply with such requirement.

(8) Nothing contained in subsections (1) and (7) shall be construed to mean that the licensed commercial banks set out in Schedule I of this Act are required to comply with the provisions of the preceding subsections before the expiry of twelve months from the appointed date.

(9) Where the capital or capital funds of a licensed commercial bank have become deficient in terms of the provisions of the preceding subsections the Monetary Board may, grant a reasonable period of time for the rectification of such deficiency.

20. (1) Every licensed commercial bank shall maintain a reserve fund and shall out of the net profits after the payment of tax of each year, before any dividend is declared or any profits are transferred to the head office or elsewhere, transfer to such reserve fund—

(a) a sum equivalent to not less than five *per centum* of such profits until the amount of the said reserve fund is equal to fifty *per centum* of the paid-up or assigned capital of such bank, as the case may be ; and

(b) a further sum equivalent to not less than two *per centum* of such profits until the amount of the said reserve fund is equal to the paid-up or assigned capital of such bank as the case may be :

Provided ; however, that an amount not less than twenty-five *per centum* of the net profits shall be utilised for setting off such intangible assets as may be determined by the Monetary Board, before such profits are transferred to the reserve fund.

(2) The reserve fund of any licensed commercial bank shall not be reduced nor impaired :

Provided, however, that the Monetary Board may, specify circumstances in which the reserve fund may be reduced, and shall permit a reduction when a transfer is made for the purpose of increasing the paid-up or assigned capital, as the case may be. The Monetary Board shall permit an impairment of the reserve fund when it is the only means of preventing an impairment of paid-up or assigned capital, as the case may be, subject to the condition that within a given period of time, the deficiency shall be rectified.

21. (1) Every licensed commercial bank shall maintain liquid assets in such amount as may from time to time be determined by the Monetary Board having regard to the nature of the business carried on by such bank, which shall not in a daily average each month, be less than such percentage of the total of its liabilities, less its liabilities to the Central Bank and to the shareholders :

Provided, however, the percentage determined by the Monetary Board shall not be less than twenty *per centum* and not more than forty *per centum* of the total of its liabilities, less its liabilities to the Central Bank and to the shareholders.

(2) The Director of Bank Supervision, may, by notice in writing, require every licensed commercial bank to furnish to him such return or returns as she may deem necessary for the purposes of satisfying himself that the provisions of subsection (1) have been complied with, and every licensed commercial bank so noticed, shall furnish such return or returns as may be required.

(3) Any licensed commercial bank which fails to comply with the provisions of subsection (1) shall, within such time as may be determined by the Monetary Board, pay to the Central Bank a charge on the amount of the deficiency calculated at such rate as may be determined by the Monetary Board.

(4) Any licensed commercial bank which fails to comply with the provisions of subsection (3) shall be guilty of an offence under this Act.

22. No licensed commercial bank incorporated or established within Sri Lanka by or under any written law shall pay any dividend on its shares and no licensed commercial bank incorporated outside Sri Lanka shall transfer abroad any profits earned in Sri Lanka, until all its capitalised expenses, including preliminary expenses and other items of expenditure not represented by tangible assets, have been completely written off.

PART IV

OFF-SHORE BANKING BUSINESS

23. No off-shore banking business shall be carried on except by a commercial bank Licensed to carry on off-shore banking and such bank shall carry on its business in accordance with such off-shore banking scheme formulated by the Monetary Board :

Provided that the banks specified in Schedule I, which on the appointed date are carrying on off-shore banking business under the " Foreign Currency Banking Scheme " established by the Monetary Board shall be issued a licence in terms of section 5 enabling such banks to carry on off-shore banking business under this Part.

24. All off-shore operations of a licensed commercial bank under this Part shall be carried on by its off-shore unit, and Parts III, V and VI of this Act shall not apply in respect of off-shore banking business.

25. The Monetary Board may, by order made with the approval of the Minister, authorize an off-shore unit of a licensed commercial bank subject to such terms and conditions as the Monetary Board may, with the approval of the Minister, impose, having regard to the interests of national economy, to carry on all or any of the following businesses :—

- (a) accept time and demand deposits from any non-resident in any designated foreign currency provided that, in the case of time deposits, such deposits shall not be less than ten thousand United States dollars, or its equivalent, or such higher amount as may be determined by the Monetary Board, and provided that no savings accounts from which funds are withdrawable by cheque shall be opened by such off-shore unit ;
- (b) borrow any sum in a designated foreign currency from any non-resident ;
- (c) extend accommodation to any non-resident in any designated foreign currency ;
- (d) engage in any transaction in any designated foreign currency with any other off-shore unit ; and
- (e) engage in any other transaction authorized by the Monetary Board with the approval of the Minister, in any designated foreign currency.

26. The Monetary Board may with the approval of the Minister, by order authorize licensed commercial banks to engage in off-shore banking business in any or all of the business specified under section 25, subject to such terms and conditions as the Monetary Board may specify with the approval of the Minister having regard to the interests of national economy.

27. Every licensed commercial bank shall, in respect of its off-shore unit, prepare—

- (a) a balance sheet as at the last working day of each financial year of such licensed commercial bank ;
- (b) a profit and loss account in respect of such year.

28. The Monetary Board may specify the form of the balance sheet and profit and loss account referred to in section 27 and the balance sheet and profit and loss account shall be prepared in such form as is specified.

29. The provisions of Part III, Part VI and Part VII of Chapter V of the Monetary Law Act, shall not apply in respect of off-shore units.

30. (1) Every commercial bank engaged in off-shore banking business, shall appoint annually, a qualified auditor to audit the accounts of its off-shore unit and such auditor shall submit a report to such licensed commercial bank in respect of the accounts, balance sheet and profit and loss account of such off-shore unit. The auditor shall state in his report whether in his opinion, the balance sheet and profit and loss account are full and fair and properly drawn up and whether they exhibit a true and correct statement of affairs of the licensed commercial bank.

(2) A certified copy of the report shall be sent to the Monetary Board, and if the Monetary Board is of the opinion that the auditor has not discharged his duty to the best of his ability the Board may, order the licensed commercial bank to appoint another auditor for the purpose of preparing a fresh report.

31. The Monetary Board may cause an examination of any off-shore unit to be made by officers duly authorized by it, in that behalf, in consequence of the auditor's report, or the auditor's failure to submit a report, or because of other relevant information that affords the Monetary Board reasonable grounds to believe that the off-shore unit is not in a sound financial condition or that it is engaging in fraudulent unsafe or unsound banking practices or that the requirements of this Part have not been complied with in the carrying on of its business.

32. Every off-shore banking unit shall maintain the books, minutes, accounts, cash, securities, vouchers, other documents and records as may be determined by the Monetary Board, having regard to the nature of the business carried on by such off-shore unit.

33. (1) It shall be lawful for the Director of Bank Supervision or any officer of the Department of Bank Supervision or any officer authorized under section 31—

(a) to require any director, officer or employee of any off-shore unit to furnish him with such information as he may consider necessary to obtain, for the purpose of ascertaining the true condition of the affairs of any off-shore unit;

(b) to require any such director, officer, or employee to produce for inspection by him at such time as he may specify any books, minutes, accounts, cash, securities, vouchers other documents and records in the possession of such director, officer or employee containing or likely to contain any such information.

(2) It shall be the duty of every director, officer or employee of any off-shore unit to afford to the Director of Bank Supervision or to any officer of his department or any officer authorized under section 31 whenever required so to do, in terms of subsection (1), the fullest opportunity to examine books, minutes, accounts, cash, securities, vouchers, other documents and records in his possession containing or likely to contain any such information.

(3) If any books, minutes, accounts, cash, securities, vouchers, other documents and records are not produced or information not furnished in accordance with the provisions of subsection (2), the officer so defaulting shall be guilty of an offence under this Act.

34. Subject to the provisions of this Part, the Monetary Board may, from time to time, call for information, reports and returns as it may deem necessary for the purposes of this Part and may publish information and data extracted therefrom which does not disclose particulars of individual transactions.

PART V

ACCOUNTS, AUDIT, INFORMATION AND INSPECTION

35. Every licensed commercial bank shall prepare at the expiration of each financial year—

- (a) a balance sheet as at the last working day of such financial year ; and
- (b) a profit and loss account in respect of such year.

36. (1) The balance sheet of a licensed commercial bank shall set out the state of affairs of such bank as at the end of the financial year to which such balance sheet relates.

(2) There shall be shown in the balance sheet or in any statement annexed thereto —

- (a) capitalised 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 provisions 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 applications of funds ;
- (g) reserves, provisions and liabilities distinguishable from each other ;
- (h) except in the case of the first balance sheet after the coming into force of this Part of this Act the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet.

37. There shall be shown in the profit and loss account 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, of material, 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 banking companies 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 profit and loss account after the coming into force of this Part of this Act, the corresponding amount at the end of the immediately preceeding financial year for all items shown in the profit and loss account.

38. (1) Every licensed commercial bank incorporated or established within Sri Lanka by or under any written law shall transmit to the Director of Bank Supervision, and publish within five months after the close of the financial year its balance sheet as at the close of the financial year, and exhibit them in a conspicuous place of each of its places of business until the balance sheet and profit and loss account for the succeeding financial year are prepared and exhibited.

(2) Every licensed commercial bank incorporated outside Sri Lanka shall transmit to the Director of Bank Supervision within five months of the close of each financial year its balance sheet as at the close of the financial year and its profit and loss account for such financial year in respect of its business in Sri Lanka.

(3) The Monetary Board may specify the form of the balance sheet and profit and loss account referred to in this Part and where such form is specified, the balance sheet and profit and loss account of every licensed commercial bank shall be prepared in such form as may be specified.

(4) Every commercial bank licensed to carry on banking business in Sri Lanka shall within six months of the close of the financial year, exhibit in a conspicuous place within the place of business of such commercial bank—

- (a) the profit and loss account for such financial year in respect of its business within Sri Lanka including the business of its off-shore unit ; and
- (b) the consolidated balance sheet as at the end of such financial year setting out the state of affairs of such commercial bank and of its affiliates and subsidiaries, until its next profit and loss account and balance sheet are exhibited.

39. (1) Every licensed commercial bank shall appoint annually a qualified auditor to audit the accounts of such bank. The duties of such auditor shall be—

- (a) in the case of a licensed commercial bank incorporated or established within Sri Lanka by or under any written law, to prepare a report in respect of the accounts balance sheet and profit and loss account examined by him, to be submitted to each of its shareholders ; and
- (b) in the case of a licensed commercial bank incorporated outside Sri Lanka, to submit a report to its head office in respect of the accounts, balance sheet and the profit and loss account examined by him.

(2) Every such report, which shall be completed within three months of the end of the financial year, shall contain a statement by the auditor as to whether in his opinion the balance sheet and profit and loss account contain a full and fair and properly drawn up statement and whether they represent a true and correct statement of the bank's affairs, and if the auditor has called for an explanation or any information from the officers or agents of such licensed commercial bank whether such explanation or information is satisfactory.

(3) The report of the auditor made in accordance with subsections (1) and (2) shall, in the case of a licensed commercial bank incorporated or established within Sri Lanka by or under any written law, be read together with the report of the Board of Directors of the licensed commercial bank at the annual general meeting of its share-holders, and, in the case of a licensed commercial bank incorporated outside Sri Lanka, be transmitted to the head office of such licensed commercial bank. A copy of such report shall be transmitted to the Director of Bank Supervision. Where the Director of Bank Supervision is not satisfied with the report of the auditor, he may make a request to the Monetary Board for the appointment of a new auditor to submit a fresh report.

(4) If a licensed commercial bank fails to appoint an auditor under subsection (1) or the Director of Bank Supervision has made a request to the Monetary Board in terms of subsection (3), the Monetary Board shall have the power to appoint an auditor for such licensed commercial bank.

(5) Every auditor appointed under subsection (1) or (4) shall have a right of access at all times to the books, accounts and vouchers and all documents and records belonging to the licensed commercial bank, which he considers necessary

for the performance of his duties, and he shall be entitled to require from the officers of such bank such information and explanations as he thinks necessary for the performance and proper discharge of his duties and functions as auditor.

(6) The remuneration of the auditor, whether appointed by the licensed commercial bank or by the Monetary Board, shall be paid by the licensed commercial bank and, in the case of an auditor appointed by the Monetary Board under subsection (4), he shall be paid such amount as may be determined by the Monetary Board.

(7) No person having an interest in any licensed commercial bank or any director, officer, employee, agent of such licensed commercial bank shall be eligible for appointment as auditor for that licensed commercial bank. Any person appointed as auditor who shall after such appointment acquire any interest in or become a director, officer, employee or agent of such licensed commercial bank shall forthwith cease to act as such auditor.

(8) Nothing contained in this section shall apply to the audit of the accounts of any licensed commercial bank which is a public corporation.

40. Where any licensed commercial bank has, due to circumstances beyond its control, failed to comply with the provisions of section 35, or where an auditor appointed by such licensed commercial bank has, due to reasons beyond his control, failed to complete the audit report as specified, the Monetary Board may, on an application made by such licensed commercial banks, grant a reasonable period of time for compliance with the preceding provisions of this Part.

41. (1) The Monetary Board shall, from time to time, cause an examination of any licensed commercial bank or any of its subsidiaries, to be made by an officer duly authorized by it, whenever it appears to the Board that such examination is necessary or expedient in order to examine whether such licensed commercial bank is in a sound financial condition and whether the carrying on of business by the licensed commercial bank has been in accordance with the provisions of this Act or any other written law.

(2) Every licensed commercial bank and any subsidiary of such licensed commercial bank referred to in subsection (1) shall permit the officer authorized by the Monetary Board, to inspect at any time as requested by such officer all books, minutes, accounts, cash, securities, vouchers other documents and records relating to its business and shall be required to furnish such information concerning its business as may be requested by such officer.

(3) If any books, minutes, accounts, cash securities, vouchers, other documents and records are not produced or information not furnished in accordance with the provisions of subsection (2) or if any information furnished or item produced is false in any material particular the defaulting licensed commercial bank or subsidiary or both, as the case may be, shall be guilty of an offence under this Act.

PART VI

DISQUALIFICATION FOR APPOINTMENT AS DIRECTOR, SECRETARY,
&C. OF LICENSED COMMERCIAL BANKS

42. (1) No person shall be appointed or elected as a director of a licensed commercial bank if he—

- (a) is a person, who, having been declared insolvent or a bankrupt under any law in Sri Lanka or in any other country, is an undischarged insolvent or bankrupt; or
- (b) is serving or has served a sentence of imprisonment imposed by any court in Sri Lanka or any other country; or
- (c) has been convicted of any act which is of a fraudulent or illegal character.

(2) A director of a licensed commercial bank shall be removed from the office of director if—

- (a) he becomes subject to any of the disqualifications mentioned in subsection (1);
or
- (b) he becomes permanently incapable of performing his duties; or
- (c) he has been convicted of any act which is of a fraudulent or illegal character; or
- (d) has done an act or thing which is manifestly opposed to the objectives and interests of the licensed commercial bank.

43. No licensed commercial bank shall have as Secretary of such licensed commercial bank, a person other than an employee of such licensed commercial bank.

44. (1) No person shall be appointed as Manager, Secretary or other official of a licensed commercial bank and any such person appointed as Manager, Secretary or other official of such bank shall be removed from office if he—

- (a) is a person, who, having been declared insolvent or a bankrupt under any law in Sri Lanka or in any other country, is an undischarged insolvent or bankrupt; or
- (b) is serving or has served a sentence of imprisonment imposed by any court in Sri Lanka or by any other country; or
- (c) has been convicted of any act which is of a fraudulent or illegal character.

(2) No person who has been a director or has been a chief executive officer of a licensed commercial bank which has been wound up by an Order of court shall, without the written approval of the Monetary Board, act as a director or chief executive officer of a licensed commercial bank.

(3) No licensed commercial bank shall employ or be managed by a managing agent other than an employee of such licensed commercial bank.

PART VII

CONTROL OVER LICENSED COMMERCIAL BANKS

45. (1) Where the Director of Bank Supervision is of the opinion that a licensed commercial bank—

(a) is engaging in unsafe or unsound practices in the carrying on of its business, which—

(i) is likely to jeopardise its obligations to its depositors ; or

(ii) is likely to result in such bank being unable to meet its obligations ; or

(b) has contravened or failed to comply with the provisions of the Monetary Law Act or the provisions of this Act,

he may issue an order directing such licensed commercial bank—

(a) to cease and desist from any such practice or contravention ; or

(b) to comply with the provisions of the Monetary Law Act or the provisions of this Act ; or

(c) to take necessary action to correct the conditions resulting from such practice or contravention.

(2) Any licensed commercial bank dissatisfied with an order given under subsection (1), may, before the expiry of thirty days from the date of the issue order, appeal in writing to the Monetary Board and the Monetary Board shall render its decision within fifteen days of receipt of such appeal.

46. (1) The Monetary Board may give directions as it may deem necessary to all or any licensed commercial bank specifying—

(a) the class or classes of advances which may or may not be made by such bank ;

(b) the margins to be maintained in respect of secured advances ;

(c) the maximum amount of accommodation which, having regard to the paid-up capital, reserves and deposits of such licensed commercial bank and other relevant considerations, as may be made by such bank to any one company, public corporation, firm, association of persons or individuals, or in the aggregate, to an individual, his close relations or a company or firm in which he has a substantial interest ;

(d) the maximum percentage of the share capital in a licensed commercial bank incorporated in Sri Lanka—

(i) held by a company, an incorporated body, or an individual ;

(ii) in the aggregate by—

(a) a company and one or more of the following :—

(aa) its subsidiaries ;

(bb) its holding company ;

(cc) a subsidiary of its holding company ; or

(dd) a company in which such company or its subsidiary, or its holding company, or a subsidiary of its holding company has a substantial interest ; or

(b) an individual and one or more of the following :—

(aa) his close relations ;

(bb) a company in which he has a substantial interest or in which his close relation has a substantial interest ;

(cc) the subsidiary of such company ;

(dd) a holding company of such company ;

(ee) a subsidiary of such company's holding company ;

(ff) a company in which such company, or its subsidiary, 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 close relation has a substantial interest.

(2) A direction issued under subsection (1) shall have effect notwithstanding that such direction will require a licensed commercial bank 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 licensed commercial bank which is required to so effect a change, is afforded a period of twelve months from the date of such direction or such longer period as may be granted by the Monetary Board in which to comply with that requirement.

(3) In order to comply with a direction issued to it under paragraph (d) of subsection (1), a licensed commercial bank may direct a person holding shares in such bank to reduce the number of shares held by such person in such bank, whether such shares were acquired by such person before or after the appointed date, within such period as may be specified in such direction ; and it shall be the duty of such person to comply with such direction.

(4) A person who fails to comply with a direction given to him under sub-section (3) shall be guilty of an offence under this Act, and shall on conviction after summary trial by a Magistrate be liable to imprisonment for a term not exceeding eighteen months or to a fine not exceeding one thousand rupees or to both such imprisonment and fine.

47. (1) The provisions of this section shall apply only to licensed commercial banks carrying on domestic banking business.

(2) No licensed commercial bank shall grant accommodation against security of—

(a) its own shares ; or

(b) shares of companies which have a substantial interest in it ; or

(c) shares of companies in which the companies referred to in paragraph (b) have substantial interest.

(3) No licensed commercial bank shall grant any accommodation to any of its directors or to a close relation of such director, unless such security as may from time to time be approved by the Monetary Board, is given, and such accommodation is sanctioned at a meeting of the Board of Directors with not less than two thirds of the number of directors constituting the Board of Directors of the licensed commercial bank (other than the director concerned), voting in favour of such accommodation.

(4) Accommodation granted by a licensed commercial bank to a director or to a close relation of such director shall not exceed the amount of the accommodation, if any, extended to him or such close relation, and outstanding on the day prior to the date of his appointment as a director or on the day prior to the appointed date, whichever is later, or rupees five hundred thousand, whichever is more, and such accommodation is secured by such security as may from time to time be approved by the Monetary Board for the purposes of this section.

(5) No licensed commercial bank shall grant accommodation to any concern in which such director who on the day prior to the date of his appointment as a director or on the date prior to the appointed date, whichever is earlier, has a substantial interest, unless such a security, as may from time to time be approved by the Monetary Board is given, and such accommodation is sanctioned at a meeting of the Board of Directors, with not less than two thirds of the number of directors constituting the Board of Directors of the licensed commercial bank (other than the director concerned), voting in favour of such accommodation.

(6) Where any accommodation has been granted by a licensed commercial bank to a person or a close relation of a person or to any concern in which the person has a substantial interest and if the person is a director of that licensed commercial bank on the appointed date or is appointed a director after the appointed date, steps shall be taken to obtain such security as may be approved for that purpose by the Monetary Board, within one year from the appointed date or from the date of appointment as director, whichever is applicable.

(7) Where such security has not been provided as specified in subsection (6), the licensed commercial bank shall take steps to recover any amount due on account of any accommodation together with interest, if any, due thereon—

(a) within the period specified at the time of the grant of accommodation or at the expiry of a period of six months of the termination of the period specified in subsection (6), whichever is earlier ;

(b) where no period has been specified, at the expiry of a period of one year of the termination of the period specified in subsection (6) :

Provided that the Monetary Board may, in any case, on an application in writing made to it by the licensed commercial bank in that behalf, extend the period for the recovery of the accommodation until a date, not beyond the period of three years commencing from the expiry of six months specified in paragraph (a) :

Provided further, that the provisions of this subsection and of subsection (6) shall not apply if and when the director concerned vacates such office whether by death, retirement, resignation or otherwise.

(8) Where no security has been provided within the period specified in subsection (6), or the amount due has not been repaid in terms of subsection (7) in respect of an accommodation granted to a director or to a concern in which the director has a substantial interest such Director shall be deemed to have vacated office on the expiry of the period specified in subsection (7).

(9) Every director of a licensed commercial bank, who is in any manner whatsoever, whether directly or indirectly, interested in any accommodation or proposed accommodation from that licensed commercial bank, shall as soon as is practicable,

declare the nature of his interest to the Board of Directors and the Secretary or Manager of such licensed commercial bank shall cause the declaration to be circulated forthwith to all the directors.

(10) A director shall not take part in any deliberations or decisions of the Board with regard to any business transacted or proposed to be transacted by a licensed commercial bank in which the director or a close relation of the director, or a concern in which the director has a substantial interest, is interested, and the director shall withdraw from the meeting of the Board at which such business is discussed or transacted while the deliberation is in progress or decision is being made.

(11) No accommodation or any part thereof granted by a licensed commercial bank to a director or to a close relation of the director or to a concern in which the director has a substantial interest shall be remitted without the prior approval of the Monetary Board, and any remission without such approval shall be void and of no effect.

(12) Any director who contravenes the provisions of subsections (9) and (10) shall be guilty of an offence under this Act.

(13) For the purpose of this section—

“ company ” shall not include a company incorporated outside Sri Lanka ;

“ director ” shall not include a director of a licensed commercial bank incorporated outside Sri Lanka.

48. (1) Notwithstanding anything contained in any other written law or in any contract, no licensed commercial bank shall directly or indirectly deal in the buying or selling or bartering of goods, except in connection with the realization of security given to or held by it, or engage in any trade, or buy, sell or barter goods for others, otherwise, than in connection with bills of exchange received for collection or negotiation or with such of its business as is referred to in Schedule II or in any other law or in the Bank of Ceylon Ordinance (Chapter 397) or in the People's Bank Act, No. 29 of 1961, where the provisions of these enactments are applicable.

(2) The provisions of the preceding subsection shall not apply to any such business as aforesaid, which was being carried on by a bank on the appointed date :

Provided that the said business shall be completed before the expiry of one year from the appointed date.

49. Without the prior approval obtained in writing of the Monetary Board, no licensed commercial bank shall sell, transfer, assign or dispose of any of its immovable assets below the market value of the assets or increase the valuation of the assets as recorded in the books of the bank above the market value of the assets.

PART VIII

LIQUIDATION OF LICENSED COMMERCIAL BANKS INCORPORATED WITHIN SRI LANKA
AND CLOSURE OF BRANCHES OF LICENSED COMMERCIAL BANKS
INCORPORATED OUTSIDE SRI LANKA

50. The Director of Bank Supervision shall be appointed as the liquidator for the purposes of this Part.

51. No voluntary liquidation of a licensed commercial bank incorporated or established in Sri Lanka by or under any written law shall be effected without the prior authorization of the Monetary Board obtained in writing. The authorization shall be granted only if it appears to the Monetary Board that—

- (a) the licensed commercial bank is solvent and has sufficient liquid assets to repay its depositors and other creditors without delay ; and
- (b) the liquidation has been approved by the affirmative vote of the shareholders of at least three-fourths of the outstanding shares entitled to vote at a meeting called expressly for this purpose :

Provided that if the liquidation is to be affected in whole or in part through the sale of any of the assets of the licensed commercial bank to, and the assumption of its deposit liabilities by, another licensed commercial bank, the Monetary Board may, upon a finding of imminent danger of insolvency, waive the requirement for shareholder approval :

Provided further, that the provisions of paragraph (c) of subsection (1) of section 12 shall not apply to such assumption of liabilities.

52. Where a licensed commercial bank has received the authorization of the Monetary Board to liquidate, such bank shall—

- (a) immediately cease to carry on business, exercising only such powers as are necessary to effect an orderly liquidation ;
- (b) repay sums of money due to its depositors and other creditors ;
- (c) wind up all operations undertaken prior to the receipt of the authorization.

53. Any licensed commercial bank which is subject to voluntary liquidation shall, within thirty days of the receipt of the authorization referred to in section 51 cause a notice of voluntary liquidation, to be sent by registered post to all depositors, to the creditors, and persons otherwise entitled to the funds or property held by such licensed commercial bank as a fiduciary, lessor or a safe deposit box or bailee. The Monetary Board shall specify the information to be included in the notice. The Monetary Board may, where it considers it expedient so to do, exempt the posting

of such notice to specified persons upon a showing of reasonable cause therefor by such licensed commercial bank. The notice shall be kept displayed in a conspicuous place within the place of business of the licensed commercial bank, and shall be given such other publicity as the Monetary Board may direct.

54. The authorization to go into voluntary liquidation shall not prejudice the rights of a depositor or other creditor or owner to payment in full of his claim and the rights on an owner of funds or other property held by the licensed commercial bank. All lawful claims shall be paid promptly and all funds and other property held by the licensed commercial bank shall be returned to their rightful owners within such maximum period as the Monetary Board may determine.

55. Where the Monetary Board is of the opinion that any licensed commercial bank has discharged all its obligations as referred to in section 54 the name of such bank shall be removed from the list of licensed commercial banks and the outstanding assets shall be distributed among its rightful owners in proportion to their respective rights. No distributions shall be made until—

(a) all claims of depositors or other creditors or owners have been paid and, in the case of disputed claims, before the licensed commercial bank has transmitted to the Central Bank sufficient funds to meet any liability that may arise after a judicial decision ;

(b) any funds payable to depositors, other creditors and owners who have not claimed them, have been transmitted to the Central Bank ;

(c) any other funds or property held by the licensed commercial bank which could not be returned to the rightful owner in accordance with the provisions of this section, have been dealt with in accordance with section 72.

56. Where the Monetary Board is of the opinion that—

(a) the assets of a licensed commercial bank whose voluntary liquidation, it has authorized, will not be sufficient for the full discharge of all its obligations ; or

(b) the completion of voluntary liquidation is unduly delayed,
it shall forthwith take steps to revoke the licence issued to such bank and commence proceedings for the compulsory liquidation of such bank in conformity with the procedures set out hereunder.

57. When the cancellation of the licence of a licensed commercial bank incorporated or established in Sri Lanka has become final in terms of subsection (3) of section 9, the licensed commercial bank shall forthwith suspend its business within and outside Sri Lanka, and the Director of Bank Supervision shall direct that liquidation proceedings in accordance with the provisions of this Act be taken. As soon as possible after initiating the liquidation proceedings an inventory of the

assets and contingent liabilities of the licensed commercial bank shall be made and a copy thereof transmitted to the Monetary Board, which copy shall be available at the office of the Monetary Board for examination by the parties having an interest in the business of such bank.

58. The Director of Bank Supervision shall be vested with the full and exclusive power of management and control of the affairs of any licensed commercial bank for the purpose of compulsory liquidation and shall have the power—

- (a) to wind up its operations by the institution of liquidation proceedings in Court ;
- (b) to stop or limit the payments of its obligations ;
- (c) to execute any instrument in the name of the licensed commercial bank ; and
- (d) to initiate, defend and conduct in its name any action or proceedings to which the licensed commercial bank may be a party.

59. Under liquidation proceedings—

- (a) any term, statutory, contractual or otherwise, on the expiration of which a claim or right of the licensed commercial bank would expire or be extinguished, shall by the operation of this section, be extended by six months from the date of the commencement of the proceedings ;
- (b) any attachment or lien, except a lien existing six months prior to the date as specified in paragraph (a) shall be vacated, and no attachment or lien, except a lien created by the Director of Bank Supervision, in the application of the provisions of this Part, shall attach to, any property or assets of the licensed commercial bank in liquidation ;
- (c) any transfer of any assets of the licensed commercial bank made after or in contemplation of its insolvency shall be void.

60. (1) Within a period of six months from the date on which the cancellation of a licence becomes final, the Director of Bank Supervision may, subject to the provisions of any other law for the time being in force, terminate—

- (a) any contract of employment entered into with such bank ;
- (b) any contract for services to which such licensed commercial bank was a party ;
or
- (c) any obligation of the licensed commercial banks including its obligations, if any, as a lessee.

(2) A lessor who shall have received ninety days notice that the Director of Bank Supervision is exercising discretionary powers to terminate the lease shall have no claim for rent other than rent accrued on the date of termination of the lease, nor for damages by reason of such termination.

61. As soon as possible after the cancellation of a licence becomes final, the Director of Bank Supervision shall make a final distribution by taking such steps as are necessary to terminate all functions performed in a fiduciary capacity by the licensed commercial bank and return all assets and property held by the licensed commercial bank as a fiduciary to the owners thereof, and settle its fiduciary accounts.

62. As soon as possible after the cancellation of a licence becomes final, the Director of Bank Supervision shall dispatch by registered post to all depositors, owners, other creditors, safe deposit box lessees, and the bailors of property held by the licensed commercial bank, a statement of the nature and amount for which their claim is shown in the licensed commercial bank's books. The statement shall specify that any objections if any must be filed with the Director of Bank Supervision before a specified date not later than sixty days from the issue thereof, and shall invite safe deposit box lessees and bailors to withdraw their property in person. The Director of Bank Supervision may, subject to confirmation by the Monetary Board, obtained prior to the commencement of the sixty day period, exempt the dispatch of the statements by post to specified persons upon the licensed commercial bank showing reasonable cause therefor.

63. (1) Any safe deposit box, the contents of which have not been withdrawn before the date specified, shall be opened in the manner prescribed by the Director of Bank Supervision. The contents and any unclaimed property shall be held by the licensed commercial bank as bailee, and—

(a) all monies shall, upon direction by the Monetary Board, be transferred to a special account in the Central Bank;

(b) any article other than money shall, upon direction by the Monetary Board, be referred to the Minister for a direction as to the method of disposal of the same.

2. The money referred to in paragraph (a) and articles referred to in paragraph (b) shall be deemed to be abandoned property in terms of the provisions of Part IX, if the owner thereof, has, over a period of ten years from the date of deposit of such money or articles, as the case may be, not evidenced an interest in the same. The provisions of section 72 shall apply in respect of such items as from the date of their transfers.

64. Within three months after the date specified in the notice for filing of objections or such longer period as may be determined by Monetary Board, the Director of Bank Supervision shall—

- (a) reject any claim if he doubts the validity thereof ;
- (b) determine the amount, if any, owing to each identifiable depositor or other creditor and the priority attaching to his claim under the provisions of this Act ;
- (c) prepare a Schedule of the scheme of work he proposes to take ;
- (d) notify each person whose claim has not been allowed in full, and publish once a week for three consecutive weeks, a notice in three daily newspapers in the Sinhala, Tamil and English languages, which contains an intimation of the date and place, where the Schedule of the scheme of work he proposes to take, will be available for inspection. The date so intimated, shall be a date not sooner than thirty days from the date of the third publication in the newspaper, upon which the Director of Bank Supervision will file the Schedule in Court.

65. Within twenty one days after the filing of the Schedule referred to in paragraph (c) of section 64, any depositor creditor, shareholder or other interested person may file objections to any step proposed to be taken. Any objections so filed shall be considered by the Court upon such notice to the Director of Bank Supervision and interested parties as the Court may specify. If an objection is sustained, the Court shall direct that an appropriate modification be made to the Schedule. After filing the Schedule the Director Bank Supervision may, from time to time, make partial distribution to the holders of claims which are undisputed or which have been allowed by the Court, on condition that a proper reserve is established for the payment of disputed claims. As soon as possible after all objections have been decided upon, the Director of Bank Supervision shall make the final distribution.

66. (1) The claims set out hereunder shall have priority as against the general assets of the licensed commercial bank in the order indicated below—

- (a) necessary and reasonable expenses incurred by the Director of Bank Supervision in the application of the provisions of this Part ;
- (b) wages and salaries of officers and employees of the licensed commercial bank in liquidation for the three month period preceding the revocation of the licence of the licensed commercial bank ;
- (c) taxes, rates, and deposits owed to the Government and Local authorities ;
- (d) fees and assessments due to the Monetary Board ;
- (e) savings and time deposits to the extent of rupees five thousand or less ;
- (f) other deposits.

(2) After payment of all other claims filed, with interest thereon calculated, at a rate to be fixed by the Director of Bank Supervision, with the approval of the Court, any remaining claims which were not filed within the prescribed time shall be paid.

(3) If the amount available in respect of a particular category of claims is insufficient to provide payment in full, the said amount shall be distributed pro-rata among the parties of that claim.

67. Any assets remaining after all claims have been paid shall be distributed among all the shareholders in proportion to their participation.

68. Funds remaining unclaimed after the final distribution referred to in section 61 is made, which are not subject to the other provisions under this Act, shall upon direction by the Monetary Board, be transferred to a special account in the Central Bank. The Monetary Board may utilise such funds for such purposes as may be determined by the Monetary Board after consultation with the Minister. The funds shall be abandoned property, in terms of Part IX of this Act, if the owner has not, within the ten years immediately preceding the date of the final distribution under Section 61, evidenced any interest in the funds. Section 72 shall apply in respect of such funds as from the time of their transfer under this section.

69. Once all assets have been distributed in accordance with the provisions of this Act, the Director of Bank Supervision shall render an audited account to Court. Upon approval of the account by Court, and where the Court makes an order to terminate the liquidation, the Monetary Board shall be relieved of any liability in connection with the liquidation. The Director of Bank Supervision shall proceed to terminate the judicial existence of the licensed commercial bank concerned, in accordance with such provisions of the Companies Act, No. 17 of 1982, and applicable thereto, which are not inconsistent with the provisions of this Act.

70. (1) When a licensed commercial bank incorporated outside Sri Lanka wishes to close down its business in Sri Lanka the approval of the Monetary Board for the closure shall be granted, subject to such terms and conditions as the Board may specify. Where approval is granted by the Board the affairs of the licensed commercial bank in Sri Lanka shall be wound up in accordance with the procedures set out in subsection (4).

(2) When a cancellation of the licence of a licensed commercial bank incorporated outside Sri Lanka has been made final under subsection (3) of section 9, the licensed commercial bank shall terminate its business in Sri Lanka and its affairs shall be wound up in accordance with the provisions of subsection (4).

(3) When liquidation proceedings in respect of a licensed commercial bank incorporated outside Sri Lanka are started at the place where the head office is located, the Monetary Board shall order the closure of the licensed commercial bank in Sri Lanka.

(4) When the business of the licensed commercial bank is closed down under subsections (1) or (2) or (3), the licensed commercial bank which is the subject of liquidation, shall retain only such powers as are necessary to wind up its affairs within Sri Lanka, which shall be done expeditiously and in an orderly manner. The Director of Bank Supervision shall supervise the winding up under subsection (1) or (2) or (3) of this section, in accordance with the provisions of subsections (1) and (3) of section 11, take all measures necessary to ensure that no assets owned by the licensed commercial bank, which is the subject of liquidation are removed from Sri Lanka until all obligations and liabilities incurred by such bank, to which the undertaking referred to in paragraph (c) of subsection 2 of section 3 relates, have been met in accordance with the undertaking. The provisions of sections 63 and 68 shall apply to the winding up of the affairs under this section.

(5) Where the Monetary Board is of the opinion that the licensed commercial bank has discharged all the obligations referred to in the preceding provisions of this section, the name of such bank shall be removed from the list of licensed commercial banks.

71. In the event of conflict or inconsistency between the provisions of this Part of this Act and the provisions of the Monetary Law Act (Chapter 422) or the Companies Act, No. 17 of 1982, the provisions of this Part shall prevail.

PART IX

ABANDONED PROPERTY

72. (1) In addition to the articles referred to in sections 63 and 68 the articles enumerated in subsection (2) of this section, held by a licensed commercial bank other than such articles so held by an offshore unit of a licensed commercial bank shall be presumed to be abandoned if the owner has, within a period of ten years immediately after the date of deposit, or payment of funds towards the purchase of shares or other interests, or issuing of instruments, or the date upon which funds held in a fiduciary capacity became payable, or capable of being distributed, or the expiration of the period for which the safe deposit box was rented, as the case may be—

(a) not increased or decreased the amount of the deposit or funds or presented the pass book or other record for the crediting of interest or dividends in respect of the articles enumerated in paragraphs (a) and (b) of subsection (2) of this section ;

(b) not increased or decreased the principal or accepted payment of principle or income in respect of funds held in a fiduciary capacity ;

(c) not had any correspondence with the licensed commercial bank concerning such articles ;

(d) not otherwise indicated an interest in the articles as evidenced by a memorandum concerning them by the licensed commercial bank.

(2) The following shall be the articles referred to in subsection (1) :—

- (a) any general deposit (demand, savings or matured time deposit) made in Sri Lanka with that licensed commercial bank together with any interest or dividend thereon excluding any lawful charges ;
- (b) any funds paid in Sri Lanka towards the purchase of shares or other interests in a licensed commercial bank together with any interest or dividend, excluding any lawful charges ;
- (c) any sum payable on cheques or on written instruments, on which the licensed commercial bank is directly liable ;
- (d) any intangible personal property and any income or interest thereon held in a fiduciary capacity for the benefit of another person ;
- (e) any contents of a safe deposit box upon which the rental period has expired and concerning which notice has been sent by registered post to the last known address of the lessee and to which the lessee has failed to respond within three years.

73. (1) Any licensed commercial bank holding any abandoned property referred to in section 72, shall make a report to the Monetary Board in such form as the Monetary Board may determine stating the nature of the articles held and in the case of money, the amount of money.

(2) Notwithstanding anything in any other law, all monies included in the report shall, if the Monetary Board directs, be transferred by the licensed commercial bank to a special account in the Central Bank and may be utilised by the Monetary Board for such purposes as may be determined by the Monetary Board after consultation with the minister.

(3) The articles included in the report that do not fall under subsection (2) shall be referred by the Monetary Board to the Minister for such action as he shall prescribe.

74. Within thirty days from the submission of the report required by subsection (1) of section 73, the licensed commercial bank shall publish a notice in the Sinhala, Tamil and English daily newspapers stating the name of the owner and particulars concerning the property and shall despatch, by registered post a notice to the owner to his last known address containing particulars concerning the property, provided that the Monetary Board may exempt the licensed commercial bank from the mailing of such notice upon the licensed commercial bank showing reasonable cause therefor.

75. (1) Where any person furnishes proof to the satisfaction of the Monetary Board that moneys lying to the credit of an account which was in his name or in the name of a person from whom he derives title, have been transferred to a special

account in the Central Bank under section 73 shall, subject to such terms, conditions or restrictions as are imposed in respect of such money by or under any written law be entitled to the repayment of such moneys by the Central Bank together with the interest payable on such moneys upto the date of such repayment, in accordance with such rates and conditions as are applicable to the account to the credit of which such money were lying before they were transferred to the special account in the Central Bank.

76. Any licensed commercial bank which fails to file the report or to pay or deliver property presumed to be abandoned as required by section 74 shall be guilty of an offence under this Act.

PART X

GENERAL

77. Every director manager, officer or other person employed in the business of any licensed commercial bank shall, before entering up on his duties sign a declaration pledging himself to observe strict secrecy in respect of all transactions of the bank, its customers and the state of accounts of any person and all matters relating thereto, and shall by such declaration pledge himself not to reveal any other matters which may come to his knowledge in the discharge of his duties except

(a) when required to do so—

(i) by a court of law ;

(ii) by the person to whom such matters relate ;

(b) in the performance of his duties ; and

(c) in order to comply with any of the provisions of this Act or any other law.

78. No suit or prosecution shall lie against any member of the Monetary Board or any officer or servant of the Central Bank for any act which in good faith is done or purported to be done by the Monetary Board or by any officer or servant of the Central Bank under this Act ; or against any director, officer or employee of any licensed commercial bank for any act which in good faith is done or purported to be done by him under this Act or on the direction of the Monetary Board.

79. (1) Any person who contravenes the provisions of subsection (1) of section 2, subsection (5) of section 3, subsection (2) of section 15, subsection (5) of section 16, subsection (1) of section 17, subsection (2) of section 33, subsection (2) of section 41, subsections (9) and (10) of section 47 and section 77 of this Act or any rule or regulation made thereunder, and the licensed commercial bank and every officer or servant of such bank who knowingly and wilfully authorizes or permits such default, shall be guilty of an offence under this Act and shall be liable, on conviction after

summary trial before a Magistrate, to imprisonment of either description for a term not exceeding three years or to a fine not exceeding one million rupees or to both such imprisonment and such fine.

(2) Every person who is guilty of an offence under this Act for which no punishment has been specified under subsection (1), shall, after summary trial before a Magistrate, be liable to imprisonment for a term not exceeding eighteen months or to a fine not exceeding five hundred thousand rupees or to both such imprisonment and such fine.

80. (1) Any person who being a director, manager, officer or employee of a licensed commercial bank—

- (a) fails to take all reasonable steps to secure compliance by the licensed commercial bank with the requirements of that Act ; or
- (b) fails to comply with any direction issued by the Monetary Board under the provisions of this Act ;
- (c) fails to take all reasonable steps to secure the correctness of any statement submitted under the provisions of this Act ;
- (d) wilfully makes a false entry or causes such an entry to be made in any book, or record or in any report, slip, document, or statement of the business, affairs, transactions, conditions, assets or liabilities or accounts of such licensed commercial bank ; or
- (e) wilfully omits to make an entry in any book or record in any report, slip, document or statement of the business, affairs, transactions, conditions, assets or liabilities or accounts of such licensed commercial bank or wilfully causes any such entry to be omitted ; or
- (f) wilfully alters abstracts, conceals or destroys an entry in any book or record or in any report, slip, document, or statement of the business, affairs, transactions, conditions, assets or liabilities or accounts of such licensed commercial bank or wilfully causes any such entry to be altered, abstracted concealed or destroyed.

shall be guilty of an offence under this Act, and shall, on conviction after summary trial by a Magistrate, be liable to a term of imprisonment for a term not exceeding eighteen months or to a fine not exceeding one thousand rupees or to both such imprisonment and fine.

(2) In any proceedings 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 these statements were accurate and that such person was competent and in a position to discharge that duty.

81. Where an offence under this Act is committed by a body corporate, every person, who at the time of the commission of the offence was a director or an officer of the body corporate, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge, or that he exercised all due diligence to avoid the commission of such offence.

82. (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*.

83. A licensed commercial bank which is granted a licence in terms of section 5 shall be deemed to be—

(i) an approved credit agency for purposes of the Trust Receipt Ordinance (Chapter 85) and the Mortgage Act (Chapter 89);

(ii) an "approved bank" for purposes of the Finance Act, No. 65 of 1961.

PART XI

REPEAL

84. The Monetary Law Act, (Chapter 422) is hereby amended by the repeal of sections 116A, 121A and 121B of that Act.

85. The Companies Act, No. 17 of 1982 is hereby amended by the repeal of Part XIV of that Act.

PART XII

INTERPRETATION

86. In this Act, unless the context otherwise requires—

"accommodation" means any loan or overdraft or advance or any commitment to grant any loan or overdraft or advance, including a commitment to accept a contingent liability;

“ banking business ” means the business of receiving funds from the public through the acceptance of money deposits payable upon demand by cheque, draft, order or otherwise, and the use of such funds either in whole or in part for advances, investments or any other operation either authorized by law or by customary banking practices ;

“ capital funds ” means paid-up or assigned capital and the reserve fund as provided for in section 2 ;

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

“ close relation ” means spouse or dependant child ;

“ company ” means a company formed and registered under the Companies Act, No. 17 of 1982 ;

“ concern ” means a company or firm ;

“ designated foreign currency ” means a foreign currency determined as a designated foreign currency by the Monetary Board ;

“ director ” means—

(a) in relation to a licensed commercial bank incorporated in Sri Lanka, any person by whatever designation he may be called, carrying out or empowered to carry out substantially the same functions in relation to the direction of the licensed commercial bank as those carried out by a director of a company incorporated under the Companies Act ;

(b) in relation to a licensed commercial bank incorporated outside Sri Lanka, any person by whatever designation he may be called carrying out or empowered to carry out substantially the same functions in relation to the direction of the licensed commercial bank as those carried out by a director of a company incorporated under the Companies Act and the person in Sri Lanka responsible for carrying out the functions of such licensed commercial bank who shall be designated the principal authorized agent or his alternate ;

“ Director of Bank Supervision ” means the Heads of the Department of Bank Supervision of the Central Bank established under the Monetary Law Act, (Chapter 422) ;

“ domestic banking business ” means any banking business that is not subject to Part IV of this Act, dealing with off-shore banking ;

“ head office of a commercial bank ” means the place where the office of the Board of directors of the commercial bank is located ;

“ liquid assets ” means—

- (a) cash ;
- (b) balances with licensed commercial banks ;
- (c) money at call in Sri Lanka ;
- (d) treasury bills and securities issued or guaranteed by the Government of Sri Lanka which have a maturity not exceeding one year ;
- (e) goods receipts ;
- (f) import and export bills ;
- (g) such other assets as may be determined by the Monetary Board ;

“ local Authority ” means any Municipal Council, Urban Council or any Development Council and includes any Authority created and established by or under any law to exercise, perform and discharge, powers, duties, and functions corresponding to or similar to the powers, duties and functions exercised, performed and discharged by any such Council ;

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

“ non-resident ” means an individual company, body corporate or other judicial person or any unincorporated body not included in the definition of “ resident ” ;

“ place of business ” means any branch or office of a licensed commercial bank in Sri Lanka including a mobile office open to the public ;

“ public corporation ” means any corporation, board or other body which was or is established by or under any written law other than the Companies Ordinance, with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise ;

“ qualified auditor ” means—

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

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

“ resident ” means—

- (a) a citizen of Sri Lanka residing in Sri Lanka ;
- (b) an individual who is not a citizen of Sri Lanka but who has been in Sri Lanka for at least six months and continues or intends to be in Sri Lanka ;
- (c) a company incorporated in Sri Lanka, or a body corporate established under any written law or any firm, partnership or other organization in Sri Lanka ;
- (d) a branch subsidiary, affiliate, extension, office or any other unit of a company or other judicial person established under the laws of any foreign country, operating in Sri Lanka ;

“ substantial interest ” means—

- (a) in relation to a company means the holding of a beneficial interest by another company or an individual or his close relation, whether singly or taken together, in the shares thereof the paid-up value of which exceeds rupees one million or ten *per centum* of the paid-up capital of the company, whichever is less, or the existence of a guarantee or indemnity given by an individual or his close relation or by another company on behalf of such company ;
- (b) in relation to a firm, means the beneficial interest held therein by an individual or his close relation, whether singly or taken together, which represents more than ten *per centum* of the total capital subscribed by all partners of the said firm or the existence of a guarantee or indemnity given by an individual or his or her spouse or parent or child on behalf of such firm.

[Section 2(4)]

SCHEDULE I

1. Algemene Bank Nederland N.V.
2. American Express Bank Ltd.
3. Amsterdam-Rotterdam Bank N. V.
4. Bank of Ceylon
5. Bank of Credit & Commerce International (Overseas) Ltd.
6. Bank of Oman Ltd.
7. Banque Indosuez
8. Citibank N. A.
9. Commercial Bank of Ceylon Ltd.

10. Deutsche Bank A G.
11. Grindlays Bank P. I. C.
12. Habib Bank A. G. Zurich
13. Habib Bank Ltd.
14. Hatton National Bank Ltd.
15. Hongkong & Shanghai Banking Corporation
16. Indian Bank
17. Indian Overseas Bank
18. Middle East Bank Ltd.
19. Overseas Trust Bank Ltd.
20. People's Bank
21. Standard Chartered Bank
22. State Bank of India
23. Union Bank of the Middle East Ltd.
24. Sampath Bank Ltd.
25. Seylan Trust Bank Ltd.
26. Any Bank established under the provisions of the Regional Rural Development Bank Act, No. 15 of 1985.

(Section 3(4))

SCHEDULE II

- (a) opening, maintaining and managing deposit, savings and other similar account ;
- (b) the borrowing, raising, or taking up of money, the lending or advancing of money either upon or without security ; the drawing, making, accepting, discounting, buying, selling, collecting and dealing in bills of exchange, hundees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debenture certificates, scrips and other instruments and securities whether transferable or negotiable or not granting and issuing of letters of credit, travellers cheques and circular notes ; the buying, selling and dealing in bullion specie ; the buying and selling of foreign exchange including foreign bank notes, the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds, the purchasing and selling of bonds, scrips, or other forms of securities on behalf of constituents or others—the negotiating of loans and advances ; the receiving of all kinds of bonds, scrips or valuables on deposits, or for safe custody or otherwise and the carrying on of the business of safe deposits, the collecting and transmitting of money and securities ;
- (c) acting as agents for Government or local authorities or for any other person or persons ; the carrying on of agency business of any description other than the business of a managing agent of any company, which is not a banking company, but including the clearing and forwarding of goods the power to act as attorneys and to give discharges and receipts ;
- (d) contracting for public and private loans and negotiating and issuing the same ;
- (e) the promoting, effecting, insuring, guaranteeing, under writing, participating in managing and carrying out of any issue, public or private, of state municipal or other loans or of shares, stock debentures, or debenture stock of any company, corporation or association and the lending of money for the purpose of any such issue ;
- (f) carrying on and transacting every kind of guarantee and indemnity business ;
- (g) promoting or financing or assisting in promoting or financing any business undertaking or industry either existing or new, and developing or forming the same either through the instrumentality of syndicates or otherwise ;
- (h) acquisition by purchase, lease, exchange, hire or otherwise of any property immovable or movable and any rights or privileges which the company may think necessary or convenient to acquire or the acquisition of which in the opinion of the company is likely to facilitate the realisation of any securities held by the company or to prevent or diminish any apprehended loss or liability ;
- (i) managing, selling and realising all property movable and immovable which may come into the possession of the company in satisfaction or part satisfaction of its claims ;
- (j) acquiring, holding, and generally dealing with any property and any right, title or interest in any property movable or immovable which may from the security or part of the security for any loans or advances or which may be connected with any such security ;

- (k) undertaking and executing trusts ;
- (l) undertaking the administration of estates as executors, trustees or otherwise ;
- (m) taking or otherwise acquiring and holding shares in any other company having objects similar to those of the company ;
- (n) establishing and supporting or aiding in the establishment and support of associations institutions, funds, trustees and conveniences calculated to benefit employees or ex-employees of the company or the dependants or connections of such persons, granting pensions and allowances and making payments towards insurance, subscribing to or guaranteeing moneys for charitable or benevolent objects or for any exhibition or for any public, general or useful objects ;
- (o) the acquisition, construction, maintenance and alterations of any building or works necessary or convenient for the purposes of the company ;
- (p) selling, improving, managing, developing, exchanging, leasing, mortgaging, disposing of or turning into account or otherwise dealing with all or any part of the property and rights of the company ;
- (q) acquiring and undertaking the whole or any part of the business of any person or company when such business is of a nature enumerated or described in this Act ;
- (r) doing all such other things as are incidental or conducive to the promotion or advancement of the business of the company ;
- (s) engaging in management consultancy services ;
- (t) providing for the training in banking, accounting, valuation, project and credit appraisal and allied subjects ;
- (u) engaging in the business of hire-purchase services, factories, leasing and warehousing ;
- (v) providing for medium and long term credit for development.

INLAND REVENUE (AMENDMENT) ACT, No. 31 OF 1988

(Certified on 8th September, 1988)

AN ACT TO AMEND THE INLAND REVENUE ACT, No. 28 OF 1979

1. This Act may be cited as the Inland Revenue (Amendment) Act, No. 31 of 1988.
2. Section 8 of the Inland Revenue Act, No. 28 of 1979, (hereinafter referred to as the "principal enactment") is hereby amended in paragraph (a) of that section as follows :—

(1) by the substitution, in sub-paragraph (Lii) of that paragraph, for the words and figures "Surveyors' Institute of Sri Lanka Act, No. 22 of 1982 ; and, of the words and figures "Surveyors' Institute of Sri Lanka Act, No. 22 of 1982 ;";

(2) by the substitution, in sub-paragraph (Liii) of that paragraph, for the words and figures "Institute of Chemistry (Ceylon) Act, No. 15 of 1972.", of the words and figures "Institute of Chemistry (Ceylon) Act, No. 15 of 1972 ; and " ; and

(3) by the addition, immediately after sub-paragraph (Liii) of that paragraph, of the following sub-paragraph :—

"(Liv) the Sri Lanka Institute of Development Administration established by the Sri Lanka Institute of Development Administration Act, No. 9 of 1982."

3. Section 33 of the principal enactment is hereby amended in paragraph (b) of subsection (2) of that section as follows :—

(1) by the substitution, in sub-paragraph (iii) of that paragraph, for the words and figures "November 15, 1978, and ", of the word and figures "November 15, 1978," ;

(2) by the substitution, in sub-paragraph (iv) of that paragraph, for the words "existing company ;", of the words "existing company ; and " ; and

(3) by the addition, immediately after sub-paragraph (iv) of that paragraph, of the following new subparagraph :—

"(v) the taxable income of which for any year of assessment commencing on or after April 1, 1988, does not exceed three hundred and thirty-three thousand three hundred and thirty three-rupees."

4. The following sections are hereby inserted immediately after section 33 of the principal enactment and shall have effect as sections 33A, 33B, 33C and 33D of that enactment :—

“Advance company tax on qualifying distribution to which resident companies are liable.”

33A. (1) Every company resident in Sri Lanka shall be liable to pay for every year of assessment commencing on or after April 1, 1988 a tax (hereinafter referred to as the “advance company tax”) calculated at the appropriate rate specified in the Seventh Schedule to this Act as the rate applicable to companies of that class, on an amount equal to the amount of every qualifying distribution made by that company during that year of assessment.

(2) Every resident company shall be entitled to deduct, in accordance with the provisions of section 125(2) (iv), from the tax payable by it under section 33(1) (a) of this Act for any year of assessment commencing on or after April 1, 1988, the advance company tax paid by it in that year of assessment. Such deduction shall not exceed 50 *per centum* of the tax payable under section 33 (1) (a) by that company in that year of assessment.

(3) The advance company tax paid by a company in any year of assessment which is in excess of the amount deducted for that year of assessment under subsection (2) shall not be refunded to the company but shall be carried forward and deducted, in accordance with the provisions of section 125 (2) (iv) from the tax payable under section 33(1) (a) by that company for the next succeeding year of assessment and so on, so however, that the total amount deducted on account of advance company tax from the tax payable by that company under section 33(1) (a) for any year of assessment shall not exceed 50 *per centum* of the tax payable under section 33 (1) (a) by that company for that year of assessment.

33B. (1) Where a resident person, other than a company, receives in any year of assessment, a dividend in relation to which advance company tax under subsection (1) of section 33A has been paid by any resident company, the statutory income of such person from such dividend for that year of assessment shall be deemed to be a sum equal to the aggregate of the gross dividend and the advance company tax which is attributable to such part of that dividend as consists of a qualifying distribution.

(2) Every resident person, other than a company, whose total statutory income for any year of assessment includes a dividend in relation to which advance company tax under subsection (1) of section 33A has been paid by any resident

company, shall be entitled to deduct from the tax payable by such person for that year of assessment, a sum equal to the advance company tax paid on such part of that dividend as consists of a qualifying distribution. Where the amount to be so deducted exceeds the tax payable by him for that year of assessment, the excess shall, subject to the provisions of chapter XXIII, be refunded to such person.

33c. Every resident company shall maintain for every year of assessment commencing on or after April 1, 1988, a record indicating—

(1) dividends in the form of money or of an order to pay money from other resident companies received on or after April 1, 1988, classified under the following Categories and sub-categories :—

(a) exempt dividends ;

(b) dividends in relation to which advance company tax has not been paid ;

(c) other dividends—

(i) dividends paid out of profits for any period prior to April 1, 1988,

(ii) dividends in relation to which, advance company tax has been paid at 50 *per centum*.

(iii) dividends in relation to which advance company tax has been paid at 33 $\frac{1}{3}$ *per centum*, and

(iv) dividends in relation to which advance company tax has been paid at 25 *per centum* ;

(2) profits and income, other than dividend income, arising or accruing on or after April 1, 1988, classified under the following categories :—

(a) exempt profits and income ;

(b) profits and income taxable at rates other than those specified in the Second Schedule to this Act ; and

(c) other profits and income ;

(3) details of dividends paid out during that year of assessment, out of each of the categories and subcategories of income set out in the foregoing paragraphs ;

(4) appropriations made during that year of assessment out of each of the categories and subcategories of income set out in the foregoing paragraphs, for payment of taxes and reserves.

5. Section 38 of the principal enactment is hereby amended as follows :—

(1) in subsection (2) of that section—

(i) by the substitution for paragraph (d) of that subsection of the following paragraph :—

“(d) the composition of the gross dividend indicating separately the amount paid out of—

(i) exempt dividends received ;

(ii) dividends received, in relation to which advance company tax has been paid at 50 *per centum* ;

(iii) dividends received in relation to which advance company tax has been paid at 33 $\frac{1}{3}$ *per centum* ;

(iv) dividends received, in relation to which advance company tax has been paid at 25 *per centum* ;

(v) other dividends received ;

(vi) income exempt from income tax ;

(vii) profits and income taxable at rates other than those specified in the Second Schedule to this Act ; and

(viii) other profits and income ;” ; and

(ii) by the addition, immediately after paragraph (d) of that subsection of the following new paragraphs :—

“(e) the advance company tax paid in relation to such part of the dividend paid out of the other profits and income referred to in sub-paragraph (viii) of the foregoing paragraph as consists of a qualifying distribution ;

(f) advance company tax paid in relation to such part of the dividend paid out of a dividend referred to in sub-paragraph (ii) or (iii) or (iv) of paragraph (d) as consists of a qualifying distribution.” ; and

- (2) by the insertion, immediately after subsection (2) of that section of the following new subsection :—

“(2A) Every company resident in Sri Lanka shall, for every year of assessment commencing on or after April 1, 1988, furnish to the Commissioner-General on or before the thirtieth day of November immediately succeeding the end of that year of assessment, a statement in such form as may be specified by the Commissioner-General setting out the particulars of—

(i) advance company tax paid in that year of assessment ;

(ii) any payments made in that year of assessment in respect of tax under section 33 (1) (a) for any year of assessment commencing on or after April 1, 1988.” ; and

- (3) in subsection (4) of that section by the substitution for the words “ the amount of tax shown on such statement. ”, of the words “ the amount of tax including the advance company tax, shown on such statement. ”.

6. Section 97 of the principal enactment is hereby amended by the addition, immediately after subsection (3), of that section of the following new subsection :—

“(4) Notwithstanding the provisions of any of the foregoing subsections, the entirety of the advance company tax payable by any company resident in Sri Lanka, under section 33A (1) on an amount equal to the amount of every qualifying distribution made by such company in any year of assessment commencing on or after April 1, 1988, shall be remitted to the Commissioner-General at the time at which the dividend consisting of each such qualifying distribution is distributed. The remittance shall be accompanied by a declaration in such form and containing such particulars as may be specified by the Commissioner-General to ensure the orderly collection of such tax.

For the purposes of this subsection the expression “ the time at which the dividend consisting of each such qualifying distribution is distributed ” means the date on which the dividend is declared or where the dividend is declared to be paid on a future date, such future date.”.

7. Section 117 of the principal enactment is hereby amended in subsection (12) of that section, by the substitution, for the words and figures “ on or after April 1, 1987, shall be agreed to, or determined,”, of the words and figures, “on or after April 1, 1987, shall be agreed to, or determined by the Commissioner-General,”.

8. Section 125 of the principal enactment is hereby amended as follows :—

- (1) in subsection (1A) of that section by the substitution for the words and figures “specified in section 97 (3),” ; of the words and figures “specified for the payment of that tax in section 97 (3) or section 97 (4),” ;

(2) in subsection (2) of that section, by the addition, immediately after paragraph (iii) of the proviso to that subsection, of the following paragraph :—

“(iv) for any year of assessment commencing on or after April 1, 1989, any excess of advance company tax paid by a company and carried forward in accordance with the provisions of subsection (3) of section 33A, from the year immediately preceding that year of assessment may be deducted, to the extent it can be deducted, first from the quarterly instalment payable on or before the fifteenth day of August in that year of assessment and the balance, if any, of such excess, from the next quarterly instalment payable on or before the fifteenth day of November in that year of assessment and so on, and the amount so deducted shall, for the purposes of this paragraph, be deemed to have been paid on the fifteenth day of August, or the fifteenth day of November and so on, as the case may be.”; and

(3) in subsection (11) of that section, by the substitution for the words “any year of assessment.”, of the words “any year of assessment, the advance company tax payable for any year of assessment by a company in relation to any qualifying distribution.”.

9. Section 126 of the principal enactment is hereby amended by the addition, immediately after paragraph (c) of that section of the following new paragraph :—

“(d) any advance company tax which a company is required to pay under this Act,”.

10. Section 151 of the principal enactment is hereby amended in paragraph (d) of subsection (1) of that section by the substitution, for the words and figures “requirements of section 60 (3)”, of the words and figures “requirements of section 33c or section 60 (3)”.

11. Section 158 of the principal enactment is hereby amended by the addition, immediately after subsection (11) of that section, of the following new subsection :—

“(12) Nothing in the preceding provisions of this section shall be read or construed as empowering the Minister or the Secretary to the Ministry of the Minister to have access to, or to examine, any records or documents relating to the affairs of any person, in the possession, custody or control of the Commissioner-General.”.

12. Section 163 of the principal enactment is hereby amended by the insertion, immediately after the definition of “property”, of the following definition :—

“qualifying distribution” means the whole or part of any gross dividend distributed in any year of assessment commencing on or after April 1, 1988, by a resident company to a shareholder, in the form of money or of an order

to pay money, out of such profits of the company which, if taxable for that year of assessment, would be taxed at the appropriate rate specified in the Second Schedule to this Act, as the rate applicable to companies of that class, but does not include any dividend distributed out of—

- (i) profits or income which accrued, or arose, to such company, prior to April 1, 1988 ;
- (ii) its exempt income ; and
- (iii) any income from dividends received by such company,

13. The Second Schedule to the principal enactment is hereby amended as follows :—

- (1) in Part II of that Schedule, by the substitution, for the words and figures “April 1, 1979.”, of the words and figures “ April 1, 1979, but ending on or before March 31, 1988. ” ;
- (2) in Part III of that Schedule, by the substitution, for the words and figures “ April 1, 1979 ”, of the words and figures “ April 1, 1979, but ending on or before March 31, 1988, ” ;
- (3) by the substitution, in paragraph (b) of Part IV of that Schedule for the word and figures “ April 1, 1982—”, of the words and figures “April 1, 1982, but ending on or before March 31, 1988—” ; and
- (4) by the insertion, immediately after Part IV of that Schedule, of the following new Part :—

“PART IV A

Small Company

The rate income tax for every year of assessment commencing on or after April 1, 1988 —

- (1) if the taxable income of the company does not exceed two hundred and fifty thousand rupees 33 1/3
- (2) if the taxable income of the company exceeds two hundred and fifty thousand rupees but does not exceed three hundred and thirty-three thousand three hundred and thirty-three rupees, the tax shall be the aggregate of—
 - (i) a sum equal to 33 1/3 per centum of two hundred and fifty thousand rupees, and
 - (ii) the amount by which the taxable income of the company for that year of assessment exceeds two hundred and fifty thousand rupees.”.

14. The following new Schedule is hereby added immediately after the Sixth Schedule to the principal enactment and shall have effect as the Seventh Schedule to that enactment :—

"SEVENTH SCHEDULE"

(SECTION 33A (1))

The rates of advance company tax for every year of assessment commencing on or after April 1, 1988, shall be as follows:—

- (i) on the amount equal to the amount of every qualifying distribution made by a small company,

.. 25 per centum

- (ii) on the amount equal to the amount of every qualifying distribution made by a quoted public company or a people's company,

or a people's company. .. 33 1/3 per centum

- (iii) on the amount equal to the amount of every qualifying distribution made by a company other than a small company, or a quoted public company, or a people's company,

people's company. .. 50 per centum"

EMPLOYEES' PROVIDENT FUND (AMENDMENT)

ACT, No. 42 OF 1988

(Certified on 24th November, 1988)

AN ACT TO AMEND THE EMPLOYEE PROVIDENT FUND ACT, No. 15 OF 1958

1. This Act may be cited as the Employees' Provident Fund (Amendment) Act, No. 42 of 1988.

2. Section 5 of the Employees' Provident Fund Act, No. 15 of 1958 (hereinafter referred to as the "principal enactment") is hereby amended as follows :—

- (a) by the insertion immediately after paragraph (f), of the following new paragraph :—

"(ff) shall maintain a Suspense Account, into which shall be credited the contributions received under this Act in respect of which, the employers have failed to furnish relevant returns in terms of the Act or any regulations made thereunder, or have furnished deficient or incorrect returns and thus cannot be credited to individual accounts, and all the moneys held on the date on which this paragraph comes into force, in an account maintained by the Fund in respect of such contributions, shall be transferred by the Monetary Board to the Suspense Account created by this paragraph.

As and when an employer, who has failed to furnish relevant returns as referred to above, furnishes correct returns in respect of his employee, the Monetary Board shall transfer the moneys lying in the Suspense Account to the individual account of the member.

Where any moneys are transferred from the Suspense Account to an individual account as provided for in this paragraph interest shall be paid on that sum, for the period from the date of receipt of such moneys to the date of transfer of such moneys to the individuals account, for a period not exceeding six years prior to the date of such transfer, and the rate of interest shall be the rate determined in terms of section 14(1) of the Act, and applicable for the year in respect of which the interest is paid ;” ; and

(b) by the insertion immediately after paragraph (kk) of the following new paragraph :—

“(kkk) shall deduct any outstanding monies due on a housing loan under section 22, from the individual account of a member, upon a directive from the Commissioner to that effect, and transfer the amount so deducted to the relevant lending institution ;”.

3. Section 22 of the principal enactment is hereby amended by the insertion of the following proviso, at the end of that section :—

‘Provided however, a member of the Fund may, assign or charge the contributions lying to the credit of his individual account in the Fund, with the State Mortgage and Investment Bank established under the State Mortgage and Investment Bank Act, No. 13 of 1975, or the National Housing and Development Authority established under the National Housing Development Authority Act, No. 17 of 1979 or the Housing Development Finance Corporation of Sri Lanka Limited established under the National Housing Act (Chapter 401), or the People’s Bank established under the People’s Bank Act, No. 29 of 1961, or the Bank of Ceylon established under the Bank of Ceylon Ordinance (Chapter 397) or the National Savings Bank established under the National Savings Bank Act, No. 30 of 1971, or Multipurpose Corporative Societies established under the Corporative Societies Ordinance (Chapter 124), against a loan given for housing purposes by any one of the said lending institutions.

In any case where more than one member of a family are members of the Fund, all such members of the family as are members of the Fund may assign or charge the aggregate of the contributions lying to the credit of their individual accounts against a housing loan taken as aforesaid.

Where the repayment of the instalment of a loan is in default, the Commissioner shall, after being so intimated by the relevant lending institution, settle the instalment in default together with interest accrued on such instalment to such lending institution, out of the moneys lying in the individual account or accounts of such employee or employees, notwithstanding the provisions of section 23 or 24 of the Act.

The intimation by a relevant lending institution to the Commissioner, with respect to defaults in payment by an employee of instalments of a loan shall be made at the end of each calendar year.

Where there are any sums outstanding on account of a housing loan taken as aforesaid at the time of the payment of a benefit under section 23 or 24, as the case may be, the Commissioner may direct the Monetary Board, to deduct such outstanding sums out of the moneys lying to the credit of such member or members, in his or their individual accounts as the case may be, and transfer the moneys so deducted, immediately after such deduction, to the respective lending institutions.

For the purpose of section 22, "Family" means a member of the Fund, his or her spouse, and his or her children."

4. Section 23 of the principal enactment is hereby amended in subsection (1) of that section, by the substitution for the words "Save as hereinafter provided in this section"; of the words "Save as hereinafter provided in this section and subject to the deductions made in section 22,".

5. Section 24 of the principal enactment is hereby amended as follows :—

(a) in subsection (1) of that section, by the substitution for the words "then such amount shall—", of the words and figures "then subject to the deductions made in section 22, such amount shall—";

(b) in subsection (2) of that section, by the substitution for the words and figures "such amount shall—" of the words "subject to the deductions made in section 22, such amount shall—".

6. The following new section is hereby inserted immediately after section 31 and shall have effect as section 31A of the principal enactment :—

"Imposition
of a surcharge
on employers
who fail
to furnish
returns.

31A. Where any employer, who is required in terms of this Act or any regulation made thereunder, to furnish a return together with any contribution, has failed to furnish such return, within the specified period or has furnished incorrect or deficient return and is unable to explain to the satisfaction of the Commissioner, the reason for the failure to furnish such return for that period, he shall be liable to pay to the Fund a surcharge at the rate of one *per cent* of the amount of such contribution for every completed month or a part thereof from the last date on or before which the return was due to the date of receipt by the Central Bank of Sri Lanka of a duly completed return."

**MULTILATERAL INVESTMENT GUARANTEE AGENCY
ACT, No. 57 OF 1988**

(Certified on 17, December, 1988)

AN ACT TO ENABLE SRI LANKA TO FULFIL ITS OBLIGATIONS UNDER THE CONVENTION ESTABLISHING THE MULTILATERAL INVESTMENT GUARANTEE AGENCY

WHEREAS Sri Lanka became, on October 3, 1986, a signatory to the Convention establishing the Multilateral Investment Guarantee Agency.

AND WHEREAS it is necessary to make legal provision to enable Sri Lanka to fulfil its obligations under that Convention :

1. This Act may be cited as the Multilateral Investment Guarantee Agency Act, No. of 1988 and shall come into operation on such date as the Minister by Order published in the *Gazette*, certifies as the date on which the Convention establishing the Multilateral Investment Guarantee Agency (hereinafter referred to as "the Convention"), and the provisions of which are set out in the Schedule to this Act enters into force in respect of Sri Lanka.

2. The Minister shall on behalf of the Government, create and issue to the Multilateral Investment Guarantee Agency (hereinafter referred to as "the Agency") established by the Convention, such non-negotiable and non-interest bearing promissory notes and or similar obligations as may be necessary to meet Sri Lanka's obligations to the Agency, under paragraph (i) of Article 7 of the Convention.

3. There shall be paid out of the Consolidated Fund of Sri Lanka—

(a) such sums as may from time to time, be required to pay to the Agency, the initial subscription payable by Sri Lanka under paragraphs (i) and (ii) of Article 7 of the Convention ;

(b) such sums as may, from time to time, become payable to the Agency by Sri Lanka, under any other provisions of the Convention ; and

(c) such sums as may be required for the redemption of any notes or obligations created or issued to the Agency under section 2 of this Act.

4. (1) For the purpose of providing any sums required to be paid out of the Consolidated Fund of Sri Lanka under section 3, the Minister in charge of the subject of Finance is hereby authorized to raise loans, on behalf of the Government of Sri Lanka, by the creation and issue to the Central Bank of Sri Lanka, in such form as he thinks fit, of non-interest bearing and non-negotiable notes or obligations.

(2) Notwithstanding anything in the Monetary Law Act (Chapter 422) the Central Bank of Sri Lanka is hereby authorized to accept and hold any notes or obligations created and issued in accordance with the provisions of subsection (1) of this section.

(3) There shall be paid out of the Consolidated Fund of Sri Lanka all sums required for the redemption of any notes or obligations created and issued to the Central Bank of Sri Lanka under subsection (1) of this section.

5. All sums received by, or on behalf of, the Government of Sri Lanka from the Agency—

- (a) as a refund under Article 10 of the Convention ;
- (b) on a distribution of net-income under Article 27 of the Convention ;
- (c) on a liquidation of the Agency under Article 55 of the Convention; and
- (d) under any other provision of the Convention, shall be credited to the Consolidated Fund of Sri Lanka.

6. The provisions of Articles 1, 44, 45, 46, 47, 48 and 50 of the Convention shall have the force of Law in Sri Lanka and accordingly—

- (a) the Agency shall have in Sri Lanka, the status and capacity specified in the aforesaid Article 1 ; and
- (b) the Agency and its official shall, subject to the aforesaid Article 50, have in Sri Lanka, the immunities and privileges specified in the aforesaid Articles 44, 45, 46, 47 and 48.

7. When designated as such by the Government of Sri Lanka under Article 37 of the Convention, the Central Bank of Sri Lanka shall be the depository of the Agency in Sri Lanka, for the purposes referred to in that Article.

8. In this Act, 'Central Bank' means the Central Bank of Sri Lanka established by section 5 of the Monetary Law, Act (Chapter 422).

CONVENTION ESTABLISHING THE MULTILATERAL INVESTMENT GUARANTEE AGENCY

PREAMBLE

The Contracting States

Considering the need to strengthen international co-operation for economic development and to foster the contribution to such development of foreign investment in general and private foreign investment in particular ;

Recognizing that the flow of foreign investment to developing countries would be facilitated and further encouraged by alleviating concerns related to non-commercial risks;

Desiring to enhance the flow to developing countries of capital and technology for productive purposes under conditions consistent with their development needs, policies and objectives, and on the basis of fair and stable standards for the treatment of foreign investment ;

Convinced that the Multilateral Investment Guarantee Agency can play an important role in the encouragement of foreign investment complementing national and regional investment guarantee programs and private insurers of non-commercial risk and ;

Realizing that such Agency should, to the extent possible, meet its obligations without resort to its callable capital and that such an objective would be served by continued improvement in investment conditions,

Havt Agreed as follows :

CHAPTER I

ESTABLISHMENT, STATUS, PURPOSES AND DEFINITIONS

Article 1. Establishment and Status of the Agency.

(a) There is hereby established the Multilateral Investment Guarantee Agency (hereinafter called the " Agency ").

(b) The Agency shall possess full juridical personality and, in particular, the capacity to—

(i) contract ;

(ii) acquire and dispose of movable and immovable property ; and

(iii) institute legal proceedings.

Article 2. Objective and Purposes.

The objective of the Agency shall be to encourage the flow of investments for productive purposes among member countries, and in particular to developing member countries, thus supplementing the activities of the International Bank for Reconstruction and Development (hereinafter referred to as the " Bank ") the International Finance Corporation and other international development finance institutions.

To serve its objective, the Agency shall—

(a) issue guarantees, including coinsurance and reinsurance, against non-commercial risks in respect of investments in a member country which flow from other member countries ;

(b) carry out appropriate complementary activities to promote the flow of investments to and among developing member countries ; and

(c) exercise such other incidental powers as shall be necessary or desirable in the furtherance of its objective.

The Agency shall be guided in all its decisions by the provisions of this Article

Article 3. Definitions.

For the purposes of this Convention—

(a) A " Special Majority " means an affirmative vote of not less Convention has entered into force in accordance with Article 61.

(b) " Host Country " or " Host government " means a member its government or any public authority of a member in whose territories, as defined in Article 66, an investment which has been guaranteed or reinsured, or is considered for guarantee or reinsurance, by the Agency is to be located.

(c) A "developing member country" means a member which is listed as such in Schedule A hereto as this Schedule may be amended from time to time by the Council of Governors referred to in Article 30 (hereinafter called the "Council").

(d) A "Special Majority" means an affirmative vote of not less than two-thirds of the total voting power representing not less than fifty-five per cent of the subscribed shares of the capital stock of the agency.

(e) A "freely usable currency" means (i) any currency designated as such by the International Monetary Fund from time to time and (ii) any other freely available and effectively usable currency which the Board of Directors referred to in Article 30 (hereinafter called the "Board") may designate for the purposes of this Convention after consultation with the International Monetary Fund and with the approval of the country of such currency.

CHAPTER II

MEMBERSHIP AND CAPITAL

Article 4. Membership.

(a) Membership in the Agency shall be open to all members of the Bank and to Switzerland.

(b) Original members shall be the States which are listed in Schedule A hereto and become parties to this Convention on or before October 30, 1987.

Article 5. Capital.

(a) The authorized capital stock of the Agency shall be one billion Special Drawing Rights (SDR 1,000,000,000). The capital stock shall be divided into 100,000 shares having a par value of SDR 10,000 each, which shall be available for subscription by members. All payment obligations of members with respect to capital stock shall be settled on the basis of the average value of the SDR in terms of United States dollars for the period January 1, 1981 to June 30, 1985, such value being 1.082 United States dollars per SDR.

(b) The capital stock shall increase on the admission of a new member to the extent that the then authorized shares are insufficient to provide the shares to be subscribed by such member pursuant to Article 6.

(c) The Council, by special majority, may at any time increase the capital stock of the Agency.

Article 6. Subscription of Shares.

Each original member of the Agency shall subscribe at par to the number of shares of capital stock set forth opposite its name in Schedule A hereto. Each other member shall subscribe to such number of shares of capital stock on such terms and conditions as may be determined by the Council, but in no event at an issue price of less than par. No member shall subscribe to less than fifty shares. The Council may prescribe rules by which members may subscribe to additional shares of the authorized capital stock.

Article 7. Division and Call of Subscribed Capital.

The initial subscription of each member shall be paid as follow .—

(i) Within ninety days from the date on which this Convention enters into force with respect to such member, ten *per cent* of the price of each share shall be paid in cash as stipulated in section (a) of Article 8 and an additional ten *per cent* in the form of non-negotiable, non-interest-bearing promissory notes or similar obligations to be encashed pursuant to a decision of the Board in order to meet the Agency's obligations.

(ii) The remainder shall be subject to call by the Agency when required to meet its obligations.

Article 8. Payment of Subscription of Shares.

(a) Payments of subscriptions shall be made in freely usable currencies except that payments by developing member countries may be made in their own currencies up to twenty-five *per cent* of the paid-in cash portion of their subscriptions payable under Article 7(i).

(b) Calls on any portion of unpaid subscriptions shall be Uniform on all shares.

(c) If the amount received by the Agency on a call shall be insufficient to meet the obligations which have necessitated the call, the Agency may make further successive calls on unpaid subscriptions until the aggregate amount received by it shall be sufficient to meet such obligations.

(d) Liability on shares shall be limited to the unpaid portion of the issue price.

Article 9. Valuation of Currencies.

Whenever it shall be necessary for the purposes of this Convention to determine the value of one currency in terms of another, such value shall be as reasonably determined by the Agency, after consultation with the International Monetary Fund.

Article 10. Refunds.

(a) The Agency shall, as soon as practicable, return to members amounts paid on calls on subscribed capital if and to the extent that—

(i) the call shall have been made to pay a claim resulting from a guarantee or reinsurance contract and thereafter the Agency shall have recovered its payment, in whole or in part in a freely usable currency ; or

(ii) the call shall have been made because of a default in payment by a member and thereafter such member shall have made good such default in whole or in part ; or

(iii) the Council, by special majority, determines that the financial position of the Agency permits all or part of such amounts to be returned out of the Agency's revenues.

(b) Any refund effected under this Article to a member shall be made in freely usable currency in the proportion of the payments made by that member to the total amount paid pursuant to calls made prior to such refund.

(c) The equivalent of amounts refunded under this Article to a member shall become part of the callable capital obligations of the member under Article 7 (ii).

CHAPTER III

OPERATIONS

Article 11. Covered Risks.

(a) Subject to the provisions of sections (b) and (c) below, the Agency may guarantee eligible investments against a loss resulting from one or more of the following types of risks :—

(i) Currency Transfer—

Any introduction attributable to the host government of restrictions on the transfer outside the host country of its currency into a freely usable currency or another currency acceptable to the holder of the guarantee, including a failure of the host government to act within a reasonable period of time on an application by such holder for such transfer ;

(ii) Expropriation and Similar Measures

Any legislative action or administrative action or omission attributable to the host government which has the effect of depriving the holder of a guarantee of his ownership or control of, or a substantial benefit from, his investment, with the exception of non-discriminatory measures of general application which governments normally take for the purpose of regulating economic activity in their territories ;

(iii) Breach of Contract

Any repudiation or breach by the host government of a contract with the holder of a guarantee, when (a) the holder of a guarantee does not have recourse to a judicial or arbitral forum to determine the claim of repudiation or breach, or (b) a decision by such

forum is not rendered within such reasonable period of time as shall be prescribed in the contracts of guarantee pursuant to the Agency's regulations, or (c) such a decision cannot be enforced and

(iv) War and Civil Disturbance

Any military action or civil disturbance in any territory of the host country to which this Convention shall be applicable as provided in Article 66.

(b) Upon the joint application of the investor and the host Country, the Board, by special majority, may approve the extension of coverage under this Article to specific non-commercial risks other than those referred to in section (a) above, but in no case to the risk of devaluation or depreciation of currency.

(c) Losses resulting from the following shall not be covered :—

(i) any host government action or omission to which the holder of the guarantee has agreed or for which he has been responsible; and

(ii) any host government action or omission or any other event occurring before the conclusion of the contract of guarantee.

Article 12. Eligible Investments.

(a) Eligible investments shall include equity interests, including medium or long-term loans made or guaranteed by holders of equity in the enterprise concerned, and such forms of direct investment as may be determined by the Board.

(b) The Board, by special majority may extend eligibility to any other medium or long-term form of investment, except that loans other than those mentioned in section (a) above may be eligible only if they are related to a specific investment covered or to be covered by the Agency.

(c) Guarantees shall be restricted to investments, the implementation of which begins subsequent to the registration of the application for the guarantee by the Agency. Such investments may include—

(i) any transfer of foreign exchange made to modernize, expand, or develop an existing investment ; and

(ii) the use of earnings from existing investments which could otherwise be transferred outside the host country.

(d) In guaranteeing an investment the, Agency shall satisfy itself as to—

(i) the economic soundness of the investment and its contribution to the development of the host Country ;

(ii) compliance of the investment with the host country's laws and regulations ;

(iii) consistency of the investment with the declared development objectives and priorities of the host country ; and

(iv) the investment conditions in the host country, including the availability of fair and equitable treatment and legal protection for the investment.

Article 13. Eligible Investors.

(a) Any natural person and any juridical person may be eligible to receive the Agency's guarantee provided that—

(i) such natural person is a national of a member other than the host country ;

(ii) such juridical person is incorporated and has its principal place of business in a member or the majority of its capital is owned by a member or members or Nationals thereof, provided that such member is not the host country in any of the above cases ; and

(iii) such juridical person, whether or not it is privately owned, operates on a commercial basis,

(b) In case the Investor has more than one nationality, for the purposes of section (a) above the nationality of member shall prevail over the nationality of a non-member and the nationality of the host Country shall prevail over the nationality of any other member.

(c) Upon the joint application of the investor and the host country, the Board, by special majority, may extend eligibility to a natural person who is a national of the host country or a juridical person which is incorporated in the host country or the majority of whose capital is owned by its nationals, provided that the assets invested are transferred from outside the host country..

Article 14. Eligible Host Countries

Investments shall be guaranteed under this Chapter only if they are to be made in the territory of a developing member country.

Article 15. Host Country Approval

The Agency shall not conclude any contract of guarantee before the host government has approved the issuance of the guarantee by the Agency against the risks designated for cover.

Article 16. Terms and Conditions

The terms and conditions of each contract of guarantee shall be determined by the Agency subject to such rules and regulations as the Board shall issue, provided that the Agency shall not cover the total loss of the guaranteed investment. Contracts of guarantee shall be approved by the President under the direction of the Board.

Article 17. Payment of Claims

The President under the direction of the Board shall decide on the payment of claims to a holder of a guarantee in accordance with the contract of guarantee and such policies as the Board may adopt. Contracts of guarantee shall require holders of guarantees to seek, before a payment is made by the Agency, such administrative remedies as may be appropriate under the circumstances, provided that they are readily available to them under the laws of the host country. Such contracts may require the lapse of certain reasonable periods between the occurrence of events giving rise to claims and payments of claims.

Article 18. Subrogation

(a) Upon paying or agreeing to pay compensation to a holder of a guarantee, the Agency shall be subrogated to such rights or claims related to the guaranteed investment as the holder of a guarantee may have had against the host country and other obligations. The contract of guarantee shall provide the terms and conditions of such subrogation.

(b) The rights of the Agency pursuant to section (a) above shall be recognized by all members.

(c) Amounts in the currency of the host country acquired by the Agency as subrogee pursuant to section (a) above shall be, accorded, with respect to use and conversion, treatment by the host country as favourable as the treatment to which such funds would be entitled in the hands of the holder of the guarantee. In any case, such amounts may be used by the Agency for the payment of its administrative expenditures and other costs. The Agency shall also seek to enter arrangements with host countries of other uses of such currencies to the extent that they are not freely usable.

Article 19. Relationship to National and Regional Entities.

The Agency shall co-operate with, and seek to complement the operations of national entities of members and regional entities the majority of whose capital is owned by members, which carry out activities similar to those of the Agency, with a view to maximizing both the efficiency of their respective services and their contribution to increased flows of foreign investment. To this end the Agency may enter into arrangements with such entities on the details of such co-operation, including in particular the modalities of reinsurance and coinsurance.

Article 20. Reinsurance of National and Regional Entities.

(a) The Agency may issue reinsurance in respect of a specific investment against a loss resulting from one or more of non-commercial risks underwritten by a member or agency thereof or by a regional investment guarantee agency the majority of whose capital is owned by members. The Board, by special majority, shall from time to time prescribe maximum amounts of contingent liability which may be assumed by the Agency with respect to reinsurance contracts. In respect of specific investments which have been completed more than twelve months prior to receipt of the

application for reinsurance by the Agency, the maximum amount shall initially be set at ten *per cent* of the aggregate contingent liability of the Agency under this Chapter. The conditions of eligibility specified in Articles 11 to 14 shall apply to reinsurance operations, except that the reinsured investments need not be implemented subsequent to the application for reinsurance.

(b) The mutual rights and obligations of the Agency and a reinsured member or agency shall be stated in contracts of reinsurance subject to such rules and regulations as the Board shall issue. The Board shall approve each contract for reinsurance covering an investment which has been made prior to receipt of the application for reinsurance by the Agency, with a view to minimizing risks, assuring that the Agency receives premiums commensurate with its risk, and assuring that the reinsured entity is appropriately committed towards promoting new investment in developing member countries.

(c) The Agency shall, to the extent possible, assure that if or the reinsured entity shall have the rights of subrogation and arbitration equivalent to those the Agency would have if it were the primary guarantor. The terms and conditions of reinsurance shall require that administrative remedies are sought in accordance with Article 17 before a payment is made by the Agency. Subrogation shall be effective with respect to the host country concerned only after its approval of the reinsurance by the Agency. The Agency shall include in the contracts of reinsurance provisions requiring the reinsured to pursue with due diligence the rights or claims related to the reinsured investment.

Article 21. Co-operation with Private Insurers and with Reinsurers.

(a) The agency may enter into arrangements with private insurers in member countries to enhance its own operations and encourage such insurers to provide coverage of non-commercial risks in developing member countries on conditions similar to those applied by the Agency. Such arrangements may include the provision of reinsurance by the Agency under the conditions and procedures specified in Article 20.

(b) The Agency may reinsure with any appropriate reinsurance entity, in whole or in part, any guarantee or guarantees issued by it.

(c) The Agency will in particular seek to guarantee investments for which comparable coverage on reasonable terms is not available from private insurers and reinsurers.

Article 22. Limits of Guarantee

(a) Unless determined otherwise by the Council by special majority the aggregate amount of contingent liabilities which may be assumed by the Agency under this Chapter shall not exceed one hundred and fifty *per cent* of the amount of the Agency's unimpaired subscribed capital and its reserves plus such portion of its reinsurance cover as the Board may determine. The Board shall from time to time review the risk profile of the Agency's portfolio in the light of its experience with claims, degree of risk diversification, reinsurance cover and other relevant factors with a view to ascertaining whether changes in the maximum aggregate amount of contingent liabilities should be recommended to the Council. The maximum amount determined by the Council shall not under any circumstances exceed five times the amount of the Agency's unimpaired subscribed capital, its reserves and such portion of its reinsurance cover as may be deemed appropriate.

(d) Without prejudice to the general limit of guarantee referred to in section (a) above, the Board may prescribe—

(i) maximum aggregate amounts of contingent liability which may be assumed by the Agency under this Chapter for all guarantees issued to investors of each individual member. In determining such maximum amounts, the Board shall give due consideration to the share of the respective member in the capital of the Agency and the need to apply more liberal limitations in respect of investments originating in developing member countries; and

(ii) maximum aggregate amounts of contingent liability which may be assumed by the Agency with respect to such risk diversification factors as individual projects, individual host countries and types of investment or risk.

Article 23. Investment Promotion

(a) The Agency shall carry out research, undertake activities to promote investment flows and disseminate information on investment opportunities in developing member countries, with a view to improving the environment for foreign investment flows to such countries. The Agency may, upon the request of a member, provide technical advice and assistance to improve the investment conditions in the territories of that member. In performing these activities the Agency shall—

- (i) be guided by relevant investment agreements among member countries ;
- (ii) seek to remove impediments, in both developed and developing member countries ; and
- (iii) coordinate with other agencies concerned with the promotion of foreign investment, and in particular the International Finance Corporation.

(b) The Agency also shall—

- (i) encourage the amicable settlement of disputes between investors and host countries ;
- (ii) endeavor to conclude agreements with developing member countries, and in particular with prospective host countries, which will assure that the Agency, with respect to investment guaranteed by it, has treatment at least as favourable as that agreed by the member concerned for the most favoured investment guarantee agency or State in an agreement relating to investment, such agreements to be approved by special majority of the Board ; and
- (iii) promote and facilitate the conclusion of agreements, among its members, on the promotion and protection of investments.

(c) The Agency shall give particular attention in its promotional efforts to the importance of increasing the flow of investments among developing member countries.

Article 24. Guarantees of Sponsored Investments

In addition to the guarantee operations undertaken by the Agency under this Chapter, the Agency may guarantee investments under the sponsorship arrangements provided for in Annex I to this Convention.

CHAPTER IV

FINANCIAL PROVISIONS

Article 25. Financial Management

The Agency shall carry out its activities in accordance with sound business and prudent financial management practices with a view to maintaining under all circumstances its ability to meet its financial obligations.

Article 26. Premiums and Fees

The Agency shall establish and periodically review the rates of premiums, fees and other charges, if any, applicable to each type of risk.

Article 27. Allocation of Net Income.

(a) Without prejudice to the provisions of section (a) (iii) of Article 10, the Agency shall allocate net income to reserves until such reserves reach five times the subscribed capital of the Agency.

(b) After the reserves of the Agency have reached the level prescribed in section (a) above, the Council shall decide whether, and to what extent, the Agency's net income shall be allocated to reserves, be distributed to the Agency's members or be used otherwise. Any distribution of net income to the Agency's members shall be made in proportion to the share of each member in the capital of the Agency in accordance with a decision of the Council acting by special majority.

Article 28. Budget

The President shall prepare an annual budget of revenues and expenditures of the agency for approval by the Board.

Article 29. Accounts

The Agency shall publish an Annual Report which shall include statements of its accounts and of the accounts of the Sponsorship Trust Fund referred to in Annex I to this Convention, as audited by independent auditors. The Agency shall circulate to members at appropriate intervals a summary statement of its financial position and a profit and loss statement showing the results of its operations.

CHAPTER V

ORGANISATION AND MANAGEMENT

Article 30. Structure of the Agency

The Agency shall have a Council of Governors, a Board of Directors, a President and staff to perform such duties as the Agency may determine.

Article 31. The Council

(a) All the powers of the Agency shall be vested in the Council, except such powers as are, by the terms of this Convention, specifically conferred upon another organ of the Agency. The Council may delegate to the Board the exercise of any of its powers, except the power to—

- (i) admit new members and determine the conditions of their admission ;
- (ii) suspend a member ;
- (iii) decide on any increase or decrease in the capital ;
- (iv) increase the limit of the aggregate amount of contingent liabilities pursuant to section (a) of Article 22 ;
- (v) designate a member as a developing member country pursuant to section (c) of Article 3 ;
- (vi) classify a new member as belonging to Category One or Category Two for voting purposes pursuant to section (a) of Article 39 or reclassify an existing member for the same purposes ;
- (vii) determine the compensation of Directors and their Alternates ;
- (viii) cease operations and liquidate the Agency ;
- (ix) distribute assets to members upon liquidation ; and
- (x) amend this Convention, its Annexes and Schedules.

(b) The Council shall be composed of one Governor and one Alternate appointed by each member in such manner as it may determine. No Alternate may vote except in the absence of his principal. The Council shall select one of the Governors as Chairman.

(c) The Council shall hold an annual meeting and such other meetings as may be determined by the Council or called by the Board. The Board shall call a meeting of the Council whenever requested by five members or by members having twenty-five percent of the total voting power.

Article 32. The Board

(a) The Board shall be responsible for the general operations of the Agency and shall take, in the fulfilment of this responsibility, any action required or permitted under this Convention.

(b) The Board shall consist of not less than twelve Directors. The number of Directors may be adjusted by the Council to take into account changes in membership. Each Director may appoint an Alternate with full power to act for him in case of the Directors absence or inability to act. The President of the Bank shall be ex-officio, Chairman of the Board, but shall have no vote except a deciding vote in case of an equal division.

(c) The Council shall determine the term of office of the Directors. The first Board shall be constituted by the Council at its inaugural meeting.

(d) The Board shall meet at the call of its chairman acting on his own initiative or upon request of three Directors.

(e) Until such time as the Council may decide that the Agency shall have a resident Board which functions in continuous session, the Directors and Alternates shall receive compensation only for the cost of attendance at the meetings of the Board and the discharge of other official functions on behalf of the Agency. Upon the establishment of a Board in continuous session, the Directors and Alternates shall receive such remuneration as may be determined by the Council.

Article 33. President and Staff

(a) The President shall under the general control of the Board, conduct the ordinary business of the Agency. He shall be responsible for the organization appointment and dismissal of the staff.

(b) The President shall be appointed by the Board on the nomination of its Chairman. The Council shall determine the salary and terms of the contract of service of the President.

(c) In the discharge of their offices, the President and the staff owe their duty entirely to the Agency and to no other authority. Each member of the Agency shall respect the international character of this duty and shall refrain from all attempts to influence the President or the staff in the discharge of their duties.

(d) In appointing the staff, the President shall subject to the paramount importance of securing the highest standards of efficiency and of technical competence, pay due regard to the importance of recruiting personnel on as wide a geographical basis as possible.

(e) The President and staff shall maintain at all time the confidentiality of information obtained in carrying out the Agency's operations.

Article 34. Political Activity Prohibited

The Agency, its President and staff shall not interfere in the political affairs of any member. Without prejudice to the right of the Agency to take into account all the circumstances surrounding an investment, they shall not be influenced in their decisions by the political character of the member or members concerned. Considerations relevant to their decisions shall be weighed impartially in order to achieve the purposes stated in Article 2.

Article 35. Relations with International Organizations

The Agency shall, within the terms of this Convention, cooperate with the United Nations and with other inter-governmental organizations having specialized responsibilities in related fields, including in particular the Bank and the International Finance Corporation.

Article 36. Location of principal office

(a) The principal office of the Agency shall be located in Washington, D. C., unless the Council, by special majority decides to establish it in another location.

(b) The Agency may establish other offices as may be necessary for its work.

Article 37. Depositories for Assets

Each member shall designate its central bank as a depository in which the Agency may keep holdings of such member's currency or other assets of the Agency or, if it has no central bank, it shall designate for such purpose such other institution as may be acceptable to the Agency.

Article 38. Channel of Communication

(a) Each member shall designate an appropriate authority with which the Agency may communicate in connection with any that member with respect to matters dealt with in Articles 19 to statement of such authority as being statements of the member. The Agency, upon the request of a member shall consult with that member with respect to matters dealt within Article 19 to 21 and related to entities or insurers of that member.

(b) Whenever the approval of any member is required before any act may be done by the Agency, approval shall be deemed to have been given unless the member presents an objection within such reasonable period as the Agency may fix in notifying the member of the proposed act.

CHAPTER VI

VOTING, ADJUSTMENTS OF SUBSCRIPTIONS AND REPRESENTATION

Article 39. Voting and Adjustments of Subscriptions

(a) In order to provide for voting arrangements that reflect the equal interest in the Agency of the two Categories of States listed in Schedule A of this Convention, as well as the importance of each member's financial participation, each member shall have 177 membership votes plus one subscription vote for each share of stock held by that member.

(b) If at any time within three years after the entry into force of this Convention the aggregate sum of membership and subscription votes of members which belong to either of the two Categories of States listed in Schedule A of this Convention is less than forty per cent of the total voting power, members from such a Category shall have such number of supplementary votes as shall be necessary for the aggregate voting power of the Category to equal such a percentage of the total

voting power. Such supplementary votes shall be distributed among the members of such Category in the proportion that the subscription votes of each bears to the aggregate of subscription votes of the Category. Such supplementary votes shall be subject to automatic adjustment to ensure that such percentage is maintained and shall be cancelled at the end of the above-mentioned three-year period.

(c) During the third year following the entry into force of this Convention, the Council shall review the allocation of shares and shall be guided in its decision by the following principles :—

(i) the votes of members shall reflect actual subscriptions to the Agency's capital and the membership votes as set out in section (a) if this Article ;

(ii) shares allocated to countries which shall not have signed the Convention shall be made available for reallocation to such members and in such manner as to make possible voting parity between the above-mentioned Categories ; and

(iii) the Council will take measures that will facilitate members' ability to subscribe to shares allocated to them.

(d) Within the three-year period provided for in section (b) of this Article, all decisions of the Council and Board shall be taken by special majority, except that decisions requiring a higher majority under this Convention shall be taken by such higher majority.

(e) In case the capital stock of the Agency is increased pursuant to section (c) of Article 5, each member which so requests shall be authorized to subscribe a proportion of the increase equivalent to the proportion which its stock therefore subscribed bears to the total capital stock of the Agency, but no member shall be obligated to subscribe any part of the increased capital.

(f) The Council shall issue regulations regarding the making of additional subscriptions under section (e) of this Article. Such regulations shall prescribe reasonable time limits for the submission by members of requests to make such subscriptions.

Article 40. Voting in the Council

(a) Each Governor shall be entitled to cast the votes of the member he represents. Except as otherwise specified in this Convention, decisions of the Council shall be taken by a majority of the votes casted.

(b) A quorum for any meeting of the Council shall be constituted by a majority of the Governors exercising not less than two-thirds of the total voting power.

(c) The Council may by regulation establish a procedure whereby the Board, when it deems such action to be in the best interests of the Agency, may request a decision of the Council on a specific question without calling a meeting of the Council.

Article 41. Election of Directors

(a) Directors shall be elected in accordance with Schedule B.

(b) Directors shall continue in office until their successors are elected. If the office of a Director becomes vacant more than ninety days before the end of his term, another Director shall be elected for the remainder of the term by the Governors who elected the former Director. A majority of the votes cast shall be required for election. While the office remains vacant, the Alternate of the former Director shall exercise his powers, except that of appointing an Alternate.

Article 42. Voting in the Board

(a) Each Director shall be entitled to cast the number of votes of the members whose votes counted towards his election. All the votes which a Director is entitled to cast shall be cast as a unit. Except as otherwise specified in this Convention, decisions of the Board shall be taken by a majority of the votes cast.

(b) A quorum for a meeting of the Board shall be constituted by a majority of the Directors exercising not less than one-half of the total voting power.

(c) The Board may by regulation establish a procedure whereby its Chairman, when he deems such action to be in the best interest of the Agency, may request a decision of the Board on a specific question without calling a meeting of the Board.

CHAPTER VII

PRIVILEGES AND IMMUNITIES

Article 43. Purposes of Chapter

To enable the Agency to fulfill its functions, the immunities and privileges set forth in this Chapter shall be accorded to the Agency in the territories of each member.

Article 44. Legal Process

Actions other than those within the scope of Articles 57 and 58 may be brought against the Agency only in a court of competent jurisdiction in the territories of a member in which the Agency has an office or has appointed an agent for the purpose of accepting service or notice of process. No such action against the Agency shall be brought (i) by members or persons acting for or deriving claims from members or (ii) in respect of personnel matters. The property and assets of the Agency shall, wherever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of the final judgment or award against the Agency.

Article 45. Assets

(a) The property and assets of the Agency, wherever located and by whomsoever held shall be immune from search, requisition, confiscation, expropriation or any other form of seizure by executive or legislative action.

(b) To the extent necessary to carry out its operations under this Convention, all property and assets of the Agency shall be free from restrictions, regulations, controls and moratoria of any nature ; provided that property and assets acquired by the Agency as successor to or subrogee of a holder of a guarantee, a reinsured entity or an investor insured by a reinsured entity shall be free from applicable foreign exchange restrictions, regulations and controls in force in the territories of the member concerned to the extent that the holder, entity or investor to whom the Agency was subrogated was entitled to such treatment.

(c) For purposes of this Chapter, the term " assets " shall include the assets of the Sponsorship Trust Fund referred to in Annex I to this Convention and other assets administered by the Agency in furtherance of its objective.

Article 46. Archives and Communications

(a) The archives of the Agency shall be inviolable, wherever they may be.

(b) The official communications of the Agency shall be accorded by each member the same treatment that is accorded to the official communications of the Bank.

Article 47. Taxes

(a) The Agency, its assets property and income, and its operations and transactions authorized by this Convention, shall be immune from all taxes and customs duties. The Agency shall also be immune from liability for the collection or payment of any tax or duty.

(b) Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Agency to Governors and their Alternates or on or in respect of salaries, expense allowances or other emoluments paid by the Agency to the Chairman of the Board, Directors, their Alternates, the President or staff of the Agency.

(c) No taxation of any kind shall be levied on any investment guaranteed or reinsured by the Agency (including any earnings therefrom) or any insurance policies reinsured by the Agency (including any premiums and other revenues therefrom) by whomsoever held ; (i) which discriminates against such investment or insurance policy solely because it is guaranteed or reinsured by the Agency ; or (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Agency.

Article 48. Officials of the Agency

All Governors, Directors, Alternates, the President and staff of the Agency—

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity ;

- (ii) not being local nationals, shall be accorded the same immunities from immigration, restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange restrictions as are accorded by the members concerned to the representatives, officials and employees of comparable rank of other members ; and
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by the members concerned to representative, officials and employees of comparable rank of other members.

Article 49. Application of this Chapter.

Each member shall take such action as is necessary in its own territories for the purpose of making effective in terms of its own law the principles set forth in this Chapter and shall inform the Agency of the detailed action which it has taken.

Article 50. Waiver

The immunities, exemptions and privileges provided in this Chapter are granted in the interests of the Agency and may be waived, to such extent and upon such conditions as the Agency may determine, in cases where such a waiver would not prejudice its interests. The Agency shall waive the immunity of any of its staff in cases where, in its opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Agency.

CHAPTER VIII

WITHDRAWAL, SUSPENSION OF MEMBERSHIP AND CESSATION OF OPERATIONS

Article 51. Withdrawal

Any member may, after the expiration of three years following the date upon which this Convention has entered into force with respect to such member, withdraw from the Agency at any time by giving notice in writing to the Agency at its principal office. The Agency shall notify the Bank, as depository of this Convention, of the receipt of such notice. Any withdrawal shall become effective ninety days following the date of the receipt of such notice by the Agency. A member may revoke such notice as long as it has not become effective.

Article 52. Suspension of Membership

(a) If a member fails to fulfil any of its obligations under this Convention, the Council may by a majority of its members exercising a majority of the total voting power, suspend its membership.

(b) While under suspension a member shall have no rights under this Convention, except for the right of withdrawal and other rights provided in this Chapter and Chapter IX, but shall remain subject to all its obligations.

(c) For purposes of determining eligibility for a guarantee or reinsurance to be issued under Chapter III or Annex I to this Convention, a suspended member shall not be treated as a member of the Agency.

(d) The suspended member shall automatically cease to be a member one year from the date of its suspension unless the Council decides to extend the period of suspension or to restore the member to good standing.

Article 53. Rights and Duties of States Ceasing to be Members

(a) When a State ceases to be a member, it shall remain liable for all its obligations, including its contingent obligations, under this Convention which shall have been in effect before the cessation of its membership.

(b) Without prejudice to section (a) above, the Agency shall enter into an arrangement with such State for the settlement of their respective claims and obligations. Any such arrangement shall be approved by the Board.

Article 54. Suspension of Operations

(a) The Board may, whenever it deems it justified suspend the issuance of new guarantees for a specified period.

(b) In an emergency, the Board may suspend all activities of the Agency for a period not exceeding the duration of such emergency, provided that necessary arrangements shall be made for the protection of the interests of the Agency and of third parties.

(c) The decision to suspend operations shall have no effect on the obligations of the members under this Convention or on the obligations of the Agency towards holders of a guarantee or reinsurance policy or towards third parties.

Article 55. Liquidation

(a) The Council, by special majority, may decide to cease operations and to liquidate the Agency. Thereupon the Agency shall forthwith cease all activities, except those incidents to the orderly realization, conservation and preservation of assets and settlement of obligations. Until final settlement and distribution of assets, the Agency shall remain in existence and all rights and obligations of members under this Convention shall continue unimpaired.

(b) No distribution of assets shall be made to members until all liabilities to holders of guarantees and other creditors shall have been discharged or provided for and until the Council shall have decided to make such distribution.

(c) Subject to the foregoing, the Agency shall distribute its remaining assets to members in proportion to each member's share, in the subscribed capital. The Agency shall also distribute any remaining assets of the Sponsorship Trust Fund referred to in Annex I to this Convention to sponsoring member in the proportion which the investments sponsored by each bears to the total of sponsored investments. No member shall be entitled to its share in the assets of the Agency or the Sponsorship Trust Fund unless that member has settled all outstanding claims by the Agency against it. Every distribution of assets shall be made at such times as the Council shall determine and in such manner as it shall deem fair and equitable.

CHAPTER IX

SETTLEMENT OF DISPUTES

Article 56. Interpretation and Application of the Convention

(a) Any question of interpretation or application of the provisions of this Convention arising between any member of the Agency and the Agency or among members of the Agency shall be submitted to the Board for its decision. Any member which is particularly affected by the question and which is not otherwise represented by a national in the Board may send a representative to attend any meeting of the Board at which such question is considered.

(b) In any case where the Board has given a decision under section (a) above, any member may require that the question be referred to the Council, whose decision shall be final. Pending the result of the referral to the Council, the Agency may, so far as it deems necessary, act on the basis of the decision of the Board.

Article 57. Disputes between the Agency and Members

(a) Without prejudice to the provisions of Article 56 and section (b) of this Article, any dispute between the Agency and a member or an agency thereof and any dispute between the Agency and a country (or agency thereof) which has ceased to be a member, shall be settled in accordance with the procedure set out in Annex II to this Convention.

(b) Disputes concerning claims of the Agency acting as subrogee of an investor shall be settled in accordance with either (i) the procedure set out in Annex II to this Convention, or (ii) an agreement to be entered into between the Agency and the member concerned on an alternative method or methods for the settlement of such disputes. In the latter case, Annex II to this Convention shall serve as a basis for such an agreement which shall in each case, be approved by the Board by special majority prior to the undertaking by the Agency of operations in the territories of the member concerned.

Article 58. Disputes Involving Holders of a Guarantee of Reinsurance

Any dispute arising under a contract of guarantee or reinsurance between the parties thereto shall be submitted to arbitration for final determination in accordance with such rules as shall be provided for or referred to in the contract of guarantee or reinsurance.

CHAPTER X

AMENDMENTS

Article 59. Amendment by Council

(a) This Convention and its Annexes may be amended by vote of three-fifths of the Governors exercising four-fifths of the total voting power, provided that,

(i) any amendment modifying the right to withdraw from the Agency provided in Article 51 or the limitation on liability provided in section (d) of Article 8 shall require the affirmative vote of all Governors ; and

(ii) any amendment modifying the loss-sharing arrangement provided in Articles 1 and 3 of Annex I to this Convention which will result in an increase in any member's liability thereunder shall require the affirmative vote of the Governor of each such member.

(b) Schedules A and B to this Convention may be amended by the Council by special majority.

(c) If an amendment affects any provision of Annex I to this Convention, total votes shall include the additional votes allotted under Article 7 of such Annex to sponsoring members and countries hosting sponsored investments.

Article 60. Procedure

Any proposal to amend this Convention, whether emanating from a member or a Governor or a Director, shall be communicated to the Chairman of the Board who shall bring the proposal before the Board. If the proposed amendment is recommended by the Board, it shall be submitted to the Council for approval in accordance with Article 59. When an amendment has been duly approved by the Council, the Agency shall so certify by formal communication addressed to all members. Amendments shall enter into force for all members ninety days after the date of the formal communication unless the Council shall specify a different date.

CHAPTER XI

FINAL PROVISION

Article 61. Entry into Force

(a) This Convention shall be open for signature on behalf of all members of the Bank and Switzerland and shall be subject to ratification, acceptance or approval by the signatory States in accordance with their constitutional procedures.

(b) This Convention shall enter into force on the day when not less than five instruments of ratification, acceptance or approval shall have been deposited on behalf of signatory States in Category One, and not less than fifteen such instruments shall have been deposited on behalf of signatory States in Category Two ; provided that total subscriptions of these States amount to not less than one-third of the authorized capital of the Agency as prescribed in Article 5.

(c) For each State which deposits its instrument of ratification, acceptance or approval after this Convention shall have entered into force, this Convention shall enter into force on the date of such deposit.

(d) If this Convention shall not have entered into force within two years after its opening for signature, the President of the Bank shall convene a conference of interested countries to determine the future course of action.

Article 62. Inaugural Meeting

Upon entry into force of this Convention, the President of the Bank shall call the inaugural meeting of the Council. This meeting shall be held at the principal office of the Agency within sixty days from the date on which this Convention has entered into force or as soon as practicable thereafter.

Article 63. Depository

Instruments of ratification, acceptance or approval of this Convention and amendments thereto shall be deposited with the Bank which shall act as the depository of this Convention. The depository shall transmit certified copies of this Convention to States members of the Bank and to Switzerland.

Article 64. Registration

The depositary shall register this Convention with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

Article 65. Notification

The depositary shall notify all signatory States and, upon the entry into force of this Convention, the Agency of the following ;—

- (a) signatures of this Convention ;
- (b) deposits of instruments of ratification, acceptance and approval in accordance with Article 63;
- (c) the date on which this convention enters into force in accordance with Article 61 ;
- (d) exclusions from territorial application pursuant to Article 66 ; and
- (e) withdrawal of a member from the Agency pursuant to Article 51.

Article 66. Territorial Application

This Convention shall apply to all territories under the jurisdiction of a member including the territories for whose international relations a member is responsible, except those which are excluded by such member by written notice to the depositary of this convention either at the time of ratification, acceptance or approval or subsequently.

Article 67. Periodic Reviews

(a) The Council shall periodically undertake comprehensive reviews of the activities of the Agency as well as the results achieved with a view to introducing any changes required to enhance the Agency's ability to serve its objectives.

(b) The first such review shall take place five years after the entry into force of this Convention. The dates of subsequent reviews shall be determined by the Council.

DONE at Seoul, in a single copy which shall remain deposited in the archives of the International Bank for Reconstruction and Development, which has indicated by its signature below its agreement to fulfill the functions with which it is charged under this Convention.

ANNEX I

GUARANTEES OF SPONSORED INVESTMENT UNDER ARTICLE 24

Article 1. Sponsorship

(a) Any member may sponsor for guarantee an investment to be made by an investor of any nationality or by investors of any or several nationalities.

(b) Subject to the provisions of sections (b) and (c) of Article 3 of this Annex, each sponsoring member shall share with the other sponsoring members in losses under guarantees of sponsored investments, when and to the extent that such losses cannot be covered out of the Sponsorship Trust Fund referred to in Article 2 of this Annex, in the proportion which the amount of maximum contingent liability under the guarantees of investments sponsored by it bears to the total amount of maximum contingent liability under the guarantees of investments sponsored by all members.

(c) In its decisions on the issuance of guarantees under this Annex, the Agency shall pay due regard to the prospects that the sponsoring member will be in a position to meet its obligations under this Annex and shall give priority to investments which are co-sponsored by the host countries concerned.

(d) The Agency shall periodically consult with sponsoring members with respect to its operations under this Annex.

Article 2. Sponsorship Trust Fund

(a) Premiums and other revenues attributable to guarantees of sponsored investments, including returns on the investment of such premiums and revenues, shall be held in a separate account which shall be called the Sponsorship Trust Fund.

(b) All administrative expenses and payments on claims attributable to guarantees issued under this Annex shall be paid out of the Sponsorship Trust Fund.

(c) The assets of the Sponsorship Trust Fund shall be held and administered for the joint account of sponsoring members and shall be kept separate and apart from the assets of the Agency.

Article 3. Calls on Sponsoring Members

(a) To the extent that any amount is payable by the Agency on account of a loss under a sponsored guarantee and such amount cannot be paid out of assets of the Sponsoring Trust Fund, the Agency shall call on each sponsoring member to pay into such Fund its share of such amount as shall be determined in accordance with section (b) of Article 1 of this Annex.

(b) No member shall be liable to pay any amount on a call pursuant to the provisions of this Article if as a result total payments made by that member will exceed the total amount of guarantees covering investments sponsored by it.

(c) Upon the expiry of any guarantee covering an investment sponsored by a member, the liability of that member shall be decreased by an amount equivalent to the amount of such guarantee; such liability shall also be decreased on a pro rata basis upon payment by the Agency of any claim related to a sponsored investment and shall otherwise continue in effect until the expiry of all guarantees of sponsored investments outstanding at the time of such payment.

(d) If any sponsoring member shall not be liable for an amount of a call pursuant to the provisions of this Article because of the limitation contained in sections (b) and (c) above, or if any sponsoring member shall default in payment of an amount due in response to any such call, the liability for payment of such amount shall be shared pro rata by the other sponsoring members. Liability of members pursuant to this section shall be subject to the limitation set forth in sections (b) and (c) above.

(e) Any payment by a sponsoring member pursuant to a call in accordance with this Article shall be made promptly and in freely usable currency.

Article 4. Valuation of Currencies and Refunds

The provisions on valuation of currencies and refunds contained in this Convention with respect to capital subscriptions shall be applied *mutatis mutandis* to fund paid by members on account of sponsored investments.

Article 5. Reinsurance

(a) The Agency may, under the conditions set forth in Article I of this Annex, provide reinsurance to a member, an agency thereof, a regional agency as defined in section (a) of Article 20 of this Convention or a private insurer in a member country. The provisions of this Annex concerning guarantees and of Articles 20 and 21 of this Convention shall be applied *mutatis mutandis* to reinsurance provided under this section.

(b) The Agency may obtain reinsurance for investments guaranteed by it under this Annex and shall meet the cost of such reinsurance out of the Sponsorship Trust Fund. The Board may decide whether and to what extent the loss-sharing obligation of sponsoring members referred to in section (b) of Article I of this Annex may be reduced on account of the reinsurance cover obtained.

Article 6. Operational Principles

Without prejudice to the provisions of this Annex, the provisions with respect to guarantee operations under Chapter III of this Convention and to financial management under chapter IV of this Convention shall be applied *mutatis mutandis* to guarantees of sponsored investments except that (i) such investments shall qualify for sponsorship if made in the territories of any member, and in particular of any developing member, by an investor or investors eligible under section (a) of Article I of this Annex, and (ii) the Agency shall not be liable with respect to its own assets for any guarantee or reinsurance issued under this Annex and each contract or guarantee or reinsurance concluded pursuant to this Annex shall expressly so provide.

Article 7. Voting

For decisions relating to sponsored investments, each sponsoring member shall have one additional vote for each 10,000 Special Drawing Rights equivalent of the amount guaranteed or reinsured on the basis of its sponsorship, and each member hosting a sponsored investment shall have one additional vote for each 10,000 Special Drawing Rights equivalent of the amount guaranteed or reinsured with respect to any sponsored investment hosted by it. Such additional votes shall be cast only for decisions related to sponsored investments and shall otherwise be disregarded in determining the voting power of members.

ANNEX II

SETTLEMENT OF DISPUTES BETWEEN A MEMBER AND THE AGENCY UNDER ARTICLE 57

Article 1. Application of the Annex

All disputes within the scope of Article 57 of this Convention shall be settled in accordance with the procedure set out in this Annex, except in the cases where the Agency has entered into an agreement with a member pursuant to section (b) (ii) of Article 57.

Article 2. Negotiation

The parties to a dispute within the scope of this Annex shall attempt to settle such dispute by negotiation before seeking conciliation or arbitration. Negotiations shall be deemed to have been exhausted if the parties fail to reach a settlement within a period of one hundred and twenty days from the date of the request to enter into negotiation.

Article 3. Conciliation

(a) If the dispute is not resolved through negotiation, either party may submit the dispute to arbitration in accordance with the provisions of Article 4 of this Annex, unless the parties, by mutual consent have decided to resort first to the conciliation procedure provided for in this Article.

(b) The Agreement for recourse to conciliation shall specify the matter in dispute, the claims of the parties in respect thereof and, if available, the name of the conciliator agreed upon by the parties. In the absence of agreement on the conciliator, the parties may jointly request the Secretary-General of the International Centre for Settlement of Investment Disputes (hereinafter called ICSID) or the President of the International Court of Justice to appoint a conciliator. The conciliation procedure shall terminate if the conciliator has not been appointed within ninety days after the agreement for recourse to conciliation.

(c) Unless otherwise provided in this Annex or agreed upon by the parties, the conciliator shall determine the rules governing the conciliation procedure and shall be guided in this regard by the conciliation rules adopted pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

(d) The parties shall co-operate in good faith with the conciliator and shall, in particular, provide him with all information and documentation which would assist him, in the discharge of his functions; they shall give their most serious consideration to his recommendations.

(e) Unless otherwise agreed upon by the parties, the conciliator shall, within a period not exceeding one hundred and eighty days from the date of his appointment, submit to the parties a report recording the results of his efforts and setting out the issues controversial between the parties and his proposals for their settlement.

(f) Each party shall, within sixty days from the date of the receipt of the report, express in writing its views on the report to the other party.

(g) Neither party to a conciliation proceeding shall be entitled to have recourse to arbitration unless :

(i) the conciliator shall have failed to submit his report within the period established in section (e) above ; or

(ii) the parties shall have failed to accept all of the proposals contained in the report within sixty days after its receipt ; or

(iii) the parties, after an exchange of views on the report, shall have failed to agree on a settlement of all controversial issues within sixty days after receipt of the conciliator's report ; or

(iv) a party shall have failed to express its views on the report as prescribed in section (f) above.

(h) Unless the parties agree otherwise, the fees of the conciliator shall be determined on the basis of the rates applicable to ICSID conciliation. These fees and the other costs of the conciliation proceedings shall be borne equally by the parties. Each party shall defray its own expenses.

Article 4. Arbitration

(a) Arbitration proceedings shall be instituted by means of a notice by the party seeking arbitration (the claimant) addressed to the other party or parties to the dispute (the respondent). The notice shall specify the nature of the dispute, the relief sought and the name of the arbitrator

appointed by the claimant. The respondent shall, within thirty days after the date of receipt of the notice, notify the claimant of the name of the arbitrator appointed by it. The two parties shall, within a period of thirty days from the date of appointment of the second arbitrator, select a third arbitrator, who shall act as President of the Arbitral Tribunal (the Tribunal).

(b) If the Tribunal shall not have been constituted within sixty days from the date of the notice, the arbitrator not yet appointed or the President not yet selected shall be appointed, at the joint request of the parties, by the Secretary-General of ICSID. If there is no such joint request, or if the Secretary-General shall fail to make the appointment within thirty days of the request, either party may request the President of the International Court of Justice to make the appointment.

(c) No party shall have the right to change the arbitrator appointed by it once the hearing of the dispute has commenced. In case any arbitrator (including the President of the Tribunal) shall resign, die, or become incapacitated, a successor shall be appointed in the manner followed in the appointment of his predecessor and such successor shall have the same powers and duties of the arbitrator he succeeds.

(d) The Tribunal shall convene first at such time and place as shall be determined by the President. Thereafter, the Tribunal shall determine the place and dates of its meetings.

(e) Unless otherwise provided in this Annex or agreed upon by the parties, the Tribunal shall determine its procedure and shall be guided in this regard by the arbitration rules adopted pursuant to the Convention on the Settlement of Investments Disputes between States and Nationals of Other States.

(f) The Tribunal shall be the judge of its own competence except that, if an objection is raised before the Tribunal to the effect that the dispute falls within the jurisdiction of the Board or the Council under Article 56 or within the jurisdiction of a judicial or arbitral body designated in an agreement under Article I of this Annex and the Tribunal is satisfied that the objection is genuine, the objection shall be referred by the Tribunal to the Board or the Council or the designated body, as the case may be, and the arbitration proceedings shall be stayed until a decision has been reached on the matter, which shall be binding upon the Tribunal.

(g) The Tribunal shall, in any dispute within the scope of this Annex, apply the provisions of this Convention, any relevant agreement between the parties to the dispute, the Agency's by-laws and regulations, the applicable rules of international law, the domestic law of the member concerned as well as the applicable provisions of the investment contract, if any. Without prejudice to the provisions of this Convention, the Tribunal may decide a dispute *ex aequo et bono* if the Agency and the member concerned so agree. The Tribunal may not bring a finding of non liquet on the ground of silence or obscurity of the law.

(h) The Tribunal shall afford a fair hearing to all the parties. All decisions of the Tribunal shall be taken by a majority vote and shall state the reasons on which they are based. The award of the Tribunal shall be in writing, and shall be signed by at least two arbitrators and a copy thereof shall be final and binding upon the parties and shall not be subject to appeal, annulment or revision.

(i) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may, within sixty days after the award was rendered, request interpretation of the award by an application in writing to the President of the Tribunal which rendered the award. The President shall, if possible, submit the request to the Tribunal which rendered the award and shall convene such Tribunal within sixty days after receipt of the application. If this shall not be possible, a new Tribunal shall be constituted in accordance with the provisions of sections (a) to (d) above. The Tribunal may stay enforcement of the award pending its decision on the requested interpretation.

(j) Each member shall recognize an award rendered pursuant to this Article as binding and enforceable within its territories of the award then shall be governed by the laws concerning execution of judgement in force in the State in whose territories such execution is sought and shall not derogate from the law in force relating to immunity from execution.

(k) Unless the parties shall agree otherwise, the fees and remuneration payable to the arbitrators shall be determined on the basis of the rates applicable to ICSID arbitration. Each party shall defray its own costs associated with the arbitration proceedings. The costs of the Tribunal shall be borne by the parties in equal proportion unless the Tribunal decides otherwise. Any question concerning the devision of the costs of the Tribunal or the procedure for payment of such costs shall be decided by the Tribunal.

Article 5. Service of Process

Service of any notice or process in connection with any proceeding under this Annex shall be made in writing. It shall be made by the Agency upon the authority designated by the member concerned pursuant to Article 38 of this Convention and by that member at the principal office of the Agency.

SCHEDULE A
MEMBERSHIP AND SUBSCRIPTIONS
CATEGORY ONE

<i>Country</i>	<i>Number of Shares</i>	<i>Subscription (millions of SDR)</i>
Australia	1,713	17.13
Austria	775	7.75
Belgium	2,030	20.30
Canada	2,965	29.65
Denmark	718	7.18
Finland	600	6.00
France	4,860	48.60
Germany, Federal Republic of	5,071	50.71
Iceland	90	0.90
Ireland	369	3.69
Italy	2,820	28.20
Japan	5,095	50.95
Luxembourg	116	1.16
Netherlands	2,169	21.69
New Zealand	513	5.13
Norway	699	6.99
South Africa	943	9.43
Sweden	1,049	10.49
Switzerland	1,500	15.00
United Kingdom	4,860	48.60
United States	20,519	205.19
	<hr/> 59,473	<hr/> 594.73

CATEGORY TWO

<i>Country</i>	<i>Number of Shares</i>	<i>Subscription (millions of SDR)</i>
Afghanistan	118	1.18
Algeria	649	6.49
Antigua and Barbuda	50	0.50
Argentina	1,254	12.54
Bahamas	100	1.00
Bahrain	77	0.77
Bangladesh	340	3.40
Barbados	68	0.68
Belize	50	0.50
Benin	61	0.61
Bhutan	50	0.50
Bolivia	125	1.25
Botswana	50	0.50
Brazil	1,479	14.79
Burkina Faso	61	0.61
Burma	178	1.78
Burundi	74	0.74
Cameroon	107	1.07
Cape Verde	50	0.50
Central African Republic	60	0.60
Chad	60	0.60
Chile	485	4.85
China	3,138	31.38
Colombia	437	4.37
Comoros	50	0.50
Congo, People's Republic of the	65	0.65
Costa Rica	117	1.17
Cyprus	104	1.04
Djibouti	50	0.50
Dominica	50	0.50
Dominican Republic	147	1.47
Ecuador	182	1.82
Egypt, Arab Republic of	459	4.59
El Salvador	122	1.22
Equatorial Guinea	50	0.50

* Countries listed under Category Two are developing member countries for the purposes of this Convention.

CATEGORY TWO

<i>Country</i>	<i>Name of Shares</i>	<i>Subscription (million of SDR)</i>
Ethiopia	70	0.70
Fiji	71	0.71
Gabon	96	0.96
Gambia, The	50	0.50
Ghana	245	2.45
Greece	280	2.80
Grenada	50	0.50
Guatemala	140	1.40
Guinea	91	0.91
Guinea-Bissau	50	0.50
Guyana	84	0.84
Haiti	75	0.75
Honduras	101	1.01
Hungary	564	5.64
India	3,048	30.48
Indonesia	1,049	10.49
Iran, Islamic Republic of	1,659	16.59
Iraq	350	3.50
Israel	474	4.74
Ivory Coast	176	1.76
Jamaica	181	1.81
Jordan	97	0.97
Kampuchea, Democratic	93	0.93
Kenya	172	1.72
Korea Republic of	449	4.49
Kuwait	930	9.30
Lao People's Democratic Republic	60	0.60
Lebanon	142	1.42
Lesotho	50	0.50
Liberia	84	0.84
Libyan Arab Jamahiriya	549	5.49
Madagascar	100	1.00
Malawi	77	0.77
Malaysia	579	5.79
Maldives	50	0.50
Mali	81	0.81
Malta	75	0.75
Maruitania	63	0.63
Mauritius	87	0.87
Mexico	1,192	11.92
Morocco	348	3.48
Mozambique	97	0.97
Nepal	69	0.69
Nicaragua	102	1.02
Niger	62	0.62
Nigeria	844	8.44
Oman	94	0.94

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Country	Number of Shares	Subscription (million of SDR)
Pakistan	660	6.60
Panama	131	1.31
Papua New Guinea	96	0.96
Paraguay	80	0.80
Peru	373	3.73
Philippines	484	4.84
Portugal	382	3.82
Qatar	137	1.37
Romania	555	5.55
Rwanda	75	0.75
St. Christopher and Nevis	50	0.50
St. Lucia	50	0.50
St. Vincent	50	0.50
Sao Tome and Principe	50	0.50
Saudi Arabia	3,137	31.37
Senegal	145	1.45
Seychelles	50	0.50
Sierra Leone	75	0.75
Singapore	154	1.54
Solomon Islands	50	0.50
Somalia	78	0.78
Spain	1,285	12.85
Sri Lanka	271	2.71
Sudan	206	2.06
Suriname	82	0.82
Syrian Arab Republic	168	1.68
Swaziland	58	0.58
Tanzania	141	1.41
Thailand	421	4.21
Togo	77	0.77
Trinidad and Tobago	203	2.03
Tunisia	156	1.56
Turkey	462	4.62
United Arab Emirates	372	3.72
Uganda	132	1.32
Uruguay	202	2.02
Vanuatu	50	0.50
Venezuela	1,427	14.27
Viet Nam	220	2.20
Western Samoa	50	0.50
Yemen Arab Republic	67	0.67
Yemen People's Democratic Republic of	115	1.15
Yugoslavia	635	6.35
Zaire	338	3.38
Zambia	318	3.18
Zimbabwe	236	2.36
	<u>40,527</u>	<u>405.27</u>
Total	<u>100,000</u>	<u>1,000.00</u>

SCHEDULE B

ELECTION OF DIRECTORS

1. Candidates for the office of Director shall be nominated by the Governors, provided that a Governor may nominate only one person.

2. The election of Directors shall be by ballot of the Governors.

3. In balloting for the Directors, every Governor shall cast for one candidate all the votes which the member represented by him is entitled to cast under section (a) of Article 40.

4. One-fourth of the number of Directors shall be elected separately, one by each of the Governors of members having the largest number of shares. If the total number of Directors is not divisible by four, the number of Directors so elected shall be one-fourth of the next lower number that is divisible by four.

5. The remaining Directors shall be elected by the other Governors in accordance with the provisions of paragraphs 6 to 11 of this Schedule.

6. If the number of candidates nominated equals the number of such remaining Directors to be elected, all the candidates shall be elected in the first ballot ; except that a candidate or candidates having received less than the minimum percentage of total votes determined by the Council for such election shall not be elected if any candidate shall have received more than the maximum percentage of total votes determined by the Council.

7. If the number of candidates nominated exceeds the number of such remaining Directors to be elected, the candidates receiving the largest number of votes shall be elected with the exception of any candidate who has received less than the minimum percentage of the total votes determined by the Council.

8. If all of such remaining Directors are not elected in the first ballot, a second ballot shall be held. The candidate or candidates not elected in the first ballot shall again be eligible for election.

9. In the second ballot, voting shall be limited to (i) those Governors having voted in the first ballot for a candidate not elected and (ii) those Governors having voted in the first ballot for an elected candidate who had already received the maximum percentage of total votes determined by the Council before taking their votes into account.

10. In determining when an elected candidate has received more than the maximum percentage of the votes, the votes of the Governor casting the largest number of votes for such candidate shall be counted first, then the votes of the Governors casting the next largest number, and so on until such percentage is reached.

11. If not all the remaining Directors have been elected after the second ballot, further ballots shall be held on the same principles until all the remaining Directors are elected, provided that when only one Director remains to be elected, this Director may be elected by a simple majority of the remaining votes and shall be deemed to have been elected by all such votes.

FINANCE COMPANIES ACT No. 78 OF 1988

(Certified on 18th December, 1988)

AN ACT TO PROVIDE FOR THE CONTROL AND SUPERVISION OF FINANCE COMPANIES ; AND PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

1. This Act may be cited as the Finance Companies Act, No. 78 of 1988.

2. (1) Subject to the provisions of section 3, no finance business shall be carried on except by a public company which—

(a) is registered under the Companies Act, No. 17 of 1982 ; and

(b) has a minimum issued and paid up capital of not less than five million rupees ;
and

(c) is registered under the provisions of this Act.

(2) Every application for registration under this Act by a company shall be made to the Board in the prescribed form, and shall contain a declaration by the applicant that the particulars stated in the application are, to the knowledge and belief of the applicant, true and accurate.

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

(4) Where an application is made to the Board for registration under this Act the Board may call for and examine or cause to be examined, the books, records and documents of the company applying for registration.

(5) The Board may, on considering an application made to it by a company for registration under the Act, register such company as a finance company if it is satisfied that—

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

(ii) on the information made available to it, that its registration would not be detrimental to the interests of its depositors and creditors.

(6) Where a company is not registered under subsection (5), or a person or a body of persons to whom section 3 is applicable, has failed to comply with the provisions of that section, the Board may issue to such company, a person or body of persons as the case may be directions for winding up or for divesting the finance business carried on by it and for the settlement of its deposit liabilities and it shall be the duty of such company or person or body of persons to comply with such direction.

(7) Where a company or person or a body of persons fails to comply with directions issued under subsection (6) within one month of the issue of such directions, the Board may require the Director to take such action as may be necessary, to secure compliance therewith including filing action for winding up in which event the provisions of section 18 shall apply.

3. (1) Notwithstanding the provisions of section 2. a company or a person or a body of persons carrying on finance business on the day preceding the date of commencement of this Act—

(a) may continue to carry on such business for a period of two years from the date of commencement of this Act, notwithstanding the fact that it is not registered under section 2 ;

(b) shall take such steps as may be necessary to comply with the provisions of section 2(1) and to divest itself of any of the activities carried on in contravention of any direction issued under paragraph (r) of subsection (1) of section 9 of this Act, within a period of two years from the date of commencement of this Act, or four months from the date of issue of such direction, whichever is later.

(2) Every Company or body of persons referred to in subsection (1) shall on compliance with the provisions of paragraph (7) of subsection (1) submit to the Monetary Board evidence in proof of such compliance. A company or body of persons complying with such provisions to the satisfaction of the Board, may apply for registration under section 2.

(3) Where a company or a person or a body of persons carries on finance business under subsection (1), the provisions of this Act shall in so far as they are applicable and subject to the other provisions of this Act, apply to such company or person of a body of persons.

4. (1) A finance company shall, at all times maintain an unimpaired capital of not less than five million rupees.

(2) A finance company shall not reduce or impair its capital or statutory reserves without the prior written approval of the Board.

In this subsection, "statutory reserves" means any reserve fund maintained by the company in pursuance of a direction issued to it under this Act.

5. A finance company shall at all times conduct its business in such manner so as to safeguard its deposits and shall take all such measures as are reasonably necessary to ensure that deposits and interest on deposits, are payable to depositors on the due dates.

6. The Board shall keep and maintain in the prescribed form a register of every finance company registered under this Act.

7. (1) Where a finance company has been registered under this Act, the Board shall issue to such finance company a licence in the prescribed form permitting such company to carry on finance business.

(2) Such licence shall be exhibited at all times in the principal office or place of business of such finance company.

(3) Every finance company registered under the Act, shall pay an annual licence fee of the prescribed amount to the Board.

8. (1) Where any finance company registered 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 notice of cessation under subsection (1), the Board shall remove the name of the finance company from the register maintained under section 6 and cancel its licence, and may issue to such finance company directions for winding up or for divesting the finance business of the finance company and for the settlement in such manner as may be specified, of the deposit liabilities of the finance company.

(3) Where the Board has reasonable grounds to believe that any finance company registered 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. Where such finance company fails to furnish such proof within such period, the Board shall remove the name of such notice, that it has not ceased to carry on finance under section 6 and shall cancel its licence. Where the registration of a finance company is so cancelled, the Board may issue such directions as it deems 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 18 shall apply.

(4) Where a finance company fails to comply with directions issued under subsection (2) within one month of the issue of such directions, the Board may require the Director to file action for winding up the finance company and the provisions of section 18 shall apply to such winding up.

9. (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 of such 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 periods 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 minimum initial payment a prospective hirer specific to different initial payments for different classes of transactions ; such minimum initial payment may be expressed as a percentage of the value of the goods hired under such agreement ;
- (e) the terms and conditions under which investments may be made by such companies ;

(f) 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 ;

(g) the form and manner in which books of accounts or other records or documents are to be maintained by such companies ;

(h) the exclusion from the income of companies in whole or in part, unpaid interest in respect of loans granted, if such loans have become overdue ;

(i) the minimum ratio which the liquid assets of such companies should bear to the total deposit liabilities of such companies ;

(j) the maintenance of cash balances by finance companies with the Central Bank of Sri Lanka if so required by the Board, and the minimum ratio such cash balances should bear to the deposit liabilities of finance companies ;

(k) conditions which should be applicable to withdrawal by depositors of deposits before maturity ;

(l) prohibiting such companies from increasing the amount of their loans, credit facilities or other types of financial accommodation or investments ;

(m) fixing the limits to the rate at which the amount of any loans, investments or financial accommodation made or granted by them may be increased within specified periods ;

(n) requiring the decrease of the amount of their loans, investments or financial accommodation to specified limits within a specified period ;

(o) 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 ;

(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

(c)

(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) the subsidiary company of such company ;

(dd) a 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, 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 ;

Provided, however, that these directions shall not require the reduction of the shares of a person held in a finance company on the date of commencement of this Act, otherwise than on a requirement imposed on him under the provisions of paragraph (d) of subsection (1) of section.

In order to comply with a direction issued to it under paragraph (d) of subsection (1) of section 10 a finance company may direct a person holding shares in such company to reduce the number of shares held by such person in such company whether such shares were acquired by such person before or after the date of commencement of this Act, within such period as may be specified in such direction ; and it shall be the duty of such person to comply with such direction ;

(p) the margins to be maintained in respect of secured advances ;

(q) the terms and conditions relating to leasing agreements between the company and a lessee ;

(r) restriction on the types of activities that may be carried on by Finance Companies.

(2) The maximum rates of interest fixed by any direction under paragraphs (a) and (b) of subsection (1) shall, if so determined by the Board, apply in respect of any deposit accepted or in respect of any loan, credit facility or any other financial accommodation granted, before the date of such direction :

Provided, however, that nothing in any such direction shall—

(a) apply to any interest accrued before the date of such direction in respect of any such deposit or loan, credit facility or other financial accommodation ; or

(b) require the reduction of the rate of interest payable on any deposit accepted or loan, credit facility, or financial accommodation granted before the date of such direction, if such reduction would constitute a breach of the contract or agreement relating to such deposit, loan credit facility or other financial accommodation, as the case may be

(3) For the purposes of this Act, the Board may give directions where necessary to any finance company in particular on such matters as are specified in subsection (1) :

Provided, however, that a competent court may, on any application made to it in that behalf by a finance company at any time while any direction is in force, make a declaration permitting that company to carry on its business without being subject to such a manner as the court may determine, and any declaration by the Court as aforesaid shall have effect notwithstanding anything to the contrary in the direction made by the Board.

(4) The Monetary 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 (j), at such rate as may be determined by the Board.

10. (1) Where the Board on a report made by the Director is of the opinion that a finance company.

(i) is following unsound or improper financial practices, detrimental to the interest of its depositors

(ii) is likely to be carrying on its business in a manner detrimental to the interests of its depositors ;

(iii) has contravened or failed to comply with any provisions of this Act, or any direction issued thereunder,

the Board may direct such Company—

- (a) to cease following any such practice or desist from any such contravention ; or
- (b) to comply with the provisions of this Act : or
- (c) to take necessary action to correct the conditions resulting from such practice or contravention ; or
- (d) secure the reduction of the number of shares held in the company by any person.

(2) Any finance company dissatisfied with an order given under subsection (1), may, before the expiry of thirty days from the date of the issue of such order, appeal in writing to the Board and the Board shall render its decision within fifteen days of receipt of such appeal.

11. (1) The Director or any officer authorized by him may require any person or a body of persons to furnish him with such information as he may consider necessary to ascertain whether such person or body of persons as carrying on finance business, and for this purpose, may require the production of and examine any books or records relating to such person or body of persons, and if he is of the opinion that such person or body of persons is carrying on finance business, report such fact to the Board.

(2) If the Board, on consideration of a report under subsection (1), determines that a person or body of persons is carrying on finance business, it shall require such person or body of persons to comply with the requirements of the Act within a specified period of time, and where it fails to do so, shall have the power to give directions and take such steps as it considers necessary to safeguard depositors, including the power to wind up persons or a body of persons, in which event the provisions of section 18 shall, *mutatis mutandis*, apply.

(3) Any person or body of persons required to furnish information or to produce any books or records under subsection (1) shall furnish such information or produce such books, or records, documents to an officer authorized by the Director and shall comply with any directions or requirements made under subsection (2).

(4) Without prejudice to the generality of subsection (1), the Board may require any person or a body of persons to furnish information as may be necessary to ascertain whether any sum of money accepted, borrowed or solicited by such person or body of persons is a deposit.

12. (1) The Director may at any time, examine or authorize any officer of his department to examine, the books and accounts of any finance company.

(2) The report on any such examination shall be furnished to the Governor of the Central Bank of Sri Lanka by the Director as soon as such examination is completed. The Director may recover the costs of such examination from the finance company.

(3) It shall be lawful for the Director or any officer authorized by him—

- (a) to administer, in accordance with the Oaths Ordinance, oaths or affirmations to any director, manager, secretary, employee or auditor of any finance company ;
- (b) to require any director, manager, secretary, employee or auditor of any finance company to furnish all such information relating to the affairs of the company, as the Director or any officer authorized by him may consider necessary to ascertain, for the purpose of this Act ;
- (c) to require any director, manager, secretary, employee or auditor of any finance company to produce for inspection any books, records or documents relating to the affairs of the company, in his possession or custody, likely to contain any such information ;
- (d) in case there is evidence of mismanagement by a finance company, to require any director, manager or secretary of such finance company to submit the accounts of the finance company for audit by an auditor authorized by the Director and to require the finance company to furnish such information, or, produce such books, records or documents and to pay such fees, as may be specified or authorized by the Director, to such auditor.

(4) It shall be the duty of every director, manager, secretary, employee or any auditor of any finance company to comply with any requirement imposed on him under this section and to afford to the Director or to any officer authorized by him, or to any auditor authorized by him under paragraph (d) of subsection (3), access to all books and records of that finance company including its cash balances, assets and liabilities whenever requested to do so by the Director.

(5) The Director may, where he considers it necessary to ascertain the true condition of the affairs of a finance company and to ascertain whether such finance company is carrying on business in a manner detrimental to its present or future depositors, by notice in writing require any person whom he considers to have information relating to the finance company, to furnish such information to him or to any officer authorized by him or to any auditor authorized by him under paragraph (d) of subsection (3) or to attend in person before him or any officer authorized by him, at such place and at such date and time as may be specified in such notice, so that the person may be examined on such matters as may be specified in such notice.

(6) For the purpose of ascertaining the true condition of the affairs of the finance company, the Director may if he thinks it necessary for the purposes of an examination under subsection (5), also examine the business of any company which is or has at any relevant time been—

- (a) a holding company or subsidiary company of the finance company under examination ;
- (b) a subsidiary company of a holding company of that finance company ;
- (c) an associate company of that finance company,
and may exercise in relation to any such company, any of the powers conferred on him by the preceeding provisions of this section.

In this subsection "associate company" when used in relation to a finance company, means a company in which the finance company holds ordinary shares equivalent to twenty *per centum* or more, but less than fifty *per centum* of the paid up share capital of the company.

12A. Where the Board proposes to take action against a finance company based upon a report made under section 12 or section 18, it shall furnish to such company a copy of such report, excluding the part containing the recommendations made by the Director and allow the company a period of at least seven days to state to the Board, its position in regard to such report.

Nothing in this subsection shall be deemed to prohibit the Monetary Board from taking action on the report without allowing the company to state its position in regard to such report where the Board is of the view that it is necessary to take immediate action, in the interest of depositors and the finance company.

13. Every finance company shall prepare at the expiration of each financial year—

- (a) a balance sheet as at the last working day of each financial year ; and
- (b) a profit and loss account in respect of such year.

14. (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) 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) except in the case of the first balance sheet after the date of commencement of this Act, the corresponding amounts at the end of the immediately preceding financial year for all items shown in the balance sheet.
15. There shall be shown in the profit and loss account 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 and materials, 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 nonrecurrent nature or by a change in the basis of accounting ;
- (h) except in the case of the first profit and loss account after the date of commencement of this Act, the corresponding amount at the end of the immediately preceding financial year for all items shown in the profit and loss account.

16. (1) Every finance company shall transmit to the Director and publish within six months after the close of the financial year—

- (a) the profit and loss account of the company for the year ;
- (b) the balance sheet as at the date to which such profit and loss account is made up ;

(c) the auditor's report attached to such profit and loss account and balance sheet ;
and

(d) the report by the directors relating to the state of the affairs of the company
attached to such balance sheet.

(2) Every finance company shall exhibit the balance sheet and profit and loss account of such company in a conspicuous part of each of its places of business until the balance sheet and profit and loss account for the succeeding financial year are prepared and exhibited.

(3) The Board may specify the form of the balance sheet and profit and loss account referred to in this section and where such form is specified, the balance sheet and profit and loss account of every finance company shall be prepared in such form as is specified.

17. 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 law, 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 a 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.

18. (1) In any case where the Director is satisfied after examination by himself or by any officer authorised by him, of the affairs of any finance company, or upon information received from the 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 creditors, the Director shall make a report accordingly to the Governor of the Central Bank of Sri Lanka 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 a 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 authorised by him, or any person who obstructs or resists the Director or an officer authorised by him 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 the Act.

(3) Notwithstanding anything in any other law, no action or proceeding may be instituted in any court for the purpose of securing the review or revocation of any order made in good faith under sub-section (1) or in respect of any loss or damage incurred, or likely or alleged to be incurred by reason of such order.

(4) An order made by the Board in respect of any finance company shall cease to have effect upon the expiration of a period of sixty days from the date on which it is made and it shall be the duty of the Board as soon as practicable and in any event before the expiration of such period to—

(a) make order permitting the company to resume business, either unconditionally or subject to such condition 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) notify the finance company that it intends to cause the Director to make application as hereinafter provide to a competent court for the winding up of the company ;

Without prejudice to the generality of the powers conferred by paragraph (a) and notwithstanding any other 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 appoint any person as director, manager or employee of such company :

Provided however that the number of Persons so appointed as directors, shall not constitute a majority in the Board of such finance company.

(5) If the finance company has not made an application to the Supreme Court in accordance with section 43 or where the court has rejected the application of the finance company, made in accordance with that section the Director shall make application as hereinafter provided to a competent court for the winding up of the company.

(6) During the period in which the business of a finance company is suspended under subsection (1), the Board may if it considers it in the public interest to do so meet any expenses connected with the administration of that company out of the funds of the Central Bank of Sri Lanka.

(7) The competent court may, on any application made by the Director order the winding up of any finance company and accordingly the provisions of the Companies Act, No. 17 of 1982, relating to the winding up of companies subject to the supervision of court shall, *mutatis mutandis*, apply to the winding up of such company.

(8) Where application is made for winding up of a person or body of persons (other than a company) under this Act, the value of the assets and liabilities of such person or 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 authorise the liquidator to realise 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 person or body of persons is entitled. A scheme for the purpose of the winding up of such person or body of persons shall be prepared by the liquidator and submitted for confirmation to the competent court and the winding up of such person or body of persons shall be carried out according to the scheme.

(9) In any case where an order is made whether in pursuance of an application under this section or otherwise for the winding up of a finance company, person or unincorporate body of persons (other than a company) then notwithstanding anything in any other written law, the Director or any person authorised in that behalf by the Board shall be appointed to be the liquidator for the purposes of such winding up. Where an order is made to wind up a person or body of persons other than a company the remuneration of a liquidator appointed hereunder and all costs, charges and expenses properly incurred in the winding up shall be payable in priority to all other claims, notwithstanding any other written law to the contrary, out of the assets of such person or body of persons being wound up.

(10) 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 of Sri Lanka where the Board considers it in the public interest to do so.

(11) In any case where application is made by the Director as provided in subsection (4) for the winding up of any finance company—

- (a) the company shall not carry on business during the pendency of the application, unless it is authorised so to do by the court and except in accordance with such conditions, if any as may be specified by the court ; and

- (b) if the court is of opinion after such inquiry as it may consider necessary that the company is not insolvent, it may make a declaration 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.

(12) 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 relating to appeals in civil actions shall apply, *mutatis mutandis*, in the case of any appeal :

Provided that an order under paragraph (a) of subsection (11) shall be final.

(13) Every application to a competent court under this section shall be deemed to be a proceeding of the value of five thousand rupees.

(14) In this section "competent court" in relation to any finance company means the District Court of Colombo or the District Court of the district in which the principal office in Sri Lanka of the finance company is maintained.

19. (a) Any director, manager, secretary or employee of any finance company who fails to attend in person or to furnish any information or to produce any book, record or other document when required so to do under section 12 by the Director or by any officer authorized by him or who obstructs or fails to permit the Director or any officer authorized by him or auditor authorized by him under paragraph (d) of subsection (3) of section 12 to make any examination under section 12 shall be guilty of an offence under this Act.

(b) Any person who in any report or information furnished to the Director or to any officer authorized by him or to any auditor authorized by him under paragraph (d) of subsection (3) of section 12 makes any statement which he knows to be false shall be guilty of an offence under this Act.

20. (1) If the Board after review of the facts and circumstances upon the receipt of a report by the Director under section 18 is of opinion that a finance company may be made a solvent and viable by action as hereinafter provided, it may by a notice published in the *Gazette* take over the administration and management of a finance company for such period as may be specified in such notice. The Board may by a subsequent Notice published in the *Gazette* extend the period specified in the original notice. The Board shall cause copy of every such notice to be sent to the Registrar of Companies or who 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—

- (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.
 - (b) enter into any agreement with any person or body of persons for the management of the finance company subject to such conditions as may be agreed upon between the Board and such person or body of persons having regard to the interests of the depositors and 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-organize such finance company by increasing its capital arranging for new shareholders, and by reconstituting its Board of Directors.
 - (e) reconstruct the finance company in any such manner as it considers to be in the interest of depositors ; or
 - (f) direct any shareholder of any 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.
- (3) During the period for which the administration and management of a finance company is taken over by the Board, every director, manager and secretary of such finance company shall, unless expressly authorized to do so 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 under subsection (1), 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 :

Provided however that the Board may at any time after the take over of the administration and management of a finance company under subsection (1) suspend the business of the company temporarily, 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 a competent court 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 18 relating to winding up shall apply.

21. (1) In any case where the Director is satisfied, after examination by himself, or by any officer authorized by him, 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).

22. Notwithstanding the provisions of this Act or any other law, the Board may—

(a) review any contract entered into by a depositor with a finance company the management and administration of which is taken over by the Board, 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 creditors or due regard to prudent commercial practice.

(b) review any agreement or contract entered into by a finance company the management and administration of which is taken over by the Board, with any person or body of persons 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 creditors or without due regard to prudent commercial practice, vary the terms of such agreement or contract.

23. Where the Board has taken over the administration and management of a finance company under section 20, 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 20.

24. (1) Where the Board has taken over the administration and management of a finance company under section 20, the Board may, in order to take steps to safeguard the interest of the depositors or creditors by order published in the *Gazette*, vest the administration and management of such finance company in any statutory board or person with the consent of such statutory board or person. On the publication in the *Gazette* of such order, the administration and management of such finance company shall vest in such statutory board or person which 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.

(2) Where the Board has vested the administration and management of a finance company in any statutory board or person by order made under subsection (1) the Board may direct any share holder 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 calculated as follows :—

(a) where such shares are quoted at the market value thereof ; or

(b) where such shares are not quoted, at the price to be determined by a valuer nominated by the Board.

25. (1) If the Board upon review of the facts and circumstances upon the Director making a report under section 18, is of the opinion that any past or present Director, chief executive, manager, employee or an agent of a finance company has fraudulently, wrongfully or unlawfully enriched himself or any other person or persons by misapplication of any money or property belonging to the company, the Board may notwithstanding that action has also been taken under section 18 or 20, require such person or persons to repay or restore to the finance company the money or property attributable to the finance company, with interest at such rate as the Board may think fit within such period of time as may be specified by the Board.

(2) Where any person referred to in subsection (1) above fails to restore to the finance company, the moneys or properties 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 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, or acquired or purchased with monies attributable to the assets of the finance company.

(b) require such person to furnish a sworn statement in writing 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 specifying 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 a sworn statement in writing—

(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 manager of any bank in Sri Lanka to produce within such time as may be specified in the notice, any book, document or cheque of the bank, containing entries relating to the account of such person or to furnish as so specified, certified copies of such entries ;

(e) require the Commissioner-General of Inland Revenue to furnish, as specified in the notice, all information available to such Commissioner-General relating to the affairs of such person and to produce or furnish as specified in the notice, any document or a certified copy of any document relating to such person, which is in the possession or under the control of such Commissioner-General ;

(f) invite the public by any means whatsoever to furnish to a person authorized by it, any information referred to in paragraph (a) ;

(g) 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 with monies attributable to the funds of a 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 assets specified to in that notice, and also—

(i) requiring such person to hand over to the Director, in the case of a motor vehicle the certificate of Registration issued by the Registrar of Motor Vehicles ; in respect of that motor vehicle ;

(ii) in the case of immovable property the photostat copies of deeds relating to the title of such property.

Every notice issued under this paragraph shall be in force for a period of ninety days ;

(h) serve a copy of the notice referred to in paragraph (g) on any relevant authority including in the case of immovable property, the Registrar of Lands, in the case of motor vehicles, the Commissioner of Motor Traffic and in the case of shares, stocks and debentures of any company, the Registrar of Companies and the Secretary of the relevant finance company ;

(i) require any authority on whom a copy of a notice referred to in paragraph (h) is served, to register such notice in the appropriate books or records in the custody of such authority ;

(j) require any authority referred to in paragraph (h) to furnish such information as he may have in his possession or custody relating to the properties, assets of any person or relative of a person, referred to in paragraph (a) ;

(k) (i) before the expiration of the period of ninety days, days for which a notice served under paragraph (g) is in force, 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 notice 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) a District Court upon, application made to it under sub-paragraph (i) and being satisfied that the property referred to in the application, or any interest therein, has been acquired whether directly or indirectly, with funds attributable, in whole or in part, to a Finance Company, direct a writ of execution to issue to the Fiscal authorizing and requiring him to seize and sell such property,

(iii) the provisions of sections 226 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-paragraph (ii),

(iv) 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), and the balance shall be paid to the owner of the property seized.

26. (1) Notwithstanding the provisions of any other written law or the Memorandum and articles of association of a finance company, the Monetary Board, may, where a Order has been made by the Board under paragraph (a) of subsection (4) of section 18, on a report made by the Director—

- (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-organize such finance company by increasing its Capital and arranging for new shareholders and by reconstituting its Board of Directors ; or
- (c) re-construct the finance company in any such manner as it considers to be in the interest of depositors ;
- (d) direct any shareholder of any finance company to divest or transfer the ownership of the shares owned by him, to a person nominated by the Monetary 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 quoted at a price to be determined by a valuer nominated by the Board.

(2) A shareholder who fails to comply with a direction given to him under paragraph (d) of subsection (1) shall be guilty of an offence.

27. The Central Bank of Sri Lanka may—

- (a) notwithstanding anything in section 10 of the Insurance Corporation Act, No. 2 of 1961, or other written law, establish, maintain, manage and control a scheme for the insurance of deposits held by finance companies registered under this Act and require such companies to insure the deposits held by such companies, under such scheme ; or
- (b) require finance companies registered under this Act to insure the deposits held by such companies under any scheme for the insurance of such deposits established by any such institution as is specified by the Board.

28. (1) Where a scheme for the insurance of deposits has been established by the Central Bank under paragraph (a) of section 27 every finance company registered under this Act shall, apply to the Central Bank to insure, the deposits held by such company under the scheme.

(2) The Central Bank of Sri Lanka may in its discretion, accept or reject any application made under subsection (1) and where it accepts such application, require the applicant finance company to pay such premium to the Central Bank of Sri Lanka on the insurance as may be determined by the Board from time to time having regard to the risks involved.

(3) The premium shall be payable for such periods at such times and in such manner as may be determined by the Monetary Board.

(4) 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 Central Bank of Sri Lanka interest on the amount of such premium at such rate as may be determined by the Board having regard to the losses likely to be incurred by the Board, by reason of such default.

29. Rules may be made by the Board in respect of—

(a) the interest which may be charged from an insured finance company, where it makes default in the payment of premia ;

(b) any matter that is stated or is required to be prescribed or in respect of which a rule is authorized to be made under this Act for the purpose of insuring of deposits of finance companies ;

(c) any other matter affecting, connected with or incidental to the exercise, discharge or performance of the powers, functions and duties of the Central Bank of Sri Lanka under section 27 and 28 of this Act.

30. Notwithstanding the provisions of subsection (1) of section 2, the provisions of this Act shall not apply to the business of any banking institution as defined in the Monetary Law Act (Chapter 422), or to a co-operative society registered under the Co-operative Societies Law, No. 5 of 1972, or the business of the National Development Bank established under the National Development Bank Act, No. 2 of 1979, or to the Development Finance Corporation of Ceylon established under the Development Finance Corporation of Ceylon Act (Chapter 165).

31. (1) Where a deposit with any finance company has lain dormant, that is to say, where a depositor has not called for withdrawal of the deposit on maturity for a period of ten years after maturity, (or where there has been no receipt by the finance company of any written correspondence from the depositor or his lawful representative in relation to the deposit for a period exceeding ten years), the monies lying in deposit together with interest thereon accrued, if any, shall notwithstanding anything contained in any other law, if the Board so directs, be transferred by such finance company to a special account in the Central Bank of Sri Lanka.

(2) Any person who furnishes proof to the satisfaction of the Board, that any monies lying to his credit in his name with any finance company registered under this Act or in the name of a person from whom he derives title have been transferred to a special account in the Central Bank of Sri Lanka under subsection (1) shall, subject to such terms, conditions or restrictions as may be imposed in respect of such monies, by or under any written law, be entitled to repayment of such monies by the Central

Bank of Sri Lanka together with the interest payable on such monies upto the date of repayment at such rate as the Board may, from time to time, determine or without such interest, if the Board so decides.

(3) Any monies transferred to a special account under subsection (1) may be utilized for such purposes as may be determined by the Board after consultation with the Minister in charge of the subject of Finance.

32. (1) A person shall be disqualified from being appointed or elected as the case may be, as director, chief executive or secretary of a finance company or from holding such post if such person—

- (a) has been declared insolvent by any court of law ;
- (b) has been convicted in any court of law for an offence involving moral turpitude ;
- (c) has been convicted for any offence under this Act or the Companies Act, No. 17 of 1982 ;
- (d) is a person against whom action has been taken by the Monetary Board under section 18 or 25 of this Act ;

(2) Any person who acts as a Director, Chief Executive or secretary of a finance company while being under any disqualification set out in subsection (1), shall be guilty of an offence under this Act.

33. (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) registration of finance companies and the annual licence fees payable to the Board by finance companies registered under this Act ;
- (b) the forms to be used under this Act ;
- (c) the regulation or prohibition of the issue by any person or body of persons of any prospectus or advertisement soliciting the deposit monies from the public and the conditions, subject to which any such prospectus or advertisement may be issued.

34. 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.

35. (1) Any person who, being a director, chief executive, manager, officer or 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 ; or
- (b) fails to comply with any direction issued by the Board under the provisions of this Act ;
- (c) fails to take all reasonable steps to secure the correctness of any statement submitted by such finance company under the provisions of this Act ;
- (d) wilfully makes a false entry, or causes such an entry to be made, in any book or record or in any report, slip, document, or statement relating to the business affairs, transactions, conditions, assets or liabilities or accounts of such finance company, or wilfully causes any such entry to be omitted ; or
- (e) wilfully omits to make an entry in any book or record or in any report, slip, document or statement relating to the business, affairs, transactions, conditions, assets or liabilities or accounts of such finance company or wilfully causes such entry to be omitted ; or
- (f) wilfully alters, abstracts, conceals or erases any entry in any book or record or in any report, slip, document, or statement relating to the business, affairs, transactions, conditions, assets or liabilities or accounts of such finance company or wilfully causes any such entry to be erased, abstracted concealed or destroyed 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.

36. (1) Any person or body of persons who contravenes or fails to comply with any provisions of this Act or any rule, direction order or requirement made or imposed thereunder or furnishes false information when required under any provision of this Act, to furnish information, shall be guilty of an offence under this Act.

(2) In the case of any offence under this Act committed by a body of persons—

- (a) where such body of persons is a body corporate, every director, manager, or secretary of that body corporate ; and
- (b) where such body of persons is an unincorporate body, every individual who is a member of such body, shall be guilty of such offence ;

Provided however that no such 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.

37. The Monetary Board may in the public interest, where any person or body of persons carries on finance business in contravention of the provisions of section 2 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 whatever—

(a) in the case of a company or an incorporated body of persons, the name of such company ; and the names of its directors or the name of such incorporate body, the names of the directors of such incorporated body, as the case may be ; and

(b) in the case of a person or unincorporated body of persons, the name of such person or members of such unincorporated body of persons as the case may be.

38. Every person who is guilty of an offence under this Act shall be liable on conviction after trial before a Magistrate's Court to imprisonment of either description for a term not exceeding three years or to a fine not exceeding one million rupees.

39. Officers of the Central Bank of Sri Lanka shall be deemed to be public officers, within the meaning of section 136 of the Code of Criminal Procedure Act for the purpose of instituting proceedings in respect of offences under this Act.

40. (1) The Director may, having regard to the circumstances in which an offence under this Act was committed and with the approval of the Board, compound such offence for a sum not exceeding one hundred thousand rupees.

(2) The compounding of any offence under this section—

(a) shall be notified in writing under the signature of both parties to the Court having jurisdiction over the offence ; and

(b) shall have the effect of an acquittal of the accused.

41. (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 ; or

(b) failed to pay up any debts incurred by it, on such debts becoming due ; or

(c) where a petition or action for relief has been filed against it, had appointed in respect of it, under any bankruptcy law, or any other law which provides for relief of debtors or which related to debtors, a custodian or receiver ; or

- (d) ceased to carry on finance business ; or
- (e) continuously violates or contravenes the provisions of the Act or any directions issued thereunder ; or
- (f) fails to pay the annual licence fee,

the Board may, give notice that it would cancel the licence issued to such finance company and shall communicate such notice to the 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 receipt of such notice, giving reasons why the licence issued to it under section 7 should not be so cancelled.

(3) After the expiration of sixty days from the date of notification 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 shall notify the finance company accordingly.

(4) A cancellation of a licence under subsection (3), shall take effect—

- (a) where no application is made to the Supreme Court against the cancellation, after the period for preferring such application has expired ; or
- (b) where an application is made to the Supreme Court, after the cancellation is upheld by the Supreme Court,

and notification of such cancellation shall be published in the *Gazette*.

(5) Where the licence of a finance company is so cancelled the Board shall remove the name of the finance company from the register maintained under section 6 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 18 shall apply.

(6) Where the finance company fails to comply with the provisions of subsection (5) within thirty days of the issue, the Board, may require the Director to file action for the winding up of the finance company, and the provisions of section 18 shall apply to such winding up.

42. 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 delegate to any officer of the Central Bank of Sri Lanka its authority 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.

43. (1) No person aggrieved by an Order made or purported to have been made under section 2 or section 10(2) or section 11(2) or section 18(4) (b) or section 20 or section 24 or section 25 or section 26 or section 41 or who apprehends that he would be affected by any act or any step taken, or proposed to be taken under 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 order or purported order under section 2 or section 10 (2) or section 11(2) or section 18(4) (b) or section 20 or section 24 or section 25 or section 26 or section 41, 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 effect 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.

44. No suit or prosecution shall lie against any member of the Monetary Board or any officer or servant of the Central Bank of Sri Lanka for any act which is in good faith done or purported to be done, or omitted to be done, by him under this Act.

45. (1) The Control of Finance Companies Act, No. 27 of 1979, is hereby repealed.

(2) Notwithstanding the repeal of the Control of Finance Companies Act, No. 27 of 1979 every notice, order, rule of direction issued, requirement imposed rule 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 notice, order, direction, requirement, rule or delegation is not inconsistent with the provisions of this Act, be deemed to be a notice, order, direction, requirements, rule or delegation issued imposed or made as the case may be under the corresponding provisions of this Act.

(3) Any action taken, Order made or direction given under the Control of Finance Companies Act, No. 27 of 1979 read with the Control of Finance Companies regulations made under the Public Security Ordinance during the period commencing

on June 16, 1988 and ending on the date of commencement of this Act shall be valid and effectual as if the Public Security Ordinance had authorized the making of those regulations.

(4) No civil or criminal Proceedings shall be instituted or maintained or continued against the Board or any officer, servant or agent of the Board or any other person or authority for any act *bona fide*, done or omitted to be done by him during the period commencing on June 16, 1988 and ending on the date of commencement of this Act, in pursuance or supposed pursuance of the provisions of the Control of Finance Companies Act, No. 27 of 1979, read with the Control of Finance Companies regulations made under the Public Security Ordinance.

46. In this Act unless the context otherwise requires—

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

“Capital” means the paid up capital of any 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.

“commercial bank” has the same meaning as in the Monetary Law Act (Chapter 422) ;

“Director” means the head of the department of the Central Bank of Sri Lanka to which the subject of finance companies has been assigned ;

“finance business” means the business of acceptance of money by way of deposit the payment of interest thereon and—

(a) the lending of money on interest ; or

(b) the investment of money in any manner whatsoever ; or

(c) the lending of money on interest and the investment of money in any manner whatsoever,

“finance company” means a company as defined in the Companies Act, No. 17 of 1982 registered under this Act for carrying on finance business ;

“hire purchase agreement” means an agreement for the letting of goods with an option to purchase (whether the agreement describes the weekly fortnightly or monthly payments as rentals, instalments hire or otherwise) but does

not include any agreement whereby property in the goods comprised therein passes at the time of the agreement or upon or at any time before delivery of the goods ;

“hirer” means a person to whom the goods are let, hired or agreed to be sold under a hire purchase agreement and includes a person to whom the rights or liabilities of the hirer under such agreement have passed by assignment or by operation of law.

“holding company” and “Subsidiary Company” have the respective meanings assigned to them in section 150 of Companies Act, No. 17 of 1982 ;

“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 free from any charge or lien ;
- (d) Sri Lanka Government Securities maturing within one year and free from any charge or lien ;
- (e) Central Bank of Sri Lanka securities maturing within one year and free from any charge or lien ;
- (f) cash balance if any maintained with the Central Bank of Sri Lanka ;

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

“prescribed” means prescribed by rules made under this Act ;

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

“substantial interest”—

- (i) in relation to a company means 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 one million rupees or ten *per centum* of the paid up capital of the company whichever is less or the existence of guarantee or indemnity given by an individual or his relative or by another company on behalf of such company ;

- (ii) in relation to a firm means the holding of a beneficial interest in the capital thereof by an individual or his relative which singly or taken together represents more than ten *per centum* of the total capital subscribed by all partners of that firm or the existence of a guarantee or indemnity given by an individual or his or her spouse or parent or child on behalf of such firm and ;

unimpaired capital" means capital on which there is no lien or other charge.

The notice published in the Gazette (Extraordinary) of the Democratic
Socialist Republic of Sri Lanka No. 510/9 on June 16, 1988

THE PUBLIC SECURITY ORDINANCE (CHAPTER 40)

REGULATION made by the President under section 5 of the Public Security Ordinance (Chapter 40).

J. R. JAYEWARDENE,
President.

Colombo, 16th June, 1988.

Regulation

During the continuance in force of these regulations, the Control of Finance Companies Act, No. 27 of 1979 shall have effect as if—

(1) for subsection (3) of section 15 of that Act, there were substituted the following subsections :—

“(3) It shall be lawful for the Director of Bank Supervision or any officer authorized by him—

(a) to administer in accordance with the Oaths Ordinance, oaths or affirmations to any proprietor, auditor, partner, director, manager, secretary or employee of any institution ;

(b) to require any proprietor, partner, director, manager, auditor, secretary or employee of any institution to furnish all such information as the Director or any officer authorized by him may consider necessary to ascertain the true condition of the affairs of such institution and whether such institution is being conducted in a manner detrimental to its present or future depositors ;

(c) to require any proprietor, partner, director, manager, auditor, secretary or employee of any institution to produce for inspection any books, records or other documents in his possession containing or likely to contain any necessary information ; and

(d) to require any proprietor, partner, director, manager, or secretary of an institution to submit the accounts of the institution for audit by an auditor authorized by such Director or officer.”

(2) for paragraph (a) of subsection (3) of section 16 of that Act, there were substituted the following paragraph :—

“(a) make order permitting the institution to resume business, either unconditionally or subject to such conditions as the Board may consider necessary in the public interest or in the interests of the depositors or creditors of the institution. The conditions imposed under this paragraph may include a condition requiring the removal of a Director from the Board of Directors of the institution or requiring the appointment of a person authorized by the Board, to the Board of Directors of the institution.” ;

(3) the following paragraph was added at the end of subsection (3) of section 16 of that Act :—

“(c) take measures as provided in subsection (3A).” ;

(4) the following subsection was inserted immediately after subsection (3) of section 16 of that Act :—

“(3A) (a) The Board may by a Notice published in the *Gazette* take over the administration and management of an institution for such period as may be specified in such Notice. The Board may, by a subsequent Notice published in the *Gazette*, extend the period specified in the original Notice.

(b) where the Board takes over the administration and management of an institution, the Board may—

(i) if such institution is a Company incorporated under the Companies Act, exercise, perform and discharge, with respect to such institution, all the powers, duties and functions, conferred or imposed on, or assigned to the Board of Directors of the institution, by or under any written Law or by the articles of association of such Company ;

(ii) If such institution is a partnership or sole proprietorship, exercise, perform or discharge, with respect to such institution all the powers, duties and functions, conferred or imposed on, or assigned to, a partner or a sole proprietor, by or under any written law or by the partnership deed relating to such partnership.

(iii) enter into an agreement with, any person or body of persons for the management of such Institution, subject to such conditions as may be agreed upon between the Board and such person or body of persons, having regard to the public interest.

- (c) During the period for which the administration and management of an institution is taken over by the Board every Director, partner, Manager, Secretary or proprietor of such institution shall, *unless expressly authorised to do so by the Board*, cease to exercise perform and discharge any powers, duties and functions with respect to such institution.
- (d) (i) the Board may grant to any institution, the administration and management of which it has taken over, under paragraph (a) 2, such loans or other accommodation from the funds of the Central Bank as may be necessary for the proper management of such institution.
- (ii) all costs, charges and expenses incurred in—(a) the assuming of *control of, and operating of*, an institution, the control of which has been so assumed, and (b) the winding up of an institution under subsection (4) shall be paid out of the funds of the Central Bank, in any case where the Board considers that such payment is in the public interest.
- (e) where the Board has taken over the administration and management of an institution, the Board shall not be liable or subject to any action or proceedings in any court in respect of any loss or damages 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 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 paragraph (b) of this subsection.
- (5) subsection (8) of section 16 were omitted from that Act ; and
- (6) for paragraph (a) of subsection (13) of section 16 of that Act, there were substituted the following :—
- (13) (a) any proprietor, partner, director, manager, auditor, secretary or employee of any institution who fails to furnish any information or to produce any book, record or other document when required so to do by the Director of Bank Supervision or by any officer authorized by such Director, or who obstructs or fails to permit the Director of Bank Supervision or any officer authorized by such Director to make any examination under this section or under section 15, shall be guilty of an offence."
- (7) As if there were inserted immediately after section 21 of that Act the following new Part which shall have effect as Part IV thereof :—

“PART IV

Miscellaneous

Powers of
Monetary
Board
in relation
to unviable
institutions.

21A. (1) The Monetary Board may—

(a) publicise, by any means whatsoever, including the placing of advertisements in the newspapers or other public media—

(i) the names and addresses of institutions that in the opinion of the Monetary Board, have violated any provision of this Act or of any direction or rule issued thereunder ;

(ii) the names and addresses, of any directors, shareholders, partners, proprietors, employees, agents or any other person or persons whom the Monetary Board considers responsible for the unviable or insolvent condition of any institution, it being within the absolute discretion of the Board to determine whether such institution is viable or unviable or is solvent or insolvent ;

(b) invite the public, by any means whatsoever, including the placing of advertisements in the newspapers or other public media, to furnish to the Central Bank information and particulars regarding the value, nature and whereabouts of any monies, properties or other assets, movable or immovable, of any institution or of any person referred to in paragraph (a).

(c) direct any person referred to in paragraph (a) to disclose to the Central Bank, the value, nature and whereabouts of any monies, properties and assets beneficially owned by such person whether in his own name or in the name of any corporate body in which such person has any interest or in the name of any nominee, relative, employee or agent of such person ;

(d) serve a notice on any person referred to in paragraph (a) prohibiting the transfer by such person of possession, ownership or any interest in any properties or assets specified in such notice ;

(e) serve a copy of the notice referred to in paragraph (d) on the appropriate authority for the registration of any document relating to ownership of such properties or assets or relating

to the alienation of ownership or any interest in such properties or assets, including in the case of any immovable property, the Registrar of Lands and in the case of motor vehicles, the Registrar of Motor Vehicles ;

(f) require the authority on whom a copy of the notice of prohibition signed by the Director of Bank Supervision for and on behalf of the Monetary Board is served, to register such notice in the appropriate books in the custody of such authority ;

(g) require any authority referred to in paragraph (e) and (f) to furnish any information that it may have with regard to any properties or assets of any person referred to in paragraph (a) ;

(h) by notification in the Gazette to vest in itself any assets or properties of persons referred to in paragraph (a) above other than immovable property ;

(i) seize any assets beneficially owned by any person referred to in paragraph (a) and to dispose of such assets in any manner as the Board may see fit including the seizing and disposing of any sums of money lying to the credit of such person in any bank or an institution ;

(2) (a) Any officer authorised in writing by the Monetary Board may seize and take possession of any property and assets referred to in paragraph (j) of subsection (1) of this section.

(b) Where any officer authorised under paragraph (a) is unable or apprehends that he will be unable to take possession of any assets because of any obstruction or resistance which has been or is likely to be offered, such officer shall on his making an application in that behalf to the Magistrate Court, be entitled to an order of that court, directing an officer of the Court to deliver possession of such assets to him.

(c) Where an order under sub paragraph (b) is issued to the officer of Court by the Magistrate's Court, he shall forthwith execute that order and shall in writing report to that Court, the manner in which that Order was executed.

(d) For the purpose of executing an order issued by a Magistrate's Court under subparagraph (b), the officer of Court or any person acting under his direction may use such force as may be necessary

to seize the assets to which that order relates and to deliver possession of those assets, to the officer who is authorized to take possession of such assets.

Powers of
Monetary
Board to review
certain
transactions.

21B. The Director of Bank Supervision may review any transaction entered into by any person referred to in section 21A. (a), after the coming into force of this section and may report such transaction to the Monetary Board, if he is of the opinion that it has been entered into for the purpose of defeating the purposes of these sections. Where the Monetary Board determines, on such report, that such transaction has been entered into for the purpose of defeating the purposes of these section, such transaction shall be deemed, for all purposes to be null and void.

Power of
Monetary
Board in
relation to
contracts with
depositors

21C. Notwithstanding the provisions of this Act or any other law the Monetary Board may review any contract entered into by a depositor with an institution the management of which is taken over by the Monetary Board and may vary the terms of such contract, including the terms relating to repayment, interest rates and charges.

Officers of
Central Bank
deemed to be
public officers.

21D. Officers of the Central Bank shall be deemed to be public officers, for the purposes of this Act, within the meaning of section 136 of the Criminal Procedure Code, ; and

(8) as if the following definition was added at the end of Section 22 of that Act :—

“ “ relative ” with reference to a person referred to in paragraph (a) of section 21A means spouse, child, father, mother, brother and sister of such person”.